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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE252, Special Condition No. 23–192–SC]

Special Conditions; Cessna Aircraft Company Model 510 Airplane; Full Authority Digital Engine Control (FADEC) System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments; correction.

SUMMARY: On June 16, 2006, we published a document on special conditions for Cessna Aircraft Company on the Model 510 airplane for full authority digital engine control system. There was an error in the background of the document in reference to the future type certificate number. This notice removes that sentence from the background; no change to the special conditions portion is necessary.

DATES: Comments must be received on or before July 17, 2006.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE252, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE252. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, Room 301, 901 Locust Street, Kansas City, Missouri 64106; telephone (816) 329–4135.

SUPPLEMENTARY INFORMATION:

Need for Correction

The FAA published a document on June 16, 2006 (71 FR 34789), that issued final special conditions with a request for comments. In the background, the sentence ''The Cessna 510 will be approved under TC No. A24CE'' appears. However, this will not be the type certificate number for the airplane, and this sentence is removed from the background to correct the error. There will be no change to the special conditions.

Correction of Publication

Accordingly, the background of the special conditions is revised to remove the sentence, ''The Cessna 510 will be approved under TC No. A24CE'' from the document.

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. CE252.'' The postcard will be date stamped and returned to the commenter.

Background

The original background of the special conditions contained the following sentence: ''The Cessna 510 will be approved under TC No. A24CE.'' This type certificate number is incorrect, and the sentence is removed from the background of the special conditions. Since this change has no effect on the special conditions, the remainder of the document, which includes the special condition portion, will not be changed.

Issued in Kansas City, Missouri on June 23, 2006.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–10469 Filed 7–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Clindamycin Capsules and Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Virbac AH, Inc. The supplemental ANADA provides for an expanded dose range and revised wording of indications for the oral use of clindamycin hydrochloride tablets in dogs for the treatment of certain bacterial diseases.

DATES: This rule is effective July 12, 2006.

FOR FURTHER INFORMATION CONTACT: Daniel A. Benz, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0223, e-mail: *daniel.benz@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Virbac AH, Inc., 3200 Meacham Blvd., Ft. Worth, TX 76137, filed a supplement to ANADA 200–316 for CLINITABS (clindamycin hydrochloride) tablets for the treatment of certain bacterial diseases in dogs. The supplemental ANADA provides for an expanded dose range and revised wording of indications. The supplemental ANADA is approved as of June 2, 2006, and the regulations are amended in 21 CFR 520.446 to reflect the approval and a current format.

Approval of this supplemental ANADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

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

■ 2. In § 520.446, revise paragraphs (b)(1) and (b)(2); remove paragraph (c); redesignate paragraph (d) as paragraph (c); and revise newly redesignated paragraph (c) to read as follows:

§ 520.446 Clindamycin capsules and tablets.

* * * * *

(b) * * *

(1) Nos. 000009 and 059130 for use of capsules described in paragraph (a)(1) of this section.

(2) No. 051311 for use of tablets described in paragraph (a)(2) of this section.

(c) *Conditions of use in dogs*—(1) Amount. Wounds, abscesses, and dental infections: 2.5 to 15 mg per pound (/lb) body weight every 12 hours for a maximum of 28 days. Osteomyelitis: 5.0 to 15 mg/lb body weight every 12 hours for a minimum of 28 days.

(2) *Indications for use.* For the treatment of skin infections (wounds and abscesses) due to susceptible strains of coagulase-positive staphylococci (*Staphylococcus aureus* or *S. intermedius*), deep wounds and abscesses due to susceptible strains of *Bacteroides fragilis*, *Prevotella melaninogenicus*, *Fusobacterium necrophorum*, and *Clostridium perfringens*, dental infections due to susceptible strains of *S. aureus*, *B. fragilis*, *P. melaninogenicus*, *F. necrophorum*, and *C. perfringens*, and osteomyelitis due to susceptible strains of *S. aureus*, *B. fragilis*, *P. melaninogenicus*, *F. necrophorum*, and *C. perfringens*.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 27, 2006.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E6–10877 Filed 7–11–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Hyaluronate Sodium Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co., a Division of Pfizer, Inc. The supplemental NADA provides for a revised food safety warning on labeling for hyaluronate sodium injectable solution.

DATES: This rule is effective July 12, 2006.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., a Division of Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed a supplement to NADA 112–048 for HYLARTIN (sodium hyaluronate) Injection, approved for veterinary prescription use by intra-articular injection for the treatment of joint dysfunction in horses due to noninfectious synovitis associated with equine osteoarthritis. The supplemental NADA provides for a revised food safety warning on the labeling. The application is approved as of May 30, 2006, and the regulations are amended in 21 CFR 522.1145 to reflect the approval.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.1145 [Amended]

■ 2. In § 522.1145, in the heading remove the word ''injection''; and in paragraph (a)(3)(iii) remove the sentence ''Not for use in horses intended for food.'' and add in its place ''Do not use in horses intended for human consumption''.

Dated: June 27, 2006.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E6–10879 Filed 7–11–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Melengestrol, Lasalocid, and Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Ivy Laboratories, Div. of Ivy Animal Health, Inc. The ANADA provides for use of single-ingredient Type A medicated articles containing melengestrol, lasalocid, and tylosin to make three-way combination drug Type C medicated feeds for heifers fed in confinement for slaughter.

DATES: This rule is effective July 12, 2006.

FOR FURTHER INFORMATION CONTACT: Daniel A. Benz, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0223, e-mail: *daniel.benz@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Ivy Laboratories, Div. of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed ANADA 200–430 for use of HEIFERMAX 500 (melengestrol acetate) Liquid Premix, BOVATEC (lasalocid), and TYLAN (tylosin phosphate) single-ingredient Type A medicated articles to make dry and liquid, three-way combination drug Type C medicated feeds for heifers fed in confinement for slaughter. Ivy Laboratories' ANADA 200–430 is approved as a generic copy of NADA 138–992, sponsored by Pharmacia and Upjohn Co., a Division of Pfizer, Inc., for combination use of MGA 500 (melengestrol acetate) Liquid Premix, BOVATEC, and TYLAN in cattle feed. The application is approved as of June 1, 2006, and the regulations are amended in 21 CFR 558.342 to reflect the approval. The basis of approval is discussed in freedom of information summary.

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

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

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

List of Subject in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.342 [Amended]

■ 2. In § 558.342, amend the table in paragraph (e)(1)(iv) in the ''Sponsor'' column by adding in numerical sequence ''021641''.

Dated: June 23, 2006.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. E6–10878 Filed 7–11–06; 8:45 am]

BILLING CODE 4160–01–S

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4281

RIN 1212–AA55

Duties of Plan Sponsor Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; technical amendment.

SUMMARY: This document amends part 4281 (Duties of Plan Sponsor Following Mass Withdrawal) to make technical changes to conform to amendments made to part 4044 (Allocation of Assets in Single-Employer Plans) in a final rule published in the **Federal Register** on December 2, 2005. That final rule updated PBGC's mortality tables used for certain valuations for single-employer plans. Part 4281, which provides rules for valuing benefits in multiemployer plans following mass withdrawal, refers to the mortality tables in part 4044. Technical amendments are needed to conform the references in part 4281 to the changes in part 4044.

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, or James L. Beller, Jr., Attorney, Legislative and Regulatory Department, PBGC, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

DATES: Effective July 12, 2006.

SUPPLEMENTARY INFORMATION: On December 2, 2005, at 70 FR 72205, PBGC published a final rule modifying part 4044 of its regulations (Allocation of Assets in Single Employer Plans) to update the mortality tables in Appendix A. Part 4281 (Duties of Plan Sponsor Following Mass Withdrawal) refers to those mortality tables. Because conforming changes to those references in part 4281 were inadvertently omitted, those references are no longer accurate. However, the correct references are obvious.

The mortality assumptions used for valuations under part 4281 mirror the assumptions in part 4044. The mortality assumptions in the two parts were updated at the same time in a final rule published in 1993. The preamble to the associated proposed rule stated: ''The multiemployer regulation will be simultaneously amended so that the same mortality, loading, and interest assumptions will be employed to determine the values of benefits under multiemployer plans after a mass withdrawal.'' 58 FR at 5132 (January 19, 1993). Thus, it is clear there was no intent to change this correlation when the mortality tables in part 4044 were updated in 2005. It is necessary to use the updated mortality tables under part 4281 in order to avoid inappropriate benefit valuations under that part.

Because this rule conforms part 4281 in a way that was obviously intended when part 4044 was amended by the final rule published in the **Federal Register** on December 2, 2005, at 70 FR 72206, PBGC finds good cause to issue this technical amendment without prior proposal and opportunity for public comment and without a 30-day delayed effective date.

List of Subjects in 29 CFR Part 4281

Employee benefit plans, Pensions.

■ For the reasons set forth above, PBGC amends part 4281 of 29 CFR chapter XL as follows:

PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL

■ 1. The authority citation for part 4281 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1399(c)(1)(D), and 1441.

■ 2. Amend § 4281.14 by revising paragraphs (c)(1), (c)(2), (d)(1), (d)(2), and (e) to read as follows:

§ 4281.14 Mortality assumptions.

* * * * *

(c) *Mortality rates for healthy lives.* * * *

(1) For male participants, the rates in Table 1 of Appendix A to part 4044 of this chapter projected from 1994 to the calendar year in which the valuation date occurs plus 10 years using Scale AA from Table 2 of Appendix A to part 4044 of this chapter; and

(2) For female participants, the rates in Table 3 of Appendix A to part 4044 of this chapter projected from 1994 to the calendar year in which the valuation date occurs plus 10 years using Scale AA from Table 4 of Appendix A part 4044 of this chapter.

(d) *Mortality rates for disabled lives (other than Social Security disability).* * * *

(1) For male participants, the lesser of—

(i) The rate determined from Table 1 of Appendix A to part 4044 of this chapter projected from 1994 to the calendar year in which the valuation date occurs plus 10 years using Scale AA from Table 2 of Appendix A to part 4044 of this chapter and setting the resulting table forward three years, or

(ii) The rate in Table 5 of Appendix A to part 4044 of this chapter.

(2) For female participants, the lesser of—

(i) The rate determined from Table 3 of Appendix A to part 4044 of this chapter projected from 1994 to the calendar year in which the valuation date occurs plus 10 years using Scale AA from Table 4 of Appendix A to part 4044 of this chapter and setting the resulting table forward three years, or

(ii) The rate in Table 6 of Appendix A to part 4044 of this chapter.

(e) *Mortality rates for disabled lives (Social Security disability).* The mortality rates applicable to annuities in pay status on the valuation date that are being received as disability benefits and for which either eligibility for, or receipt of, Social Security disability benefits is a prerequisite, are—

(1) For male participants, the rates in Table 5 of Appendix A to part 4044 of this chapter; and

(2) For female participants, the rates in Table 6 of Appendix A to part 4044 of this chapter.

Issued in Washington, DC, this 6th day of July, 2006.

Vincent K. Snowbarger,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. E6–10919 Filed 7–11–06; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 1, 64, 72, 81, 89, 100, 101, 104, 120, 135, 146, 148, 151, 153, 154, 155, 156, 157, 160, 164, and 165

[USCG–2006–25150]

RIN 1625–ZA08

Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule makes non-substantive changes throughout Title 33 of the Code of Federal Regulations. The purpose of this rule is to make conforming amendments and technical corrections to Coast Guard navigation and navigable water regulations. This rule will have no substantive effect on the regulated public.

DATES: This final rule is effective July 12, 2006.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2006–25150 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Ray Davis, Coast Guard, telephone 202–372–1461. If you have questions on viewing the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under both 5 U.S.C. 553(b)(A) and (b)(B), the Coast Guard finds that this rule is exempt from notice and comment rulemaking requirements because these changes involve agency organization and practices, and good cause exists for not publishing an NPRM for all revisions in the rule because they are all non-substantive changes. This rule consists only of corrections and editorial, organizational, and conforming amendments. These changes will have no substantive effect on the public; therefore, it is unnecessary to publish an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Each year Title 33 of the Code of Federal Regulations is updated on July 1. This rule, which becomes effective July 12, 2006, makes other technical and editorial corrections throughout Title 33. This rule does not create any substantive requirements.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. As this rule involves internal agency practices and procedures and non-substantive changes, it will not impose any costs on the public.

Small Entities

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a) and (b), of the Instruction from further environmental documentation because this rule involves editorial, procedural, and internal agency functions. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

33 CFR Part 64

Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 72

Government publications, Navigation (water).

33 CFR Part 81

Navigation (water), Reporting and recordkeeping requirements, Treaties.

33 CFR Part 89

Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 100

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

33 CFR Part 101

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

33 CFR Part 104

Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels.

33 CFR Part 120

Passenger vessels, Reporting and recordkeeping requirements, Security measures, Terrorism.

33 CFR Part 135

Administrative practice and procedure, Continental shelf, Insurance, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 146

Continental shelf, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

33 CFR Part 148

Administrative practice and procedure, Environmental protection, Harbors, Petroleum.

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 153

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 154

Alaska, Fire prevention, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 164

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

33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 1, 64, 72, 81, 89, 100, 101, 104, 120, 135, 146, 148, 151, 153, 154, 155, 156, 157, 160, 164, and 165.

Title 33—Navigation and Navigable Waters

PART 1—GENERAL PROVISIONS

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

Authority: 14 U.S.C. 633; 33 U.S.C. 401, 491, 525, 1321, 2716, and 2716a; 42 U.S.C. 9615; 49 U.S.C. 322; 49 CFR 1.45(b), 1.46; section 1.01–70 also issued under the authority of E.O. 12580, 3 CFR, 1987 Comp., p. 193; and sections 1.01–80 and 1.01–85 also issued under the authority of E.O. 12777, 3 CFR, 1991 Comp., p. 351.

§ 1.08–5 [Amended]

■ 2. In paragraph (d), remove the reference ''1.07–9'' and add, in its place, ''1.07–10''.

PART 64—MARKING OF STRUCTURES, SUNKEN VESSELS AND OTHER OBSTRUCTIONS

■ 3. The authority citation for part 64 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 409, 1231; 42 U.S.C. 9118; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.

§ 64.11 [Amended]

■ 4. At the end of the section, remove the Note.

PART 72—MARINE INFORMATION

■ 5. The authority citation for part 72 continues to read as follows:

Authority: 14 U.S.C. 85, 633; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

§ 72.01–25 [Amended]

■ 6. In § 72.01–25, paragraph (b), remove ''202–521–2250'' and add, in its place, ''202–512–2104''.

§ 72.05–5 [Amended]

■ 7. In § 72.05–5, remove ''202–521–2250'' and add, in its place, ''202–512–2104''.

PART 81—72 COLREGS: IMPLEMENTING RULES

■ 8. The authority citation for part 81 continues to read as follows:

Authority: 33 U.S.C. 1607; E.O. 11964; 49 CFR 1.46.

■ 9. Revise the last sentence of § 81.3 to read as follows:

§ 81.3 General.

* * * The information collection and recordkeeping requirements in §§ 81.5 and 81.18 have been approved by the Office of Management and Budget under OMB control No. 1625–0019.

■ 10. Revise the parenthetical at the end of § 81.5 to read as follows:

§ 81.5 Application for a Certificate of Alternative Compliance.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0019)

■ 11. Revise the parenthetical at the end of § 81.18 to read as follows:

§ 81.18 Notice and record of certification of vessels of special construction or purpose.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0019)

PART 89—INLAND NAVIGATION RULES: IMPLEMENTING RULES

■ 12. The authority citation for part 89 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46(n)(14).

■ 13. Revise the last sentence of § 89.3 to read as follows:

§ 89.3 General.

* * * The information collection and recordkeeping requirements in §§ 89.5 and 89.18 have been approved by the Office of Management and Budget under OMB control No. 1625–0019.

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 14. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.

§ 100.519 [Amended]

■ 15. In § 100.519 paragraph (a)(2), remove the word ''Group'' and add in its place, ''SFO''.

§ 100.531 [Amended]

■ 16. In § 100.531, in paragraph (a), in the definition of ''Coast Guard Patrol Commander'', remove the word ''Group'' and add in its place, ''SFO''.

■ 17. In § 100.531, in paragraph (a), in the definition of ''Official Patrol'', remove the word ''Group'' and add in its place, ''SFO''.

PART 101—MARITIME SECURITY: GENERAL

■ 18. The authority citation for part 101 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

§ 101.305 [Amended]

■ 19. In § 101.305, in paragraph (a), remove ''202–267–2675, fax: 202–267–1322'' and add, in its place, ''202–372–2428; Fax: 202–372–2920''.

PART 104—MARITIME SECURITY: VESSELS

■ 20. The authority citation for part 104 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

§ 104.115 Compliance.

■ 21. In § 104.115—

■ a. Revise the section heading to read as set forth above;
■ b. In paragraph (a), remove ''On July 1, 2004, and thereafter, vessel'', and add, in its place, ''Vessel''.
■ c. Remove paragraph (b), and redesignate paragraph (c) as paragraph (b).
■ d. In newly designated paragraph (b), introductory text, remove ''On July 1, 2004, and thereafter, owners'' and add, in its place, ''Owners''.

§ 104.205 [Amended]

■ 22. In § 104.205, in paragraph (b)(1), remove ''202–267–2675, fax: 202–267–1322'' and add, in its place, ''202–372–2428; Fax: 202–372–2920''.

PART 120—SECURITY OF PASSENGER VESSELS

■ 23. The authority citation for part 120 continues to read as follows:

Authority: 33 U.S.C. 1231; Department of Homeland Security Delegation No. 0170.

§ 120.220 [Amended]

■ 24. In § 120.220, in paragraph (a) remove ''202–267–2675'' and add, in its place, ''202–372–2428; Fax: 202–372–2920''.

PART 135—OFFSHORE OIL POLLUTION COMPENSATION FUND

■ 25. The authority citation for part 135 continues to read as follows:

Authority: 33 U.S.C. 2701–2719; E.O. 12777, 56 FR 54757; 49 CFR 1.46.

§ 135.305 [Amended]

■ 26. In § 135.305(b), remove the words ''Subpart C'' and add in their place ''Subpart B''.

PART 146—OPERATIONS

■ 27. The authority citation for part 146 continues to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46.

■ 28. Revise the parenthetical at the end of § 146.30 to read as follows:

§ 146.30 Notice of casualties.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0001)

■ 29. Revise the parenthetical at the end of § 146.35 to read as follows:

§ 146.35 Written report of casualty.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0001)

■ 30. Revise the parenthetical at the end of § 146.125 to read as follows:

§ 146.125 Emergency drills.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0018)

■ 31. Revise the parenthetical at the end of § 146.303 to read as follows:

§ 146.303 Notice and written report of casualties.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0001)

PART 148—DEEPWATER PORTS: GENERAL

■ 32. The authority citation for part 148 continues to read as follows:

Authority: 33 U.S.C. 1504; Department of Homeland Security Delegation No. 0170.1 (75).

§ 148.5 [Amended]

■ 33. In § 148.5, in paragraph (3), of the definition for Administrator of the Maritime Administration, remove ''202–366–4721'' and add, in its place, ''800–996–2723''.

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

■ 34. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321 and 1903; Public Law 104–227 (110 Stat. 3034), E.O. 12777, 3 CFR, 1991 Comp. p. 351.

§ 151.09 [Amended]

■ 35. In 151.09, in paragraph (a)(4), remove the reference ''§ 2.05–10'' and add, in its place, ''§ 2.22(a)(2)''.

§ 151.15 [Amended]

■ 36. In § 151.15, in paragraph (d)(2), remove ''202–267–2675), fax number 202–479–7165'' and add, in its place, ''202–372–2428), fax number 202–372–2920''.

■ 37. Revise the parenthetical at the end of § 151.19 to read as follows:

§ 151.19 International Oil Pollution Prevention (IOPP) Certificates.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0041)

■ 38. Revise the parenthetical at the end of § 151.21 to read as follows:

§ 151.21 Ships of countries not party to MARPOL 73/78.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0019)

■ 39. Revise the parenthetical at the end of § 151.25 to read as follows:

§ 151.25 Oil Record Book.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0009)

■ 40. Revise the parenthetical at the end of § 151.57 to read as follows:

§ 151.57 Waste management plans.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0072)

PART 153—CONTROL OF POLLUTION BY OIL AND HAZARDOUS SUBSTANCES, DISCHARGE REMOVAL

■ 41. The authority citation for part 153 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 1321, 1903, 1908; 42 U.S.C. 9615; 46 U.S.C. 6101; E.O. 12580, 3 CFR, 1987 Comp., p. 193; E.O. 12777, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ 153.203 [Amended]

■ 42. In § 153.203, remove ''202–267–2675'' and add, in its place, ''202–372–2428; fax number 202–372–2920''.

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

■ 43. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; Department of Homeland Security Delegation No. 0170.1. Subpart F is also issued under 33 U.S.C. 2735.

■ 44. Revise the parenthetical at the end of § 154.310 to read as follows:

§ 154.310 Operations manual: Contents.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0093)

■ 45. Revise the parenthetical at the end of § 154.740 to read as follows:

§ 154.740 Records.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0060)

■ 46. Revise the parenthetical at the end of § 154.804 to read as follows:

§ 154.804 Review, certification, and initial inspection.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0060)

■ 47. Revise the parenthetical at the end of § 154.806 to read as follows:

§ 154.806 Application for acceptance as a certifying entity.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0060)

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

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

Authority: 33 U.S.C. 1231, 1321(j); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793. Sections 155.100 through 155.130, 150.350 through 155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) are also issued under 33 U.S.C. 1903(b). Sections 155.480, 155.490, 155.750(e), and 155.775 are also issued under 46 U.S.C. 3703. Section 155.490 also issued under section 4110(b) of Public Law 101–380.

■ 49. Revise the parenthetical at the end of § 155.370 to read as follows:

§ 155.370 Oily mixture (bilge slops)/fuel oil tank ballast water discharges on oceangoing ships of 10,000 gross tons and above and oceangoing ships of 400 gross tons and above that carry ballast water in their fuel oil tanks.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0009)

■ 50. Revise the parenthetical at the end of § 155.440 to read as follows:

§ 155.440 Segregation of fuel oil and ballast water on new oceangoing ships of 4,000 gross tons and above, other than oil tankers, and on new oceangoing oil tankers of 150 gross tons and above.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0009)

■ 51. Revise the parenthetical at the end of § 155.750 to read as follows:

§ 155.750 Contents of transfer procedures.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0030)

■ 52. In Subpart D, revise the subpart heading to read ''Tank Vessel Response Plans for Oil''.

PART 156—OIL AND HAZARDOUS MATERIAL TRANSFER OPERATIONS

■ 53. The authority citation for part 156 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703a, 3715; E.O. 11735, 3 CFR 1971–1975 Comp., p. 793. Section 156.120(bb) and (ee) are also issued under 46 U.S.C. 3703.

■ 54. Revise the parenthetical at the end of § 156.20 to read as follows:

§ 156.120 Requirements for transfer.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0039)

■ 55. Revise the parenthetical at the end of § 156.170 to read as follows:

§ 156.170 Equipment tests and inspections.

* * * * *

(Approved by the Office of Management and Budget under control number 1625–0095)

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO TANK VESSELS CARRYING OIL IN BULK

■ 56. The authority citation for part 157 continues to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); 49 CFR 1.46. Subparts G, H, and I are also issued under section 4115(b), Public Law 101–380, 104 Stat. 520; Public Law 104–55, 109 Stat. 546.

■ 57. Revise the parenthetical at the end of § 157.04 to read as follows:

§ 157.04 Authorization of classification societies.

* * * * *

(Reporting and Recordkeeping requirements approved by the Office of Management and Budget under control number 1625–0036)

■ 58. Revise the parenthetical at the end of § 157.24a to read as follows:

§ 157.24a Submission of calculations, plans, and specifications for existing vessels installing segregated ballast tanks.

* * * * *

(Reporting and Recordkeeping requirements approved by the Office of Management and Budget under control number 1625–0036)

■ 59. Revise the parenthetical at the end of § 157.37 to read as follows:

§ 157.37 Discharge of oily mixtures from oil cargoes.

* * * * *

(The information collection requirement contained in paragraph (d) of this section was approved by the Office of Management and Budget under control number 1625–0041)

■ 60. Revise the parenthetical at the end of § 157.100 to read as follows:

§ 157.100 Plans for U.S. tank vessels: Submission.

* * * * *

(Reporting and Recordkeeping requirements approved by the Office of Management and Budget under control number 1625–0036)

■ 61. Revise the parenthetical at the end of § 157.102 to read as follows:

§ 157.102 Plans for foreign tank vessels: Submission.

* * * * *

(Reporting and Recordkeeping requirements approved by the Office of Management and Budget under control number 1625–0036)

■ 62. Revise the parenthetical at the end of § 157.108 to read as follows:

§ 157.108 Crude Oil Washing Operations and Equipment Manual for U.S. tank vessels: Submission.

* * * * *

(Reporting and Recordkeeping requirements approved by the Office of Management and Budget under control number 1625–0036)

■ 63. Revise the parenthetical at the end of § 157.110 to read as follows:

§ 157.110 Crude Oil Washing Operations and Equipment Manual for foreign tank vessels: Submission.

* * * * *

(Reporting and Recordkeeping requirements approved by the Office of Management and Budget under control number 1625–0036)

■ 64. Revise the parenthetical at the end of § 157.116 to read as follows:

§ 157.116 Required documents: U.S. tank vessels.

* * * * *

(Reporting and Recordkeeping requirements approved by the Office of Management and Budget under control number 1625–0036)

■ 65. Revise the parenthetical at the end of § 157.118 to read as follows:

§ 157.118 Required documents: Foreign tank vessels.

* * * * *

(Reporting and Recordkeeping requirements approved by the Office of Management and Budget under control number 1625–0036)

■ 66. Revise the parenthetical at the end of § 157.200 to read as follows:

§ 157.200 Plans for U.S. tank vessels: Submission.

* * * * *

(Reporting and Recordkeeping requirements approved by the Office of Management and Budget under control number 1625–0036)

■ 67. Revise the parenthetical at the end of § 157.206 to read as follows:

§ 157.206 Dedicated Clean Ballast Tanks Operations Manual for U.S. tank vessels: Submission.

* * * * *

(Reporting and Recordkeeping requirements approved by the Office of Management and Budget under control number 1625–0036)

■ 68. Revise the parenthetical at the end of § 157.208 to read as follows:

§ 157.208 Dedicated Clean Ballast Tanks Operations Manual for foreign tank vessels: Submission.

* * * * *

(Reporting and Recordkeeping requirements approved by the Office of Management and Budget under control number 1625–0036)

■ 69. Revise the parenthetical at the end of § 157.214 to read as follows:

§ 157.214 Required documents: U.S. tank vessels.

* * * * *

(Reporting and Recordkeeping requirements approved by the Office of Management and Budget under control number 1625–0036)

■ 70. Revise the parenthetical at the end of § 157.216 to read as follows:

§ 157.216 Required documents: Foreign tank vessels.

* * * * *

(Reporting and Recordkeeping requirements approved by the Office of Management and Budget under control number 1625–0036)

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

■ 71. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

■ 72. In § 160.7—
■ a. Redesignate paragraphs (c) and (d) as paragraphs (d) and (e);
■ b. Amend paragraph (b) by removing the reference ''paragraph (d) of this section'', and adding a reference ''paragraph (e) of this section'' in its place;
■ c. Add a new paragraph (c); and
■ d. Revise newly designated paragraph (d); as follows:

§ 160.7 Appeals.

* * * * *

(c) Any person directly affected by the establishment of a safety zone or by an order or direction issued by, or on behalf of, a District Commander may appeal to the Area Commander through the District Commander. The appeal must be in writing, except as allowed under paragraph (e) of this section, and shall contain complete supporting documentation and evidence which the appellant wishes to have considered. Upon receipt of the appeal, the Area Commander may direct a representative to gather and submit documentation or other evidence which would be necessary or helpful to a resolution of the appeal. A copy of this documentation and evidence is made available to the appellant. The appellant is afforded five working days from the date of receipt to submit rebuttal materials. Following submission of all materials, the Area Commander issues a ruling, in writing, on the appeal. Prior to issuing the ruling, the Area Commander may, as a matter of discretion, allow oral presentation on the issues.

(d) Any person directly affected by the establishment of a safety zone or by an order or direction issued by an Area Commander, or who receives an unfavorable ruling on an appeal taken under paragraph (b) of this section, may appeal through the Area Commander to the Assistant Commandant for Marine Safety, Security and Environmental Protection, U.S. Coast Guard, Washington, DC 20593. The appeal must be in writing, except as allowed under paragraph (e) of this section. The Area Commander forwards the appeal, all the documents and evidence which formed the record upon which the order or direction was issued or the ruling under paragraph (b) of this section was made, and any comments which might be relevant, to the Assistant Commandant for Marine Safety, Security and Environmental Protection. A copy of this documentation and evidence is made available to the appellant. The appellant is afforded five working days from the date of receipt to submit rebuttal materials to the Assistant Commandant for Marine Safety, Security and Environmental Protection. The decision of the Assistant Commandant for Marine Safety, Security and Environmental Protection is based upon the materials submitted, without oral argument or presentation. The decision of the Assistant Commandant for Marine Safety, Security and Environmental Protection is issued in writing and constitutes final agency action.

* * * * *

PART 164—NAVIGATION SAFETY REGULATIONS

■ 73. The authority citation for part 164 continues to read as follows:

Authority: 33 U.S.C. 1222(5), 1223, 1231; 46 U.S.C. 2103, 3703; Department of Homeland Security Delegation No. 0170.1 (75). Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

§ 164.15 [Amended]

■ 74. In § 164.15, paragraph(a)(1), remove the word ''hip'' and add, in its place ''ship''.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 76. In § 165.5, remove the parenthetical after paragraph (b)(6) and add a new parenthetical at the end of the section to read as follows:

§ 165.5 Establishment procedures.

* * * * *

(Requests for safety zones, security zones, and regulated navigation areas are approved by the Office of Management and Budget under control number 1625–0020)

■ 77. Revise § 165.501 (d)(9)(iv) as set out below:

§ 165.501 Chesapeake Bay entrance and Hampton Roads, VA and adjacent waters—Regulated Navigation Area.

* * * * *

(d) * * *

(9) * * *

(iv) The designated representative of the Captain of the Port is the Sector Command Center (SCC)—Joint Harbor Operations Center (JHOC) which shall be contacted on VHF–FM channel 12, or by calling (757) 668–5555.

* * * * *

Dated: July 6, 2006.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. E6–10890 Filed 7–11–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0053;FRL–8073–3]

Imidacloprid; Pesticide Tolerance Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of March 22, 2006, concerning the establishment of pesticide tolerances for combined residues of imidacloprid on oats and rye. This document is being issued to correct a typographical error and a typographical omission.

DATES: This final rule is effective on July 12, 2006.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0053. All documents in the docket are listed in the index for the docket. 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 Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket Facility is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Meredith Laws, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–7038; e-mail address: *laws.meredith@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT**.

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

In addition to using regulations.gov (*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/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. What Does this Correction Do?

FR Doc. 06–2712 published in the **Federal Register** of March 22, 2006 (71 FR 14406) (FRL–7766–8), in the amendment to § 180.472 is being corrected because the table in paragraph (a) was inadvertently published as a two column table. The table should have appeared as a three column table. The omitted third column should include the heading ''Expiration/Revocation Date'', and the entry ''None'' to correspond to the tolerance listed in each row. The amendment also includes a typographical error and lists the established tolerance level for ''Oats, forage'', as ''a2.0'' parts per million. This typographical error is being corrected as well.

III. Why is this Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (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 the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical correction final without prior proposal and opportunity for comment, because the use of notice and comment procedures are unnecessary to effectuate this correction. As such, EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

No. This action only corrects errors in the amendatory language for a previously published final rule and does not impose any new requirements. EPA's compliance with the statutes and Executive Orders for the underlying rule is discussed in Unit VII. of the March 22, 2006, final rule (71 FR 14406).

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of 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: June 28, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is corrected 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 180.472 is amended by alphabetically adding commodities to the table in paragraph (a) to read as follows:

§ 180.472 Imidacloprid; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/Revocation Date
* *	* * *	* *
Oats, forage	2.0	None
Oats, grain	0.05	None
Oats, hay	6.0	None
Oats, straw	3.0	None
* *	* * *	* *
Rye, forage	2.0	None
Rye, grain	0.05	None
Rye, hay	6.0	None
Rye, straw	3.0	None

* * * * *

[FR Doc. E6–10860 Filed 7–11–06; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–8195–8]

Indiana; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on the State of Indiana's Application for Final Approval.

SUMMARY: The State of Indiana has applied for approval of the underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Indiana application and has reached a final determination that Indiana's underground storage tank program satisfies all of the requirements necessary to qualify for approval under the regulations. Thus, the EPA is granting final approval to the State of Indiana to operate its Underground Storage Tank Program for petroleum and hazardous substances.

DATES: *Effective Date:* Final approval for the State of Indiana's Underground Storage Tanks Program is effective on August 11, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–UST–2006–0188. 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. *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the following addresses; Indiana Department of Environmental Management, File Room located on the 12th floor of the Indiana Government Center—North, 100 North Senate Avenue 46204, Telephone: (317) 234–0963, Monday through Friday, 8:30 a.m. through 4:30 p.m.; and U.S. EPA Region 5, Underground Storage Tank Section, 77 West Jackson Blvd., Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend you telephone Sandra Siler, Enforcement Officer, at (312) 886–0429 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Tschampa, Chief, Underground Storage Tank Section, U.S. EPA Region 5, DU–7J, 77 West Jackson Blvd., Chicago, Illinois, Telephone: (312) 886–6136.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the State program: Is ''no less stringent'' than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a). Note that RCRA sections 9005 (on information-gathering) and 9006 (on Federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State authorized analogues to these provisions.

II. Indiana

The Indiana Department of Environmental Management (IDEM) is the implementing agency for underground storage tank (UST) activities in the State.

IDEM UST/LUST program was first implemented in 1986 and IDEM recently amended its technical rules, which came into effect October 2004. Indiana adopted UST program regulations for petroleum and hazardous substance underground storage tanks. Prior to the adoption of the regulations, Indiana solicited public comments on the draft UST program regulations.

IDEM submitted their application for State Program Approval (SPA) of Indiana's UST program to U.S. EPA by letter dated April 5, 2005. EPA reviewed IDEM's application and determined it to be complete. EPA notified IDEM in a June 22, 2005, letter that the Indiana application was complete. On March 22, 2006, the EPA published a tentative decision announcing its intent to grant Indiana final approval.

III. Decision

I conclude that the State of Indiana's application for final program approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Indiana is granted final approval to operate its Underground Storage Tank Program for petroleum and hazardous substances. The State of Indiana now has the responsibility for managing all regulated underground storage tank facilities within its border and carrying out all aspects of the Underground Storage Tank Program. Indiana also has primary enforcement responsibility, although the EPA retains the right to conduct enforcement under section 9006 of RCRA.

IV. Statutory and Executive Order Reviews

This rule only applies to the Indiana Department of Environmental Management's underground storage tank program requirements pursuant to RCRA section 9004 and imposes no requirements other than those imposed by State law (see **SUPPLEMENTARY INFORMATION**). Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this rule from its review under Executive Order (EO) 12866. *2. Paperwork Reduction Act*—This rule does not impose an information collection burden under the Paperwork Reduction Act. *3. Regulatory Flexibility Act*—After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. *4. Unfunded Mandates Reform Act*—Because this rule codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act. *5. Executive Order 13132: Federalism*—EO 13132 does not apply to this rule because it will not have federalism implications (i.e., 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). *6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—EO 13175 does not apply to this rule because it will not have tribal implications (i.e., 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). *7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks*—This rule is not subject to EO 13045 because it is not economically significant and it is not based on health or safety risks. *8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This rule is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866. *9. National Technology Transfer and Advancement Act*—Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of Sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6974(b), and 6991(c).

Dated: June 5, 2006.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E6–10866 Filed 7–11–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 435, 436, 440, 441, 457, and 483

[CMS–2257–IFC]

RIN 0938–AO51

Medicaid Program; Citizenship Documentation Requirements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim Final rule with comment period.

SUMMARY: This interim final rule with comment period amends Medicaid regulations to implement the provision of the Deficit Reduction Act that requires States to obtain satisfactory documentary evidence of an applicant's or recipient's citizenship and identity in order to receive Federal financial participation. This regulation provides States with guidance on the types of documentary evidence that may be accepted, including alternative forms of documentary evidence in addition to those described in the statute and the conditions under which this documentary evidence can be accepted to establish the applicant's declaration of citizenship. It also gives States guidance on the processes that may be used to help minimize the administrative burden on both States and applicants and recipients.

DATES: *Effective Date:* July 6, 2006.

Comment Date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 11, 2006.

ADDRESSES: In commenting, please refer to file code CMS–2257–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Submit electronic comments on CMS regulations with an open comment period.'' (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2257–IFC, P.O. Box 8017, Baltimore, MD 21244–8017.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2257–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Robert Tomlinson, (410) 786–4463.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–2257–IFC and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Electronic Comments on CMS Regulations'' on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Since enactment of the Immigration Reform and Control Act of 1986 (Pub. L. 99–163, enacted on November 6, 1986), Medicaid applicants and recipients have been required by section 1137(d) of the Social Security Act (the Act) to declare under penalty of perjury whether the applicant or recipient is a citizen or national of the United States, and if not a citizen or national, that the individual is an alien in a satisfactory immigration status. Aliens who declare they are in a satisfactory immigration status have been required by section 1137(d) of the Act to present documentation of satisfactory immigration status since the declarations were first implemented. Individuals who declared they were citizens did not have to do anything else to support that claim, although some States did require documentary evidence of this claim. The new provision under section 6036 of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109–171, enacted on February 8, 2006) effectively requires that the State obtain satisfactory documentation of a declaration of citizenship. Self-attestation of citizenship and identity is no longer an acceptable practice. The provisions of section 6036 of the DRA do not affect individuals who have declared they are aliens in a satisfactory immigration status. As with other Medicaid program requirements, States must implement an effective process for assuring compliance with documentation of citizenship and identity in order to obtain Federal matching funds, and effective compliance will be part of Medicaid program integrity monitoring.

Section 6036 of the DRA creates a new section 1903(x) of the Act that prohibits Federal financial participation (FFP) in State expenditures for medical assistance with respect to an individual who has declared under section 1137(d)(1)(A) of the Act to be a citizen or national of the United States unless the State obtains satisfactory documentary evidence of citizenship or a statutory exemption applies. For new Medicaid applicants or for currently enrolled individuals, the State must obtain evidence of citizenship and identity at the time of application or at the time of the first redetermination occurring on or after July 1, 2006. Presentation of documentary evidence of citizenship is a one-time activity; once a person's citizenship is documented and recorded in the case file or database, subsequent changes in eligibility should not require repeating the documentation unless later evidence raises a question of a person's citizenship. The State need only check its databases to verify that the individual already established citizenship.

Basic Features of New Provision

To receive FFP, States must secure documentary evidence of U.S. citizenship and identity with respect to individuals who have declared under section 1137(d) of the Act that they are citizens or nationals of the United States unless an exemption applies. These individuals must present documentary evidence to establish both citizenship and identity. The law provides specific examples of acceptable documents and gives us authority to add additional documents. We explain the types of documents that may be used including additional documents that may be accepted. We establish a hierarchy of reliability of citizenship documents and specify when a document of lesser reliability may be accepted by the State. The State makes the decision whether documents of a given level of reliability are available.

Implementation Conditions/Considerations

The State must obtain satisfactory documentary evidence of citizenship and identity for all Medicaid applicants who have declared that they are citizens or nationals of the United States. This requirement applies to all recipients who declared at the time of application to be citizens or nationals of the United States unless an exemption applies. Section 1903(x)(2) of the Act provides an exemption, but it does so in a manner that is clearly a drafting error. This section exempts an ''alien'' eligible for Medicaid and entitled to or enrolled in Medicare or eligible for Medicaid by virtue of receiving Supplemental Security Income (SSI) from the requirement to present satisfactory documentary evidence of citizenship. However, because aliens are not citizens and cannot provide documentary evidence of citizenship, this exemption, if limited to aliens, does not appear to have any impact. The context of this exemption in the statutory framework suggests that the Congress may have intended to create an exemption for citizens and nationals but accidentally used the term ''alien.'' The DRA did not modify section 1137(d)(2) or (3) of the Act, which contains the documentation and verification requirements for aliens, and section 1903(x)(1), which was added by the DRA and is the section to which the exemption applies, by its terms references only citizens and nationals, not aliens.

We believe that in order to give meaning to the exemption, it is appropriate to treat the reference to ''alien'' as a ''scrivener's error.'' Courts have employed the doctrine of correcting a ''scrivener's error'' in order to correct obvious clerical or typographical errors. For example, *U.S. Nat'l Bank of Or.* v. *Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 462 (1993). Courts similarly may reform the Congress's chosen words when the plain language would lead to absurd results. See *Yates* v. *Hendon*, 541 U.S. 1, 17–18 (2004); *United States* v. *Brown*, 333 U.S. 18, 27 (1948). There are several clear scrivener's errors included in section 6036 of the DRA in addition to this one, including the Congress's decision to cross-reference the non-existent ''subsection (i)(23),'' rather than the relevant subsection (i)(22).

While the Congress chose to use words that have a logical English meaning, those words lead to absurd and counter-intuitive results. An exemption applying only to ''aliens'' who declare themselves citizens would amount to an absurd result for aliens (who, by definition, cannot provide documentation of citizenship) and no exemption at all for those whom the Congress clearly intended to benefit with the exemption. Under the absurd results doctrine, it appears reasonable for CMS to interpret the statute so that the exemption under subsection 1903(x)(2) of the Act applies to ''individuals'' rather than ''aliens.''

To adopt the literal reading of the statute could result in Medicare and SSI eligibles, a population which are by definition either aged, blind, or

disabled, and thereby most likely to have difficulty obtaining documentation of citizenship, being denied the availability of an exemption which we believe the Congress intended to afford them. Accordingly, States will not be subject to denial of FFP in their Medicaid expenditures for SSI recipients who receive Medicaid by virtue of receipt of SSI and Medicare eligibles based upon failure to document citizenship.

Not all States provide Medicaid to individuals who are SSI recipients. In those States, the exemption will not provide relief to SSI recipients. However, the Social Security Administration (SSA) maintains a database, known as the State Data Exchange (SDX) which contains the needed information to identify whether an individual has already been found to be a citizen by the SSA and the States have the option to cross match with this database to meet these requirements without using the hierarchical process for obtaining documents discussed in the regulation.

The statute also gives us authority to exempt ''aliens'' (which we construe as ''individuals who declare themselves to be citizens or nationals'') from the documentation requirements if satisfactory documentary evidence of citizenship or nationality has been previously presented. We are not currently exercising this authority. If we become aware of an appropriate instance to exercise this authority in the future or to add additional forms of documentation which will be acceptable for establishing identity or citizenship, we will do so by regulation.

Title IV–E children receiving Medicaid, while not required to declare citizenship for IV–E, must have in their Medicaid file a declaration of citizenship or satisfactory immigration status and documentary evidence of the citizenship or satisfactory immigration status claimed on the declaration.

Individuals who are receiving benefits under a section 1115 demonstration project approved under title XI authority are also subject to this provision. This includes individuals who are treated as eligible for matching purposes by virtue of the authority granted under section 1115(a)(2) of the Act (expansion populations) under section 1115 demonstrations and family planning demonstrations.

Under section 1902(e)(4) of the Act and 42 CFR 435.117, a Medicaid agency must provide categorically needy Medicaid eligibility to a child born to a woman who is eligible as categorically needy and is receiving Medicaid on the date of the child's birth. The child is deemed to have applied and been found eligible for Medicaid on the date of birth and remains eligible as categorically needy for one year so long as the woman remains eligible as categorically needy and the child is member of the woman's household. Citizenship and identity documentation for the child must be obtained at the next redetermination of eligibility. Citizen children born to non-qualified aliens do not benefit from the provisions of section 1902(e)(4) of the Act because although the mother may have been eligible for and receiving Medicaid on the date of the child's birth, the mother would not continue to be eligible after the child's birth. The mother is eligible for Medicaid but only for treatment of an emergency medical condition. A child born in the United States to an illegal alien mother, or 5-year bar qualified alien mother is not a deemed newborn under 1902(e)(4) because the mother although eligible on the date of birth of the child, would not remain eligible. The child, however, could be eligible as a poverty level child, or 1931 child. In these cases an application must be filed for the child and the requirements of this regulation would apply at the time of application.

Individuals who receive Medicaid because of a determination by a qualified provider, or entity, under sections 1920, 1920A, or 1920B of the Act (presumptive eligibility) are not subject to the documentation requirements until they file an application and declare on the application that they are citizens or nationals. These individuals receive Medicaid during the ''presumptive'' period notwithstanding any other provision of title XIX, including the requirements of section 1903(x) of the Act. However, when these individuals file an application for Medicaid and declare on the application that they are citizens or nationals, these regulations would apply for periods in which they receive services as eligible for Medicaid.

At the time of application or redetermination, the State must give an applicant or recipient, who has signed a declaration required by section 1137(d) of the Act and claims to be a citizen, a reasonable opportunity to present documents establishing U.S. citizenship or nationality and identity. Individuals who are Medicaid recipients, will remain eligible until determined ineligible as required by Federal regulations at § 435.930. A determination terminating eligibility may be made after the recipient has been given a reasonable opportunity to present evidence of citizenship or the State determines the individual has not made a good faith effort to present satisfactory documentary evidence of citizenship. By contrast, applicants for Medicaid (who are not currently receiving Medicaid), should not be made eligible until they have presented the required evidence. This is no different than current policy regarding information which an initial applicant must submit in order for the State to make an eligibility determination.

The ''reasonable opportunity period'' should be consistent with the State's administrative requirements such that the State does not exceed the time limits established in Federal regulations for timely determination of eligibility in § 435.911. The regulations permit exceptions from the time limits when an applicant or recipient in good faith tries to present documentation, but is unable to do so because the documents are not available. In these cases, the State must assist the individual in securing evidence of citizenship.

States, at their option, may use matches with the SDX (if the State does not provide automatic Medicaid eligibility to SSI recipients) or vital statistics agencies in place of a birth certificate to assist applicants or recipients to meet the requirements of the law. For example, States already receive the SDX. Therefore, a match of Medicaid applicants or recipients to the SDX that shows the individual has proved citizenship would satisfy the documentation requirement of this provision with respect to SSI recipients. An SSI recipient's citizenship status can be found in the Alien Indicator Code at position 578 on the SDX. States may also, at their option, use matches with State vital statistics agencies in place of a birth certificate to establish citizenship.

We are soliciting comments and suggestions for the use of other electronic data matches with other governmental systems of records that contain reliable information about the citizenship or identity of individuals.

We will also permit States to accept documentary evidence without requiring the applicant or recipient to appear in person. However, States may accept original documents in person, by mail, or by a guardian or authorized representative.

Although States may continue to use application procedures that do not include an interview with an applicant, the State must assure that the information it receives about the identity and citizenship of the applicant or recipient is accurate.

All documents must be either originals or copies certified by the issuing agency. Copies or notarized copies may not be accepted.

The enactment of section 6036 of the DRA does not change any Centers for Medicare & Medicaid Services (CMS) policies regarding the taking and processing of applications for Medicaid except the new requirement for presentation of documentary evidence of citizenship. Before the enactment of section 6036 of the DRA, States, although not required by law or regulation to document citizenship, were required to assure that eligibility determinations were accurate. Therefore, most States would request documentation of citizenship only if the applicant's citizenship was believed to be questionable. Likewise, the regulations at § 435.902, § 435.910(e), § 435.912, § 435.919 and § 435.920 continue to apply when securing from applicants and recipients documentary evidence of citizenship and identity. Thus, States are not obligated to make or keep eligible any individual who fails to cooperate with the requirement to present documentary evidence of citizenship and identity. Failure to provide this information is no different than the failure to provide any other information which is material to the eligibility determination.

An applicant or recipient who fails to cooperate with the State in presenting documentary evidence of citizenship may be denied or terminated. Failure to cooperate consists of failure by an applicant or recipient, or that individual's representative, after being notified, to present the required evidence or explain why it is not possible to present such evidence of citizenship or identity. Notice and appeal rights must be given to the applicant or recipient if the State denies or terminates an individual for failure to cooperate with the requirement to provide documentary evidence of citizenship or identity in accordance with the regulations at 42 CFR 431.210 or 431.211 as appropriate.

Federal Financial Participation (FFP) for Administrative Expenditures

We will provide FFP for State expenditures to carry out the provisions of section 1903(x) of the Act at the match rate for program administration.

Compliance

FFP will not be available for State expenditures for medical assistance if a State does not require applicants and recipients to provide satisfactory documentary evidence of citizenship, or does not secure this documentary evidence which includes the responsibility to accept only authentic documents on or after July 1, 2006. We will review implementation of section 6036 of the DRA to determine whether claims for FFP for services provided to citizens should be deferred or disallowed. Additionally, we will monitor the extent to which the State is using primary evidence to establish both citizenship and identity and will require corrective action to ensure the most reliable evidence is routinely being obtained.

We require that as a check against fraud, using currently available automated capabilities, States will conduct a match of the applicant's name against the corresponding Social Security number (SSN) that was provided as part of the SSN verification specified in § 435.910. In addition, the Federal government encourages States to use automated capabilities through which a State would be able to verify citizenship and identity of Medicaid applicants. When these capabilities become available, States will be required to match files for individuals who used third or fourth tier documents to verify citizenship and documents to verify identity, and we will make available to States necessary information in this regard in a future State Medicaid Director's letter. States must ensure that all case records within this category will be so identified and made available to conduct these automated matches. We may also require States to match files for individuals who used first or second level documents to verify citizenship as well. We may provide further guidance to States with respect to actions required in a case of a negative match.

In addition, in the conduct of determining or re-determining eligibility for Medicaid, State Medicaid agencies may uncover instances of suspected fraud. In such instances, State agencies would refer cases of suspected fraud to an appropriate enforcement agency pursuant to the requirements of § 455.13(c) and § 455.15(b). We are soliciting comments and suggestions on whether, as a part of this policy, CMS should develop a more formal process of sharing the information obtained by States from the checks performed through the existing and any future automated capabilities that may indicate potential fraud. HHS recognizes that in cases where the appropriate enforcement agency is a Federal entity, the Privacy Act of 1974 applies to citizens and permanent resident aliens, and privacy protections afforded by law and in accordance with Federal policy will be addressed.

II. Provisions of the Interim Final Rule With Comment Period

[If you choose to comment on issues in this section, please include the caption ''Provisions of the Interim Final Rule with Comment Period'' at the beginning of your comments.]

We are amending 42 CFR chapter IV as follows:

We are amending § 435.406 and § 436.406 to require that States obtain a Declaration signed under penalty of perjury from every applicant for Medicaid that the applicant is a citizen or national of the United States or an alien in a satisfactory immigration status, and require the individual to provide documentary evidence to verify the declaration. The types and forms of acceptable documentation of citizenship are specified in § 435.407 and § 436.407. For purposes of this regulation the term ''citizenship'' includes status as a ''national of the United States.'' The requirement to sign a Declaration of citizenship or satisfactory immigration status was added by the Immigration Reform and Control Act of 1986 and was effective upon enactment.

At the time section 1137(d) of the Act was enacted, aliens declaring themselves to be in a satisfactory immigration status were the only applicants required to present to the State documentary evidence of satisfactory status. Beginning in 1987, States were also required to verify the documents submitted by aliens claiming satisfactory immigration status with the Immigration and Naturalization Service (INS) (now the Department of Homeland Security) using the Systematic Alien Verification for Entitlements (SAVE).

The regulation requires the State to also obtain satisfactory documentary evidence establishing identity and citizenship from all Medicaid applicants who, under the DRA amendments, are required to file the Declaration. In addition, for current Medicaid recipients, States are required to obtain satisfactory documentary evidence establishing citizenship and identity at the time of the first redetermination of eligibility that occurs on or after July 1, 2006.

We are also amending § 435.406 and § 436.406 to define ''Satisfactory immigration status as a Qualified Alien'' as described in 8 U.S.C. 1641(b). We are also amending § 435.406 and § 436.406 to remove paragraphs (b) and (d), as well as subparagraphs (3) and (4) of paragraph (a). These provisions have ceased to have any force or effect because the eligibility status provided to individuals who received Lawful Temporary Residence under the

Immigration and Reform and Control Act (IRCA) of 1986 has expired or been superseded by the terms of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (Pub. L. 104–193, enacted on August 22, 1996). Lawful Temporary Resident Status was granted for a limited time to individuals who applied for the amnesty authorized by IRCA. Most individuals receiving this status would have achieved lawful permanent resident status by 1996 when PRWORA was enacted. PRWORA declared that ''notwithstanding any other law'' individuals who did not have status as a qualified alien as defined in 42 U.S.C. 1641 are not eligible for any Federal public benefit. That term includes Medicaid.

We are adding a new § 435.407 and a new § 436.407 describing the documents and processes States may use to document an applicant's or recipient's declaration that the individual is a citizen of the United States. The documents include all the documents listed in section 6036 of the DRA plus additional documents. We also note that the State Medicaid agency determinations of citizenship are not binding on other Federal or State agencies for any other purposes. We have employed a hierarchy of reliability when securing documentary evidence of citizenship and identity. To establish U.S. citizenship the document must show: A U.S. place of birth, or that the person is a U.S. citizen. Children born in the U.S. to foreign sovereigns or diplomatic officers are not U.S. citizens because they are not subject to the jurisdiction of the United States. To establish identity a document must show evidence that provides identifying information that relates to the person named on the document.

We have divided evidence of citizenship into groups based on the respective reliability of the evidence. The first group of documents is described in section 6036 of the DRA and is specified in § 435.407(a) and § 436.407(a) as primary evidence of citizenship and identity. If an individual presents documents from this section, no other information would be required. Primary evidence of citizenship and identity is documentary evidence of the highest reliability that conclusively establishes that the person is a U.S. citizen. The statute provides that these documents can be used to establish both the citizenship and identity of an individual. In general, a State should obtain primary evidence of citizenship and identity before using secondary evidence. We also permit States to use the State Data Exchange (SDX) database provided by SSA to all States that reflects actions taken by SSA to determine eligibility of applicants for the Supplemental Security Income (SSI) program. While in States which provide Medicaid eligibility to individuals by virtue of receipt of SSI, these data will not be relevant, the other States may use these data since SSA establishes the citizenship, or immigration status and identity of every applicant as part of its routine administrative processes.

Secondary Evidence of Citizenship

Secondary evidence of citizenship is documentary evidence of satisfactory reliability that is used when primary evidence of citizenship is not available. In addition, a second document establishing identity must also be presented. See § 435.407(e) and § 436.407(e). Available evidence is evidence that exists and can be obtained within a State's reasonable opportunity period. The State must accept any of the documents listed in paragraph (b) if the document meets the listed criteria and there is nothing indicating the person is not a U.S. citizen. Applicants or recipients born outside the U.S. who were not citizens at birth must submit a document listed under primary evidence of U.S. citizenship. However, children born outside the United States and adopted by U.S. citizens may establish citizenship using the process established by the Child Citizenship Act of 2000 (Pub. L. 106–395, enacted on October 30, 2000). The second group of documents consists of a mix of documents listed in section 6036 of the DRA and additional documents that only establish citizenship. This group includes a U.S. birth certificate. The birth record document may be recorded by the State, Commonwealth, Territory or local jurisdiction. It must have been recorded before the person was 5 years of age. An amended birth record document that is amended after 5 years of age is considered fourth level evidence of citizenship.

If the document shows the individual was born in Puerto Rico, the Virgin Islands of the U.S., or the Northern Mariana Islands before these areas became part of the U.S., the individual may be a collectively naturalized citizen. Collective naturalization occurred on certain dates listed for each of the territories.

The following will establish U.S. citizenship for collectively naturalized individuals:

Puerto Rico:

- Evidence of birth in Puerto Rico on or after April 11, 1899 and the applicant's statement that he or she was residing in the U.S., a U.S. possession or Puerto Rico on January 13, 1941; or
- Evidence that the applicant was a Puerto Rican citizen and the applicant's statement that he or she was residing in Puerto Rico on March 1, 1917 and that he or she did not take an oath of allegiance to Spain.

U.S. Virgin Islands:

- Evidence of birth in the U.S. Virgin Islands, and the applicant's statement of residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927; or
- The applicant's statement indicating residence in the U.S. Virgin Islands as a Danish citizen on January 17, 1917 and residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927, and that he or she did not make a declaration to maintain Danish citizenship; or
- Evidence of birth in the U.S. Virgin Islands and the applicant's statement indicating residence in the U.S., a U.S. possession or Territory or the Canal Zone on June 28, 1932.

Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI)):

- Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. Territory or possession on November 3, 1986 NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign State on November 4, 1986 (NMI local time); or
- Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration before January 1, 1975 and the applicant's statement that he or she did not owe allegiance to a foreign State on November 4, 1986 (NMI local time); or
- Evidence of continuous domicile in the NMI since before January 1, 1974 and the applicant's statement that he or she did not owe allegiance to a foreign State on November 4, 1986 (NMI local time).

If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

However, individuals born to foreign diplomats residing in one of the States, the District of Columbia, Puerto Rico, Guam, or the Virgin Islands are not citizens of the United States.

Third Level of Evidence of Citizenship

Third level evidence of U.S. citizenship is documentary evidence of satisfactory reliability that is used when neither primary nor secondary evidence of citizenship is available. Third level evidence may be used only when primary evidence cannot be obtained

within the State's reasonable opportunity period (see reasonable opportunity discussion below), secondary evidence does not exist or cannot be obtained, and the applicant or recipient alleges being born in the U.S. In addition, a second document establishing identity must be presented as described in paragraph (e), ''Evidence of identity.''

A State must accept any of the documents listed in paragraph (c) as third level evidence of U.S. citizenship if the document meets the listed criteria, the applicant alleges birth in the U.S., and there is nothing indicating the person is not a U.S. citizen (for example, lost U.S. citizenship).

Third level evidence is generally a non-government document established for a reason other than to establish U.S. citizenship and showing a U.S. place of birth. The place of birth on the non-government document and the application must agree.

Fourth Level of Evidence of Citizenship

Fourth level evidence of U.S. citizenship is documentary evidence of the lowest reliability. Fourth level evidence should only be used in the rarest of circumstances. This level of evidence is used only when primary evidence is not available, both secondary and third level evidence do not exist or cannot be obtained within the State's reasonable opportunity period, and the applicant alleges a U.S. place of birth. In addition, a second document establishing identity must be presented as described in paragraph (e), ''Evidence of identity.'' Available evidence is evidence that can be obtained within the State's reasonable opportunity period as discussed below.

A State must accept any of the documents listed in paragraph (d) as fourth level evidence of U.S. citizenship if the document meets the listed criteria, the applicant alleges U.S. citizenship, and there is nothing indicating the person is not a U.S. citizen (for example, lost U.S. citizenship). Fourth level evidence consists of documents established for a reason other than to establish U.S. citizenship and showing a U.S. place of birth. The U.S. place of birth on the document and the application must agree. The written affidavit described in this section may be used only when the State is unable to secure evidence of citizenship listed in any other groups.

Affidavits should ONLY be used in rare circumstances. If the documentation requirement needs to be met through affidavits, the following rules apply: There must be at least two affidavits by individuals who have personal knowledge of the event(s) establishing the applicant's or recipient's claim of citizenship (the two affidavits could be combined in a joint affidavit). At least one of the individuals making the affidavit cannot be related to the applicant or recipient and cannot be the applicant or recipient. In order for the affidavit to be acceptable the persons making them must be able to provide proof of their own citizenship and identity. If the individual(s) making the affidavit has (have) information which explains why documentary evidence establishing the applicant's claim or citizenship does not exist or cannot be readily obtained, the affidavit should contain this information as well. The State must obtain a separate affidavit from the applicant/recipient or other knowledgeable individual (guardian or representative) explaining why the evidence does not exist or cannot be obtained. The affidavits must be signed under penalty of perjury.

We are adding a paragraph (e) that consists of documents establishing identity. These are a mix of documents included in section 6036 of the DRA as evidence of identity, such as drivers' licenses and State identity cards. It also includes Native American Tribal enrollment documents, such as the Certificate of Degree of Indian Blood.

These documents, when coupled with satisfactory documentary evidence of citizenship from lists (b) through (d), will meet the statutory requirements of section 6036 of the DRA.

We are adding a paragraph (f) that describes special rules for individuals under the age of 16. Because children often do not have identification documents with photographs and a child's appearance changes significantly until adulthood, we permit parents or guardians to sign an affidavit as to the identity of the child. This affidavit does not establish citizenship and should not be confused with the affidavit permitted in rare situations to establish citizenship.

We are also adding a new paragraph (g) that describes rules for States to address special populations who need additional assistance. For example, if an individual is homeless, an amnesia victim, mentally impaired, or physically incapacitated and lacks someone who can act for the individual, and cannot provide evidence of U.S. citizenship or identity, the State must assist the applicant or recipient to document U.S. citizenship and identity.

We are adding a paragraph (h) that describes documentary evidence. We specify that the State can only review originals or copies certified by the issuing agency. Copies or notarized copies may not be accepted for submission. The State, however, must keep copies of documentation for its files. States must maintain copies in the case record or its data base. The copies maintained in the case file may be electronic records of matches, or other electronic methods of storing information.

Moreover, we specify that individuals may submit documents by mail or other means without appearing in person to submit the documents. If, however, the documents submitted appear inconsistent with pre-existing information, are counterfeit or altered, States should investigate the matter for potential fraud and abuse. States are encouraged to utilize cross matches and other fraud prevention techniques to ensure identity is confirmed.

We specify in paragraph (i) that once a person's citizenship is documented and recorded in the individual's permanent case file, subsequent changes in eligibility should not ordinarily require repeating the documentation of citizenship unless later evidence raises a question of the person's citizenship, or there is a gap of more than 3 years between the individual's last period of eligibility and a subsequent application for Medicaid. We use a record retention period of 3 years throughout the Medicaid program as provided in 45 CFR 74.53. To require a longer retention period would be an unreasonable imposition on State resources.

Lastly, in paragraph (j), we describe the reasonable opportunity to submit satisfactory documentary evidence of citizenship and identity. We specify that a reasonable opportunity must meet the competing goals of providing sufficient time for applicants or recipients to secure documentary evidence and the requirements placed on States to determine, or redetermine eligibility promptly. These goals derive from sections 1902(a)(19) and 1902(a)(8) of the Act respectively. For example, States may use the reasonable period they provide to all applicants and recipients claiming satisfactory immigration on the Declaration required by section 1137(d) of the Act.

We also solicit comments and suggestions for additional documents that are a reliable form of evidence of citizenship or a reliable form of identity that have not been included in this regulation. Suggestions should include an explanation as to the reliability of such additional documents, including any limits on the document's reliability and methods for assuring reliability. We are also soliciting comments as to whether the number of documents accepted for proof of citizenship and

identity should be limited. In particular, in light of the exception provided for citizens and nationals receiving SSI where receipt of SSI results in Medicaid eligibility, and for individuals entitled to or enrolled in Medicare, we are soliciting comments as to whether individuals would have difficulty proving citizenship and identity if only primary or secondary level documents were permitted.

We are removing § 435.408 and § 436.408 because the immigration status described as permanently residing in the United States under color of law no longer has any effectiveness because of the enactment in 1996 of the Personal Responsibility and Work Opportunity Reconciliation Act which provides that ''notwithstanding any other law'' an alien who is not a qualified alien as defined in 42 U.S.C. 1641 is not eligible for any Federal public benefit. The Conference Report accompanying Public Law 104–193 declares on page 383, ''Persons residing under color of law shall be considered to be aliens unlawfully present in the United States * * *''

We are redesignating § 435.1008 through § 435.1011 as § 435.1009 through § 435.1012, respectively. We are redesignating § 436.1004 and § 436.1005 as § 436.1005 and § 436.1006, respectively. We are correcting cross references in title 42 to the redesignated sections. We are adding a reference in § 435.1002(a) to new § 435.1008 conditioning FFP on State compliance with the requirements of section 1903(x) of the Act and these regulations. We are adding a new § 435.1008 and a new § 436.1004 to provide that FFP will be available if the State complies with the requirements of section 1903(x) of the Act and § 435.407 and § 436.407 regarding obtaining satisfactory documentary evidence of citizenship from individuals who have declared, under section 1137(d) of the Act, that the individual is a citizen of the United States unless the individual is subject to a statutory exemption from this requirement.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs).

Citizenship and Alienage (§ 435.406)

Section 435.406 requires States to obtain a declaration signed under penalty of perjury from every applicant for Medicaid that the applicant is a citizen or national of the United States or an alien in a satisfactory immigration status, and require the individual to provide acceptable documentary evidence to verify the declaration. (§ 435.407 describes the types of acceptable documentary evidence of citizenship.)

An individual should ordinarily be required to submit evidence of citizenship once unless the State receives evidence that evidence previously relied upon may be incorrect. States must maintain copies of that evidence in the case file or database.

We estimate it would take an individual 10 minutes to acquire and provide to the State acceptable documentary evidence and to verify the declaration.

We estimate it will take each State 5 minutes to obtain acceptable documentation, verify citizenship and maintain current records on each individual.

Citizenship and Alienage (§ 436.406)

Sections 436.406 and 436.407 apply to Guam, Puerto Rico, and the Virgin Islands and are the corresponding sections to the regulations at § 435.406 and § 435.407. An individual should ordinarily be required to submit evidence of citizenship once unless the State receives evidence that evidence previously relied upon may be incorrect. States must maintain copies of that evidence in the individual's case file.

We estimate it would take an individual 10 minutes to acquire and provide to the State acceptable documentary evidence and to verify the declaration.

We estimate it will take each State 5 minutes to obtain acceptable documentation, verify citizenship and maintain current records on each individual.

We have submitted a copy of this interim final rule with comment period to OMB for its review of the information collection requirements. A notice will be published in the **Federal Register** when we receive approval.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn: Melissa Musotto, CMS–2257–IFC, Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Katherine T. Astrich, CMS Desk Officer, CMS–2257–IFC, katherine_T._astrich@omb.eop.gov. Fax (202) 395–6974.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Waiver of Notice of Proposed Rulemaking and the 30-Day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule in accordance with the Administrative Procedure Act (APA) as codified in 5 U.S.C. 553(b). The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

The regulation is required as a result of the enactment of the DRA, section

6036. The statutory effective date is July 1, 2006. Section 1903(x)(3)(C)(v) of the Act allows for the Secretary to identify additional documentary evidence of citizenship beyond that contained in section 1903(x). States would not be required to accept such other forms of documentation beyond that contained in the law without regulation. Because delaying the implementation of this regulation to permit notice and comment could result in the most frail and vulnerable citizens, including the very elderly in nursing homes and the chronically mentally ill, being unable to demonstrate their citizenship and losing access to Medicaid, we find that good cause exists to waive this requirement. The attendant delay would be contrary to public interest.

Publication of an interim final rule with comment period will provide States with the strongest legal basis for accepting alternative forms of documentary evidence showing that a Medicaid applicant or recipient is a citizen of the United States.

In addition, we ordinarily provide a 30-day delay in the effective date of the provisions of an interim final rule with comment period. The APA as codified in *5 U.S.C. 553(d)* ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the finding and its reasons in the rule issued.

The impending statutory implementation date of July 1, 2006 prevents timely publication of guidance to permit documents in addition to those listed in section 1903(x) of the Act as added by section 6036 the Deficit Reduction Act of 2005 (Pub. L. 109–171) to be used when any of the statutory documents is not available. It is necessary for the Secretary to identify additional documentary evidence of citizenship beyond that contained in section 6036 in order to prevent Medicaid eligible citizens lacking the documents identified in statute from being terminated. Without prompt publication of a rule and without a July 1, 2006 implementation date, States will not have authority to employ additional documentary evidence beyond that contained in the law. Such additional documentary evidence that the Secretary is authorized to permit States to use is necessary to prevent loss of Medicaid eligibility when a Medicaid eligible individual lacks one of the documents listed in statute. Because delaying the effective date of this regulation by 30 days could result in the most frail and vulnerable citizens, including the very elderly in nursing homes and the chronically mentally ill, being unable to demonstrate their citizenship and losing access to Medicaid, we find that good cause exists to waive this requirement. The attendant delay would be contrary to public interest.

VI. Regulatory Impact Statement

[If you choose to comment on issues in this section, please include the caption ''Regulatory Impact Statement'' at the beginning of your comments.]

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). It is assumed that Medicaid enrollees who are citizens would eventually provide proof of that fact, and that the savings would come from those who are truly in the country illegally. Consequently, the level of Federal savings from this provision is expected to be under $70 million, and State savings under $50 million, per year over the next 5 years. Therefore, this rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This rule will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. Although each State is responsible for establishing its own procedures for reviewing the documentation, several States have already been reviewing these documents. For these States, there will be little or no added burden. There will also be no additional burden for the millions of individuals enrolled in Medicare who would be exempt. In addition, for States that provide Medicaid eligibility for all SSI recipients, there will be no additional burden. For the other States, if they verify citizenship and identity of individuals receiving SSI through the existing data match with SSA, we anticipate little or no added burden with respect to those individuals. In the future, when additional data matches are available the burden would continue to be minimized for other groups of Medicaid eligible individuals.

Finally, with respect to those States that elect to review documents through the routine eligibility and redetermination process, we recognize there will be some increased burden on eligibility workers. However, the Medicaid eligibility and redetermination process is ordinarily conducted by skilled interviewers who are trained and skilled in the review of

documents related to income and identification; therefore, we do not anticipate that these added requirements will overburden the eligibility process.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs-health, Guam, Medicaid, Puerto Rico, Virgin Islands.

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Part 441

Aged, Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirement.

42 CFR Part 457

Administrative practice and procedure, Grant programs-health, Health insurance, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

■ 1. The authority citation for part 435 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. In § 435.403, in paragraph (b), ''§ 435.1009 of this chapter'' is revised to read § 435.1010.''

■ 3. Section 435.406 is amended by—
■ A. Revising paragraph (a)(1).
■ B. Revising paragraph (a)(2).
■ C. Removing paragraphs (a)(3) and (a)(4).
■ D. Removing paragraph (b).
■ E. Redesignating paragraph (c) as paragraph (b).
■ F. Removing paragraph (d).

The revisions read as follows:

§ 435.406 Citizenship and alienage.

(a) * * *

(1) Citizens: (i) Under a declaration required by section 1137(d) of the Act that the individual is a citizen or national of the United States; and

(ii) The individual has provided satisfactory documentary evidence of citizenship or national status, as described in § 435.407.

(iii) An individual for purposes of the citizenship requirement is a Medicaid applicant or recipient or an individual receiving any services under a section 1115 demonstration for which States receive Federal financial participation in their expenditures as though they were medical assistance, for example, family planning demonstrations or Medicaid demonstrations.

(iv) Individuals must declare their citizenship and the State must document the individual's citizenship in the individual's eligibility file on initial applications and initial redeterminations effective July 1, 2006.

(2) Qualified aliens as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641) who have provided satisfactory documentary evidence of Qualified Alien status, which status has been verified with the Department of Homeland Security (DHS) under a declaration required by section 1137(d) of the Act that the applicant or recipient is an alien in a satisfactory immigration status.

* * * * *

■ 4. A new § 435.407 is added to read as follows:

§ 435.407 Types of acceptable documentary evidence of citizenship.

(a) *Primary evidence of citizenship and identity.* The following evidence must be accepted as satisfactory documentary evidence of both identity and citizenship:

(1) *A U.S. passport.* The Department of State issues this. A U.S. passport does not have to be currently valid to be accepted as evidence of U.S. citizenship, as long as it was originally issued without limitation. **Note:** Spouses and children were sometimes included on one passport through 1980. U.S. passports issued after 1980 show only one person. Consequently, the citizenship and identity of the included person can be established when one of these passports is presented. Exception: Do not accept any passport as evidence of U.S. citizenship when it was issued with a limitation. However, such a passport may be used as proof of identity.

(2) *A Certificate of Naturalization (DHS Forms N–550 or N–570.)* Department of Homeland Security issues for naturalization.

(3) *A Certificate of U.S. Citizenship (DHS Forms N–560 or N–561.)* Department of Homeland Security issues certificates of citizenship to individuals who derive citizenship through a parent.

(4) A valid State-issued driver's license, but only if the State issuing the license requires proof of U.S. citizenship before issuance of such license or obtains a social security number from the applicant and verifies before certification that such number is valid and assigned to the applicant who is a citizen. (This provision is not effective until such time as a State makes providing evidence of citizenship a condition of issuing a driver's license and evidence that the license holder is a citizen is included on the license or in a system of records available to the Medicaid agency. The State must ensure that the process complies with this statutory provision in section 6036 of the Deficit Reduction Act of 2005. CMS will monitor compliance of States implementing this provision.); or

(5) At the State's option, for States which do not provide Medicaid to individuals by virtue of their receiving SSI, a State match with the State Data Exchange for Supplementary Security Income recipients. The statute gives the Secretary authority to establish other acceptable forms of citizenship documentation. SSA documents citizenship and identity for SSI applicants and recipients and includes such information in the database provided to the States.

(b) *Secondary evidence of citizenship.* If primary evidence from the list in paragraph (a) of this section is unavailable, an applicant or recipient should provide satisfactory documentary evidence of citizenship from the list specified in this section to establish citizenship and satisfactory documentary evidence from paragraph (e) of this section to establish identity, in accordance with the rules specified in this section.

(1) *A U.S. public birth certificate showing birth in one of the 50 States, the District of Columbia, Puerto Rico (if born on or after January 13, 1941), Guam (on or after April 10, 1899), the Virgin Islands of the U.S. (on or after January 17, 1917), American Samoa, Swain's Island, or the Northern Mariana Islands (after November 4, 1986 (NMI*

local time)). A State, at its option, may use a cross match with a State vital statistics agency to document a birth record. The birth record document may be issued by the State, Commonwealth, Territory or local jurisdiction. It must have been issued before the person was 5 years of age. An amended birth record document that is amended after 5 years of age is considered fourth level evidence of citizenship. **Note:** If the document shows the individual was born in Puerto Rico, Guam, the Virgin Islands of the U.S., or the Northern Mariana Islands before these areas became part of the U.S., the individual may be a collectively naturalized citizen. Collective naturalization occurred on the dates listed for each of the Territories. The following will establish U.S. citizenship for collectively naturalized individuals:

(i) *Puerto Rico*:

(A) Evidence of birth in Puerto Rico on or after April 11, 1899 and the applicant's statement that he or she was residing in the U.S., a U.S. possession or Puerto Rico on January 13, 1941; or

(B) Evidence that the applicant was a Puerto Rican citizen and the applicant's statement that he or she was residing in Puerto Rico on March 1, 1917 and that he or she did not take an oath of allegiance to Spain.

(ii) *U.S. Virgin Islands*:

(A) Evidence of birth in the U.S. Virgin Islands, and the applicant's statement of residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927; or

(B) The applicant's statement indicating resident in the U.S. Virgin Islands as a Danish citizen on January 17, 1917 and residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927, and that he or she did not make a declaration to maintain Danish citizenship; or

(C) Evidence of birth in the U.S. Virgin Islands and the applicant's statement indicating residence in the U.S., a U.S. possession or Territory or the Canal Zone on June 28, 1932.

(iii) *Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI)):*

(A) Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. Territory or possession on November 3, 1986 (NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or

(B) Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration prior to January 1, 1975 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or

(C) Evidence of continuous domicile in the NMI since before January 1, 1974 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time).

(D) **Note:** If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

(2) *A Certification of Report of Birth (DS–1350).* The Department of State issues a DS–1350 to U.S. citizens in the U.S. who were born outside the U.S. and acquired U.S. citizenship at birth, based on the information shown on the FS–240. When the birth was recorded as a Consular Report of Birth (FS–240), certified copies of the Certification of Report of Birth Abroad (DS–1350) can be issued by the Department of State in Washington, DC. The DS–1350 contains the same information as that on the current version of Consular Report of Birth FS–240. The DS–1350 is not issued outside the U.S.

(3) *A Report of Birth Abroad of a U.S. Citizen (Form FS–240).* The Department of State consular office prepares and issues this. A Consular Report of Birth can be prepared only at an American consular office overseas while the child is under the age of 18. Children born outside the U.S. to U.S. military personnel usually have one of these.

(4) *A Certification of birth issued by the Department of State (Form FS–545 or DS–1350).* Before November 1, 1990, Department of State consulates also issued Form FS–545 along with the prior version of the FS–240. In 1990, U.S. consulates ceased to issue Form FS–545. Treat an FS–545 the same as the DS–1350.

(5) *A U.S. Citizen I.D. card.* (This form was issued as Form I–197 until the 1980's by INS. Although no longer issued, holders of this document may still use it consistent with the provisions of section 1903(x) of the Act. Note that section 1903(x) of the Act incorrectly refers to the same document as an I–97.) INS issued the I–179 from 1960 until 1973. It revised the form and renumbered it as Form I–197. INS issued the I–197 from 1973 until April 7, 1983. INS issued Form I–179 and I–197 to naturalized U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings. Although neither form is currently issued, either form that was previously issued is still valid.

(6) *A Northern Mariana Identification Card (I–873).* (Issued by the DHS to a collectively naturalized citizen of the United States who was born in the Northern Mariana Islands before November 4, 1986.) The former Immigration and Naturalization Service (INS) issued the I–873 to a collectively naturalized citizen of the U.S. who was born in the NMI before November 4, 1986. The card is no longer issued, but those previously issued are still valid.

(7) *An American Indian Card (I–872) issued by the Department of Homeland Security with the classification code ''KIC.''* (Issued by DHS to identify U.S. citizen members of the Texas Band of Kickapoos living near the United States/Mexican border.) DHS issues this card to identify a member of the Texas Band of Kickapoos living near the U.S./Mexican border. A classification code ''KIC'' and a statement on the back denote U.S. citizenship.

(8) *A final adoption decree showing the child's name and U.S. place of birth.* The adoption decree must show the child's name and U.S. place of birth. In situations where an adoption is not finalized and the State in which the child was born will not release a birth certificate prior to final adoption, a statement from a State approved adoption agency that shows the child's name and U.S. place of birth is acceptable. The adoption agency must state in the certification that the source of the place of birth information is an original birth certificate.

(9) *Evidence of U.S. Civil Service employment before June 1, 1976.* The document must show employment by the U.S. government before June 1, 1976. Individuals employed by the U.S. Civil Service prior to June 1, 1976 had to be U.S. citizens.

(10) *U.S. Military Record showing a U.S. place of birth.* The document must show a U.S. place of birth (for example a DD–214 or similar official document showing a U.S. place of birth.)

(c) *Third level evidence of citizenship.* Third level evidence of U.S. citizenship is documentary evidence of satisfactory reliability that is used when neither primary nor secondary evidence is available. Third level evidence may be used only when primary evidence cannot be obtained within the State's reasonable opportunity period, secondary evidence does not exist or cannot be obtained, and the applicant or recipient alleges being born in the U.S. A second document from paragraph (e) of this section to establish identity must also be presented:

(1) *Extract of a hospital record on hospital letterhead established at the time of the person's birth that was created 5 years before the initial application date and that indicates a*

U.S. place of birth. (For children under 16 the document must have been created near the time of birth or 5 years before the date of application.) Do not accept a souvenir ''birth certificate'' issued by the hospital. Note: For children under 16 the document must have been created near the time of birth or 5 years before the date of application.

(2) *Life, health, or other insurance record showing a U.S. place of birth that was created at least 5 years before the initial application date and that indicates a U.S. place of birth.* Life or health insurance records may show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth.

(d) *Fourth level evidence of citizenship.* Fourth level evidence of citizenship is documentary evidence of the lowest reliability. Fourth level evidence should only be used in the rarest of circumstances. This level of evidence is used only when primary evidence is unavailable, both secondary and third level evidence do not exist or cannot be obtained within the State's reasonable opportunity period, and the applicant alleges a U.S. place of birth. In addition, a second document establishing identity must be presented as described in paragraph (e) of this section.

(1) *Federal or State census record showing U.S. citizenship or a U.S. place of birth.* (Generally for persons born 1900 through 1950.) The census record must also show the applicant's age. **Note:** Census records from 1900 through 1950 contain certain citizenship information. To secure this information the applicant, recipient or State should complete a Form BC–600, Application for Search of Census Records for Proof of Age. Add in the remarks portion ''U.S. citizenship data requested.'' Also add that the purpose is for Medicaid eligibility. This form requires a fee.

(2) *One of the following documents that show a U.S. place of birth and was created at least 5 years before the application for Medicaid.* This document must be one of the following and show a U.S. place of birth:

(i) Seneca Indian tribal census record.

(ii) Bureau of Indian Affairs tribal census records of the Navajo Indians.

(iii) U.S. State Vital Statistics official notification of birth registration.

(iv) An amended U.S. public birth record that is amended more than 5 years after the person's birth.

(v) Statement signed by the physician or midwife who was in attendance at the time of birth.

(3) *Institutional admission papers from a nursing facility, skilled care facility or other institution.* Admission papers generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth.

(4) *Medical (clinic, doctor, or hospital) record created at least 5 years before the initial application date that indicates a U.S. place of birth.* (For children under 16 the document must have been created near the time of birth or 5 years before the date of application.) Medical records generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth. **Note:** An immunization record is not considered a medical record for purposes of establishing U.S. citizenship. **Note:** For children under 16 the document must have been created near the time of birth or 5 years before the date of application.

(5) *Written affidavit.* Affidavits should ONLY be used in rare circumstances. If the documentation requirement needs to be met through affidavits, the following rules apply:

(i) There must be at least two affidavits by two individuals who have personal knowledge of the event(s) establishing the applicant's or recipient's claim of citizenship (the two affidavits could be combined in a joint affidavit).

(ii) At least one of the individuals making the affidavit cannot be related to the applicant or recipient. Neither of the two individuals can be the applicant or recipient.

(iii) In order for the affidavit to be acceptable the persons making them must be able to provide proof of their own citizenship and identity.

(iv) If the individual(s) making the affidavit has (have) information which explains why documentary evidence establishing the applicant's claim or citizenship does not exist or cannot be readily obtained, the affidavit should contain this information as well.

(v) The State must obtain a separate affidavit from the applicant/recipient or other knowledgeable individual (guardian or representative) explaining why the evidence does not exist or cannot be obtained.

(vi) The affidavits must be signed under penalty of perjury.

(e) *Evidence of identity.* The following documents may be accepted as proof of identity and must accompany a document establishing citizenship from the groups of documentary evidence of citizenship in the groups in paragraphs (b) through (d) of this section.

(1) A driver's license issued by a State or Territory either with a photograph of the individual or other identifying information such as name, age, sex, race, height, weight, or eye color.

(2) School identification card with a photograph of the individual.

(3) U.S. military card or draft record.

(4) Identification card issued by the Federal, State, or local government with the same information included on driver's licenses.

(5) Military dependent's identification card.

(6) Native American Tribal document.

(7) U.S. Coast Guard Merchant Mariner card.

(8) Identity documents described in 8 CFR 274a.2(b)(1)(v)(B)(1).

(i) Driver's license issued by State or Territory either with a photograph of the individual or other identifying information of the individual such as name, age, sex, race, height, weight or eye color.

(ii) School identification card with a photograph of the individual.

(iii) U.S. military card or draft record.

(iv) Identification card issued by the Federal, State, or local government with the same information included on driver's licenses.

(v) Military dependent's identification card.

(vi) Native American Tribal document.

(vii) U.S. Coast Guard Merchant Mariner card.

Note to paragraph (e)(8): Exception: Do not accept a voter's registration card or Canadian driver's license as listed in 8 CFR 274a.2(b)(1)(v)(B)(1). CMS does not view these as reliable for identity.

(9) Certificate of Degree of Indian Blood, or other U.S. American Indian/Alaska Native Tribal document with a photograph or other personal identifying information relating to the individual. Acceptable if the document carries a photograph of the applicant or recipient, or has other personal identifying information relating to the individual.

(10) At State option, a State may use a cross match with a Federal or State governmental, public assistance, law enforcement or corrections agency's data system to establish identity if the agency establishes and certifies true identity of individuals. Such agencies may include food stamps, child support, corrections, including juvenile detention, motor vehicle, or child protective services. The State Medicaid Agency is still responsible for assuring the accuracy of the identity determination.

(f) *Special identity rules for children.* For children under 16, school records

may include nursery or daycare records. If none of the above documents in the preceding groups are available, an affidavit may be used. An affidavit is only acceptable if it is signed under penalty of perjury by a parent or guardian stating the date and place of the birth of the child and cannot be used if an affidavit for citizenship was provided.

(g) *Special populations needing assistance.* States must assist individuals to secure satisfactory documentary evidence of citizenship when because of incapacity of mind or body the individual would be unable to comply with the requirement to present satisfactory documentary evidence of citizenship in a timely manner and the individual lacks a representative to assist him or her.

(h) *Documentary evidence.*

(1) All documents must be either originals or copies certified by the issuing agency. Copies or notarized copies may not be accepted.

(2) States must maintain copies of citizenship and identification documents in the case record or electronic data base and make these copies available for compliance audits.

(3) States may permit applicants and recipients to submit such documentary evidence without appearing in person at a Medicaid office. States may accept original documents in person, by mail, or by a guardian or authorized representative.

(4) If documents are determined to be inconsistent with pre-existing information, are counterfeit, or altered, States should investigate for potential fraud and abuse, including but not limited to, referral to the appropriate State and Federal law enforcement agencies.

(5) Presentation of documentary evidence of citizenship is a one time activity; once a person's citizenship is documented and recorded in a State database subsequent changes in eligibility should not require repeating the documentation of citizenship unless later evidence raises a question of the person's citizenship. The State need only check its databases to verify that the individual already established citizenship.

(6) CMS requires that as a check against fraud, using currently available automated capabilities, States will conduct a match of the applicant's name against the corresponding Social Security number that was provided. In addition, in cooperation with other agencies of the Federal government, CMS encourages States to use automated capabilities to verify citizenship and identity of Medicaid applicants. Automated capabilities may fall within the computer matching provisions of the Privacy Act of 1974, and CMS will explore any implementation issues that may arise with respect to those requirements. When these capabilities become available, States will be required to match files for individuals who used third or fourth tier documents to verify citizenship and documents to verify identity, and CMS will make available to States necessary information in this regard. States must ensure that all case records within this category will be so identified and made available to conduct these automated matches. CMS may also require States to match files for individuals who used first or second level documents to verify citizenship as well. CMS may provide further guidance to States with respect to actions required in a case of a negative match.

(i) *Record retention.* The State must retain documents in accordance with 45 CFR 74.53.

(j) *Reasonable opportunity to present satisfactory documentary evidence of citizenship.* States must give an applicant or recipient a reasonable opportunity to submit satisfactory documentary evidence of citizenship before taking action affecting the individual's eligibility for Medicaid. The time States give for submitting documentation of citizenship should be consistent with the time allowed to submit documentation to establish other facets of eligibility for which documentation is requested. (*See* § 435.930 and § 435.911.)

§ 435.408 [Removed]

■ 5. Section 435.408 is removed.

■ 6. Section 435.1002 is amended by revising paragraph (a) to read as follows:

§ 435.1002 FFP for services.

(a) Except for the limitations and conditions specified in § 435.1007, §35.1008, § 435.1009, and § 438.814 of this chapter, FFP is available in expenditures for Medicaid services for all recipients whose coverage is required or allowed under this part.

* * * * *

§ 435.1008–§ 435.1011 [Redesignated]

■ 7. Sections 435.1008 through 435.1011 are redesignated as § 435.1009 through § 435.1012, respectively. Newly redesignated § 435.1011 and § 435.1012 are under the undesignated heading ''Requirements for State Supplements.''

■ 8. A new § 435.1008 is added to read as follows:

§ 435.1008 FFP in expenditures for medical assistance for individuals who have declared United States citizenship or nationality under section 1137(d) of the Act and with respect to whom the State has not documented citizenship and identity.

FFP will not be available to a State with respect to expenditures for medical assistance furnished to individuals unless the State has obtained satisfactory documentary evidence of citizenship or national status, as described in § 435.407 that complies with the requirements of section 1903(x) of the Act. This requirement does not apply with respect to individuals declaring themselves to be citizens or nationals who are eligible for medical assistance and who are either entitled to benefits or enrolled in any parts of the Medicare program under title XVIII of the Social Security Act, or on the basis of receiving supplemental security income benefits under title XVI of the Act.

■ 9. In newly redesignated § 435.1009, in paragraph (a)(1), ''§ 435.1009'' is revised to read ''§ 435.1010.''

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

■ 10. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 436.406 [Amended]

■ 11. In § 436.403, paragraph (b), ''§ 435.1009 of this chapter'' is revised to read ''§ 435.1010 of this chapter.''

■ 12. Section 436.406 is amended by—

■ A. Revising paragraph (a)(1).

■ B. Revising paragraph (a)(2).

■ C. Removing paragraphs (a)(3) and (a)(4).

■ D. Removing paragraph (b).

■ E. Redesignating paragraph (c) as paragraph (b).

■ F. Removing paragraph (d).

The revisions read as follows:

§ 436.406 Citizenship and alienage.

(a) * * *

(1) Citizens: (i) Under a declaration required by section 1137(d) of the Act that the individual is a citizen or national of the United States; and

(ii) The individual has provided satisfactory documentary evidence of citizenship or national status, as described in § 435.407.

(iii) An individual for purposes of the citizenship requirement is a Medicaid applicant or recipient or an individual receiving any services under a section 1115 demonstration for which States receive Federal financial participation

in their expenditures as though they were medical assistance, for example, family planning demonstrations or Medicaid demonstrations.

(iv) Individuals must declare their citizenship and the State must document an individual's eligibility file on initial applications and initial redeterminations effective July 1, 2006.

(2) Qualified aliens as described in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641) who have provided satisfactory documentary evidence of Qualified Alien status, which status has been verified with the Department of Homeland Security (DHS) under a declaration required by section 1137(d) of the Act that the applicant or recipient is an alien in a satisfactory immigration status.

* * * * *

■ 13. A new § 436.407 is added to read as follows:

§ 436.407 Types of acceptable documentary evidence of citizenship.

(a) *Primary evidence of citizenship and identity.* The following evidence must be accepted as satisfactory documentary evidence of both identity and citizenship:

(1) *A U.S. passport.* The Department of State issues this. A U.S. passport does not have to be currently valid to be accepted as evidence of U.S. citizenship, as long as it was originally issued without limitation. **Note:** Spouses and children were sometimes included on one passport through 1980. U.S. passports issued after 1980 show only one person. Consequently, the citizenship and identity of the included person can be established when one of these passports is presented. Exception: Do not accept any passport as evidence of U.S. citizenship when it was issued with a limitation. However, such a passport may be used as proof of identity.

(2) *A Certificate of Naturalization (DHS Forms N–550 or N–570.)* Department of Homeland Security issues for naturalization.

(3) *A Certificate of U.S. Citizenship (DHS Forms N–560 or N–561.)* Department of Homeland Security issues certificates of citizenship to individuals who derive citizenship through a parent.

(4) A valid State-issued driver's license, but only if the State issuing the license requires proof of U.S. citizenship before issuance of such license or obtains a social security number from the applicant and verifies before certification that such number is valid and assigned to the applicant who is a citizen. (This provision is not effective until such time as a State makes providing evidence of citizenship a condition of issuing a driver's license and evidence that the license holder is a citizen is included on the license or in a system of records available to the Medicaid agency. States must ensure that the process complies with this statutory provision in section 6036 of the Deficit Reduction Act of 2005. CMS will monitor compliance of States implementing this provision.); or

(b) *Secondary evidence of citizenship.* If primary evidence from the list in paragraph (a) of this section is unavailable, an applicant or recipient should provide satisfactory documentary evidence of citizenship from the list specified in this section to establish citizenship and satisfactory documentary evidence from paragraph (e) of this section to establish identity, in accordance with the rules specified in this section.

(1) *A U.S. public birth certificate showing birth in one of the 50 States, the District of Columbia, Puerto Rico (if born on or after January 13, 1941), Guam (on or after April 10, 1899), the Virgin Islands of the U.S. (on or after January 17, 1917), American Samoa, Swain's Island, or the Northern Mariana Islands (after November 4, 1986 (NMI local time)).* A State, at its option, may use a cross match with a State vital statistics agency to document a birth record. The birth record document may be issued by the State, Commonwealth, Territory or local jurisdiction. It must have been issued before the person was 5 years of age. An amended birth record document that is amended after 5 years of age is considered fourth level evidence of citizenship.

Note: If the document shows the individual was born in Puerto Rico, the Virgin Islands of the U.S., or the Northern Mariana Islands before these areas became part of the U.S., the individual may be a collectively naturalized citizen. Collective naturalization occurred on certain dates listed for each of the territories. The following will establish U.S. citizenship for collectively naturalized individuals:

(i) *Puerto Rico:*

(A) Evidence of birth in Puerto Rico on or after April 11, 1899 and the applicant's statement that he or she was residing in the U.S., a U.S. possession or Puerto Rico on January 13, 1941; or

(B) Evidence that the applicant was a Puerto Rican citizen and the applicant's statement that he or she was residing in Puerto Rico on March 1, 1917 and that he or she did not take an oath of allegiance to Spain.

(ii) *U.S. Virgin Islands:*

(A) Evidence of birth in the U.S. Virgin Islands, and the applicant's statement of residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927; or

(B) The applicant's statement indicating resident in the U.S. Virgin Islands as a Danish citizen on January 17, 1917 and residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927, and that he or she did not make a declaration to maintain Danish citizenship; or

(C) Evidence of birth in the U.S. Virgin Islands and the applicant's statement indicating residence in the U.S., a U.S. possession or Territory or the Canal Zone on June 28, 1932.

(iii) *Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI)):*

(A) Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. Territory or possession on November 3, 1986 NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or

(B) Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981 (NMI local time), voter registration prior to January 1, 1975 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or

(C) Evidence of continuous domicile in the NMI since before January 1, 1974 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time).

(D) **Note:** If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

(2) *A Certification of Report of Birth (DS–1350).* The Department of State issues a DS–1350 to U.S. citizens in the U.S. who were born outside the U.S. and acquired U.S. citizenship at birth, based on the information shown on the FS–240. When the birth was recorded as a Consular Report of Birth (FS–240), certified copies of the Certification of Report of Birth Abroad (DS–1350) can be issued by the Department of State in Washington, DC. The DS–1350 contains the same information as that on the current version of Consular Report of Birth FS–240. The DS–1350 is not issued outside the U.S.

(3) *A Report of Birth Abroad of a U.S. Citizen (Form FS–240).* The Department of State consular office prepares and issues this. A Consular Report of Birth can be prepared only at an American

consular office overseas while the child is under the age of 18. Children born outside the U.S. to U.S. military personnel usually have one of these.

(4) *A Certification of birth issued by the Department of State (Form FS–545 or DS–1350).* Before November 1, 1990, Department of State consulates also issued Form FS–545 along with the prior version of the FS–240. In 1990, U.S. consulates ceased to issue Form FS–545. Treat an FS–545 the same as the DS–1350.

(5) *A U.S. Citizen I.D. card.* (This form was issued as Form I–197 until the 1980's by INS. Although no longer issued, holders of this document may still use it consistent with the provisions of section 1903(x) of the Act. Note that section 1903(x) of the Act incorrectly refers to the same document as an I–97.) INS issued the I–179 from 1960 until 1973. It revised the form and renumbered it as Form I–197. INS issued the I–197 from 1973 until April 7, 1983. INS issued Form I–179 and I–197 to naturalized U.S. citizens living near the Canadian or Mexican border who needed it for frequent border crossings. Although neither form is currently issued, either form that was previously issued is still valid.

(6) *A Northern Mariana Identification Card* (I–873). (Issued by the DHS to a collectively naturalized citizen of the United States who was born in the Northern Mariana Islands before November 4, 1986.) The former Immigration and Naturalization Service (INS) issued the I–873 to a collectively naturalized citizen of the U.S. who was born in the NMI before November 4, 1986. The card is no longer issued, but those previously issued are still valid.

(7) *An American Indian Card (I–872) issued by the Department of Homeland Security with the classification code ''KIC.''* (Issued by DHS to identify U.S. citizen members of the Texas Band of Kickapoos living near the United States/Mexican border.) DHS issues this card to identify a member of the Texas Band of Kickapoos living near the U.S./Mexican border. A classification code ''KIC'' and a statement on the back denote U.S. citizenship

(8) *A final adoption decree showing the child's name and U.S. place of birth.* The adoption decree must show the child's name and U.S. place of birth. In situations where an adoption is not finalized and the State in which the child was born will not release a birth certificate prior to final adoption, a statement from a State approved adoption agency that shows the child's name and U.S. place of birth is acceptable. The adoption agency must state in the certification that the source of the place of birth information is an original birth certificate.

(9) Evidence of U.S. Civil Service employment before June 1, 1976. The document must show employment by the U.S. government before June 1, 1976. Individuals employed by the U.S. Civil Service prior to June 1, 1976 had to be U.S. citizens.

(10) U.S. Military Record showing a U.S. place of birth. T he document must show a U.S. place of birth (for example a DD–214 or similar official document showing a U.S. place of birth.)

(c) *Third level evidence of citizenship.* Third level evidence of U.S. citizenship is documentary evidence of satisfactory reliability that is used when neither primary nor secondary evidence is available. Third level evidence may be used only when primary evidence cannot be obtained within the State's reasonable opportunity period, secondary evidence does not exist or cannot be obtained, and the applicant or recipient alleges being born in the U.S. A second document from paragraph (e) of this section to establish identity must also be presented:

(1) *Extract of a hospital record on hospital letterhead established at the time of the person's birth that was created 5 years before the initial application date and that indicates a U.S. place of birth.* (For children under 16 the document must have been created near the time of birth or 5 years before the date of application.) Do not accept a souvenir ''birth certificate'' issued by the hospital.

Note: For children under 16 the document must have been created near the time of birth or 5 years before the date of application.

(2) *Life, health, or other insurance record showing a U.S. place of birth that was created at least 5 years before the initial application date that indicates a U.S. place of birth.* Life or health insurance records may show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth.

(d) *Fourth level evidence of citizenship.* Fourth level evidence of citizenship is documentary evidence of the lowest reliability. Fourth level evidence should only be used in the rarest of circumstances. This level of evidence is used only when primary evidence is unavailable, both secondary and third level evidence do not exist or cannot be obtained within the State's reasonable opportunity period, and the applicant alleges a U.S. place of birth. In addition, a second document establishing identity must be presented as described in paragraph (e) of this section.

(1) *Federal or State census record showing U.S. citizenship or a U.S. place of birth.* (Generally for persons born 1900 through 1950.) The census record must also show the applicant's age. **Note:** Census records from 1900 through 1950 contain certain citizenship information. To secure this information the applicant, recipient or State should complete a Form BC–600, Application for Search of Census Records for Proof of Age. Add in the remarks portion ''U.S. citizenship data requested.'' Also add that the purpose is for Medicaid eligibility. This form requires a fee.

(2) *One of the following documents that show a U.S. place of birth and was created at least 5 years before the application for Medicaid.* This document must be one of the following and show a U.S. place of birth:

(i) Seneca Indian tribal census.

(ii) Bureau of Indian Affairs tribal census records of the Navajo Indians.

(iii) U.S. State Vital Statistics official notification of birth registration.

(iv) An amended U.S. public birth record that is amended more than 5 years after the person's birth

(v) Statement signed by the physician or midwife who was in attendance at the time of birth.

(3) *Institutional admission papers from a nursing facility, skilled care facility or other institution.* Admission papers generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth.

(4) *Medical (clinic, doctor, or hospital) record created at least 5 years before the initial application date that indicates a U.S. place of birth.* (For children under 16 the document must have been created near the time of birth or 5 years before the date of application.) Medical records generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth. **Note:** An immunization record is not considered a medical record for purposes of establishing U.S. citizenship. **Note:** For children under 16 the document must have been created near the time of birth or 5 years.

(5) *Written affidavit. Affidavits should ONLY be used in rare circumstances.* If the documentation requirement needs to be met through affidavits, the following rules apply:

(i) There must be at least two affidavits by two individuals who have personal knowledge of the event(s) establishing the applicant's or

recipient's claim of citizenship (the two affidavits could be combined in a joint affidavit).

(ii) At least one of the individuals making the affidavit cannot be related to the applicant or recipient. Neither of the two individuals can be the applicant or recipient.

(iii) In order for the affidavit to be acceptable the persons making them must be able to provide proof of their own citizenship and identity.

(iv) If the individual(s) making the affidavit has (have) information which explains why documentary evidence establishing the applicant's claim or citizenship does not exist or cannot be readily obtained, the affidavit should contain this information as well.

(v) The State must obtain a separate affidavit from the applicant/recipient or other knowledgeable individual (guardian or representative) explaining why the evidence does not exist or cannot be obtained.

(vi) The affidavits must be signed under penalty of perjury.

(e) *Evidence of identity.* The following documents may be accepted as proof of identity and must accompany a document establishing citizenship from the groups of documentary evidence of citizenship in the groups in paragraphs (b) through (d) of this section.

(1) *A driver's license issued by a State or Territory either with a photograph of the individual or other identifying information such as name, age, sex, race, height, weight, or eye color.*

(2) *School identification card with a photograph of the individual.*

(3) *U.S. military card or draft record.*

(4) *Identification card issued by the Federal, State, or local government with the same information included on driver's licenses.*

(5) *Military dependent's identification card.*

(6) *Native American Tribal document.*

(7) *U.S. Coast Guard Merchant Mariner card.*

(8) *Identity documents described in 8 CFR 274a.2(b)(1)(v)(B)(1).*

(i) Driver's license issued by State or Territory either with a photograph of the individual or other identifying information of the individual such as name, age, sex, race, height, weight or eye color.

(ii) School identification card with a photograph of the individual.

(iii) U.S. military card or draft record.

(iv) Identification card issued by the Federal, State, or local government with the same information included on driver's licenses.

(v) Military dependent's identification card.

(vi) Native American Tribal document.

(vii) U.S. Coast Guard Merchant Mariner card.

Note to paragraph (e)(8): Exception: Do not accept a voter's registration card or Canadian driver's license as listed in 8 CFR 274a.2(b)(1)(v)(B)(1). CMS does not view these as reliable for identity.

(9) *Certificate of Degree of Indian Blood, or other U.S. American Indian/Alaska Native Tribal document with a photograph or other personal identifying information relating to the individual.* Acceptable if the document carries a photograph of the applicant or recipient, or has other personal identifying information relating to the individual.

(10) At State option, a State may use a cross match with a Federal or State governmental, public assistance, law enforcement or corrections agency's data system to establish identity if the agency establishes and certifies true identity of individuals. Such agencies may include food stamps, child support, corrections, including juvenile detention, motor vehicle, or child protective services. The State Medicaid Agency is still responsible for assuring the accuracy of the identity determination.

(f) *Special identity rules for children.* For children under 16, school records may include nursery or daycare records. If none of the above documents in the preceding groups are available, an affidavit may be used. An affidavit is only acceptable if it is signed under penalty of perjury by a parent or guardian stating the date and place of the birth of the child and cannot be used if an affidavit for citizenship was provided.

(g) *Special populations needing assistance.* States must assist individuals to secure satisfactory documentary evidence of citizenship when because of incapacity of mind or body the individual would be unable to comply with the requirement to present satisfactory documentary evidence of citizenship in a timely manner and the individual lacks a representative to assist him or her.

(h) *Documentary evidence.*

(1) All documents must be either originals or copies certified by the issuing agency. Copies or notarized copies may not be accepted.

(2) States must maintain copies of citizenship and identification documents in the case record or electronic data base and make these copies available for compliance audits.

(3) States may permit applicants and recipients to submit such documentary evidence without appearing in person at a Medicaid office. States may accept original documents in person, by mail, or by a guardian or authorized representative.

(4) If documents are determined to be inconsistent with pre-existing information, are counterfeit, or altered, States should investigate for potential fraud and abuse, including but not limited to, referral to the appropriate State and Federal law enforcement agencies.

(5) Presentation of documentary evidence of citizenship is a one time activity; once a person's citizenship is documented and recorded in a State database, subsequent changes in eligibility should not require repeating the documentation of citizenship unless later evidence raises a question of the person's citizenship. The State need only check its databases to verify that the individual already established citizenship.

(6) CMS requires that as a check against fraud, using currently available automated capabilities, States will conduct a match of the applicant's name against the corresponding Social Security number that was provided. In addition, in cooperation with other agencies of the Federal government, CMS encourages States to use automated capabilities to verify citizenship and identity of Medicaid applicants. Automated capabilities may fall within the computer matching provisions of the Privacy Act of 1974, and CMS will explore any implementation issues that may arise with respect to those requirements. When these capabilities become available, States will be required to match files for individuals who used third or fourth tier documents to verify citizenship and documents to verify identity, and CMS will make available to States necessary information in this regard. States must ensure that all case records within this category will be so identified and made available to conduct these automated matches. CMS may also require States to match files for individuals who used first or second level documents to verify citizenship as well. CMS may provide further guidance to States with respect to actions required in a case of a negative match.

(i) *Record retention.* The State must retain documents in accordance with 45 CFR 74.53.

(j) *Reasonable opportunity to present satisfactory documentary evidence of citizenship.* States must give an applicant or recipient a reasonable opportunity to submit satisfactory documentary evidence of citizenship before taking action affecting the individual's eligibility for Medicaid. The time States give for submitting

documentation of citizenship should be consistent with the time allowed to submit documentation to establish other facets of eligibility for which documentation is requested. (See § 435.930 and § 435.911 of this chapter.)

§ 436.408 [Removed and reserved]

■ 14. Section 436.408 is removed and reserved.

§ 436.1004–§ 436.1005 [Redesignated]

■ 15. Sections 436.1004 and § 436.1005 are redesignated as § 436.1005 and § 436.1006, respectively.

■ 16. New section 436.1004 is added to read as follows:

§ 436.1004 FFP in expenditures for medical assistance for individuals who have declared United States citizenship or nationality under section 1137(d) of the Act and with respect to whom the State has not documented citizenship and identity.

FFP will not be available to a State with respect to expenditures for medical assistance furnished to individuals unless the State has obtained satisfactory documentary evidence of citizenship or national status, as described in § 436.407 that complies with the requirements of section 1903(x) of the Act. This requirement does not apply with respect to individuals declaring themselves to be citizens or nationals who are eligible for medical assistance and who are either entitled to benefits or enrolled in any parts of the Medicare program under title XVIII of the Social Security Act.

Technical Amendments

§ 436.1005 [Amended]

■ 17. In newly redesignating § 436.1005, in paragraph (a)(1), ''§ 435.1009'' is revised to read ''§ 435.1010 of this chapter.''

§ 436.1006 [Amended]

■ 18. In newly redesignating § 436.1006, ''§ 435.1009 of this subchapter'' is revised to read ''§ 435.1010 of this chapter.''

PART 440—SERVICES: GENERAL PROVISIONS

■ 19. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 440.2 [Amended]

■ 20. In § 440.2, in paragraph (a), in the definition of ''Patient,'' ''§ 435.1009 of this subchapter'' is revised to read ''§ 435.1010 of this chapter.''

§ 440.140 [Amended]

■ 21. In § 440.140, in paragraph (b), ''§ 435.1009 of this chapter'' is revised to read ''§ 435.1010 of this chapter.''

§ 440.180 [Amended]

■ 22. In § 440.180, in paragraph (d)(2)(i), ''§ 435.1008(a)(2) of this subchapter'' is revised to read ''§ 435.1009(a)(2) of this chapter.''

§ 440.185 [Amended]

■ 23. In § 440.185, in paragraph (b), ''§ 435.1009'' is revised to read ''§ 435.1010 of this chapter.''

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

■ 24. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 441.13 [Amended]

■ 25. In § 441.13, in paragraph (a)(1), § 435.1009 of this subchapter'' is revised to read ''§ 435.1010 of this chapter.''

PART 457—ALLOTMENTS AND GRANTS TO STATES

■ 26. The authority citation for part 457 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 457.310 [Amended]

■ 27. In § 457.310, in paragraphs (c)(2)(i) and (c)(2)(ii), ''§ 435.1009 of this chapter'' is revised to read § 435.1010 of this chapter.''

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

■ 28. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 483.5 [Amended]

■ 29. In § 483.5, in paragraph (a), ''§ 435.1009 of this chapter'' is revised to read ''§ 435.1010 of this chapter.''

§ 483.20 [Amended]

■ 30. In § 483.20, in paragraph (m)(2)(ii), ''42 CFR 435.1009'' is revised to read § 435.1010 of this chapter.''

§ 483.102 [Amended]

■ 31. In § 483.102, in paragraph (b)(3)(ii), ''§ 435.1009 of this chapter'' is revised to read ''§ 435.1010 of this chapter.''

§ 483.136 [Amended]

■ 32. In § 483.136, in paragraph (a), ''§§ 435.1009 and 483.440 of this chapter'' is revised to read ''§ 435.1010 of this chapter and § 483.440.''

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: June 23, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 30, 2006.

Michael O. Leavitt,

Secretary.

[FR Doc. 06–6033 Filed 7–6–06; 5:00 pm]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 03–122; FCC 06–96]

Unlicensed Devices in the 5 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses petitions for reconsideration and clarification of the Commission's rules for 5 GHz U–NII devices adopted in the *Report and Order* in ET Docket No. 03–122 and revises the measurement procedures for certifying U–NII devices in the 5 GHz band. Our action will ensure that all applications for equipment certification of U–NII devices comply with the U–NII requirements.

DATES: Effective August 11, 2006.

FOR FURTHER INFORMATION CONTACT: Shameeka Hunt, Policy and Rules Division, Office of Engineering and Technology, (202) 418–2062, e-mail: *Shameeka.Hunt@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, ET Docket No. 03–122, FCC 06–96, adopted June 29, 2006, and released June 30, 2006. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (CY–A257) 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

Summary of the Memorandum Opinion and Order

1. In the Memorandum Opinion and Order, the Commission granted a request by the Wi-Fi Alliance to clarify the Transmit Power Control (TPC) requirements in § 5.407(h)(1), dismissed a request by the Wi-Fi Alliance to clarify the channel availability check time requirement in § 15.407(h)(2)(ii), denied a request by Globespan Virata to revise the rules to state that U–NII device are not required to detect and void frequency hopping radar signals, and dismissed a request by Extreme Networks to modify the definition of a U–NII central controller that must include Dynamic Frequency Selection (DFS) capability. The Memorandum Opinion and Order also issues a revised measurement procedure for certifying U–NII devices for compliance with the DFS requirements in the 5.25–5.35 GHz and 5.47–5.725 GHz bands. Our action will ensure that all applications for equipment certification of U–NII devices filed on or after July 20, 2006 will comply with the U–NII requirements for these bands.

2. In its Motion for Clarification, the Wi-Fi Alliance seeks clarification of the TPC requirements for U–NII devices, and the text in § 15.407(h)(2)(ii) regarding the DFS requirement for channel availability check time. The TPC requirement is intended to protect Earth Exploration-Satellite Service (active) (EESS) and Space Research Service (active) (SRS) operations by regulating a device's transmit power in response to an input signal or a condition (*e.g.*, a command signal issued by a controller when the received signal falls below a predetermined threshold). We recognize that the first sentence of § 15.407(h)(1) states that all U–NII devices must employ a TPC mechanism, while the last sentence modifies the first sentence by indicating that TPC is not required for systems with an EIRP of less than 500 mW. Because the wording of the TPC requirement in § 15.407(h)(1) may be confusing, we clarify, as the Commission stated in the *Report and Order*, 69 FR 2677, January 20, 2005, that there is no need to require TPC for a low-power U–NII device and that TPC is only required for U–NII devices operating at power levels higher than 500 mW. A U–NII device with an EIRP less than 500 mW is exempt because the device will not interfere with other operations in the 5.25–5.35 GHz and 5.47–5.725 GHz bands. We also clarify that the TPC requirement applies to each U–NII device since a U–NII device's transmission output power when combined with antenna gain produces an overall power referred to as ''EIRP.''

3. With regard to further clarification of § 15.407(h)(2)(ii) on DFS channel availability check time, the Project Team reached a consensus in the revised measurement procedure on a definition for channel availability check time that allows for fast channel changing. Since this issue is addressed in the revised measurement procedure that we issued with the MO&O, we dismiss this part of the Wi-Fi Alliance petition. Our action will allow industry to continue discussions with the Federal Government on this issue as needed, and the Commission's Laboratory may issue updated measurement procedures in the future if further modifications are needed.

4. Globespan requests that we clarify our rules to state that DFS-equipped U–NII devices are not required to detect and avoid frequency hopping radars in the 5.25–5.35 GHz and 5.47–5.725 GHz bands. We did not intend to exclude frequency hopping radars from the DFS requirement. In the *Report and Order*, we adopted DFS requirements to protect all Federal Government radar systems from interference from U–NII devices operating in the 5.25–5.35 GHz and 5.47–5.725 GHz bands. We made no distinction in the protection requirements between frequency hopping and other types of radars and Globespan points to no language that would support its contention. In fact, the interim test procedure appended to the *Report and Order* in this proceeding, which was developed by the Project Team, addresses the unique sharing challenges of how DFS should perform in the presence of frequency hopping radars.

5. The revised measurement procedure that we are endorsing with this MO&O addresses how DFS should perform in the presence of different types of radar systems, including frequency hopping radars. More specifically, section 6 of the revised measurement procedure provides the parameters for the required test waveforms, the minimum percentage of successful detections, and the minimum number of trials that must be used to determine DFS conformance. Accordingly, the DFS requirement is clearly intended to encompass frequency hopping radar systems.

6. Extreme Networks seeks clarification of the definition of a central controller that must have DFS capability. The intent of the DFS requirement in the rules is to ensure that all elements of a system (both master devices and client devices) are capable of avoiding causing harmful interference to government radars by dynamically switching frequencies. Although Section 5 of the revised measurement procedure addresses DFS capability for U–NII devices operating in master-client configurations, it does not address the specific configuration suggested by Extreme Networks. Nonetheless, Extreme Networks does not question the DFS requirement or the compliance criteria in the revised measurement procedure.

7. All U–NII implementations will be tested individually as part of the equipment certification process. If a unique implementation of DFS in U–NII devices is not directly addressed by the revised measurement procedure, the application for U–NII device certification will be handled on a case-by-case basis. We thus decline to clarify at this time the definition of a central controller that must have DFS capability as Extreme Networks requests and dismiss its petition.

8. *Revised Measurement Procedure.* The Project Team has worked to develop new measurement procedures for performing DFS compliance measurement tests for U–NII equipment operating in the 5.25–5.35 GHz and 5.47–5.725 GHz bands. Recently, the Project Team reached a consensus on revised DFS measurement procedures that were presented by the NTIA to the Commission on March 30, 2006 as part of this proceeding.

9. In order to allow for immediate implementation of U–NII devices in accordance with the rules adopted in the *Report and Order* of this proceeding, we are issuing the revised measurement procedures recommended by NTIA for certifying U–NII devices as an Appendix to this MO&O. Because these revised procedures represent a consensus agreement of industry and government participants, we are not making the substantive changes suggested by CCS since they may materially affect the implementation of the measurement procedures. We encourage industry and government entities to continue discussions on these procedures, as needed, and note that the Commission's Laboratory may issue further updates to the measurement procedures in the future as equipment is developed and as testing methodologies are refined. The revised measurement procedure that we are issuing with this MO&O does include non-substantive editorial changes submitted by CCS. As for the other concern, with respect to the certification process, applications for certification of U–NII devices will be processed in the order in which they are received. Further, with respect to

industry readiness to test DFS capabilities, we note that the criteria for DFS and TPC compliance in U–NII devices have been acknowledged and recognized since the adoption of the *Report and Order* in this proceeding. Therefore, manufacturers were aware of these new rules for U–NII devices well in advance of the July 20, 2006 implementation date.

Regulatory Flexibility Certification Analysis

10. The Report and Order [1] included a Final Regulatory Flexibility Certification pursuant to the Regulatory Flexibility Act (RFA).[2] We received no petitions for reconsideration of that Final Regulatory Flexibility Certification.

11. The Commission will send a copy of the Memorandum Opinion and Order, including a copy of this Regulatory Flexibility Certification Analysis, in a report to Congress pursuant to the Congressional Review Act.[3] In addition, the Memorandum Opinion and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA.[4]

Ordering Clauses

12. The Congressional Review Act (CRA), was addressed in the *Report and Order* released by the Commission on November 18, 2003, in ''*In the Matter of Revision of Parts 2 and 15 of the Commission's rules to permit Unlicensed National Information Infrastructure (U–NII) devices in the 5 GHz band*'' in this proceeding. This Memorandum Opinion and Order does not change any rules, it only issues updated measurement procedures for certifying unlicensed U–NII devices in accordance with the rules adopted in the *Report and Order.* Therefore, the CRA requirements have already been fulfilled.

13. Pursuant to sections 4(i), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), and 303(r), and section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the Memorandum Opinion and Order is hereby adopted.

14. The Motion for Clarification filed by The Wi-Fi Alliance is granted in part and dismissed in part, consistent with the terms of the Memorandum Opinion and Order.

15. The Request for Clarification filed by Extreme Networks, Inc. and the Petition for Clarification or Reconsideration filed by Globespan Virata, Inc. are denied.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–10794 Filed 7–11–06; 8:45 am]

BILLING CODE 6712–01–P

[1] *See* Appendix A: Final Regulatory Flexibility Analysis of the Report and Order.

[2] *See* 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, Title II, 110 Stat. 857 (1996).

[3] *See* 5 U.S.C. 801(a)(1)(A).

[4] *See* 5 U.S.C. 605(b).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1367]

Radio Broadcasting Services; East Liverpool, OH and Moon Township, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: The Audio Division has denied the petition for reconsideration of Keymarket Licenses, LLC (''Keymarket''), seeking reconsideration of the Audio Division's return of Keymarket's petition for rulemaking to reallot Channel 282B from East Liverpool, Ohio, to Moon Township, Pennsylvania. Keymarket filed a petition for rule making proposing change of community for Station WOGF (FM) from East Liverpool, Ohio, to Moon Township, Pennsylvania. Keymarket also proposed to change the transmitter site of Station WOGF (FM). The proposal was returned as unacceptable, because it would exacerbate an existing short-spacing. In this *Memorandum Opinion and Order,* the Audio Division denied Keymarket's petition for reconsideration of the return of Keymarket's petition for rulemaking.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* adopted June 28, 2006, and released June 30, 2006.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document is not subject to the Congressional Review Act. The Commission is, therefore, not required to send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A), because the petition for reconsideration was denied.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–10934 Filed 7–11–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1368]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), *Amendment of the Commission's Rules to permit FM Channel and Class Modifications by Applications,* 8 FCC Rcd 4735 (1993) and *Streamlining of Radio Technical Rules in Part 73 and 74 of the Commission's Rules,* 15 FCC Rcd 21649 (2000).

DATES: Effective July 12, 2006.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* adopted June 28, 2006, and released June 30, 2006. The full text of this Commission decision is available for inspection and copying during

regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will not send a copy of the *Report & Order* in this proceeding pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCASTING SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alaska, is amended by removing Channel 228A and adding Channel 228C1 at Delta Junction.

■ 3. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 222A and adding Channel 222C1 at Tusayan.

■ 4. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 261C3 and adding Channel 261C2 at Dunsmuir.

■ 5. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 262C and adding Channel 262C0 at Tifton.

■ 6. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 231C and adding Channel 231C0 at Kansas City.

■ 7. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 271C3 and adding Channel 271A at Louisiana.

■ 8. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 298A and adding Channel 298C1 at Superior and removing Channel 224A and adding Channel 224C2 at Wolf Point.

■ 9. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 265A and adding Channel 265C3 at Allen.

■ 10. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by removing Channel 233C1 and adding Channel 233C at Caliente and removing Channel 295C1 and adding Channel 295C at Overton.

■ 11. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 245C and adding Channel 245C0 at Farmington and removing Channel 279C3 and adding Channel 279C1 at Lordsburg.

■ 12. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 240A and adding Channel 238A at Dundee.

■ 13. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 240A and adding Channel 240C3 at Frederick.

■ 14. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 287C and adding Channel 287C0 at Gaffney.

■ 15. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 289A and adding Channel 289C3 at Rockwood.

■ 16. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 231C and adding Channel 231C0 at Clarkston and removing Channel 293C and adding Channel 293C0 at Richland.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–10935 Filed 7–11–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1232]

Radio Broadcasting Services; Lake Isabella, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration filed by Living Proof, Inc. directed at a staff letter action in this proceeding, which dismissed the Petition for Rulemaking requesting the reservation of vacant FM Channel 239A at Lake Isabella, California for noncommercial educational use. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* adopted June 21, 2006, and released June 23, 2006. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will not send a copy of this *Memorandum Opinion and Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the aforementioned petition for reconsideration was denied.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–10747 Filed 7–11–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1294]

Radio Broadcasting Services; Key West, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration filed by Call Communications Group directed at a staff letter action in this proceeding, which dismissed the Petition for Rulemaking requesting the reservation of vacant FM Channel 224A at Key West, Florida for noncommercial educational use. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* adopted June 21, 2006, and released June 23, 2006. The full text of this decision is available for inspection and copying during normal business hours

in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will not send a copy of this *Memorandum Opinion and Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the aforementioned petition for reconsideration was denied.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–10748 Filed 7–11–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1293; MB Docket No. 05–86; RM–11165, RM–11297]

Radio Broadcasting Services; Altamont and Odin, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Benjamin L. Stratemeyer, allots Channel 288A at Altamont, Illinois, as the community's first local service. Channel 288A can be allotted to Altamont, Illinois, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.2 kilometers (3.9 miles) southwest of Altamont. The coordinates for Channel 288A at Altamont, Illinois, are 39–01–44 North Latitude and 88–48–22 West Longitude.

DATES: Effective August 7, 2006.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–86, adopted June 21, 2006, and released June 23, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Altamont, Channel 288A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–10793 Filed 7–11–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 574

[Docket No. NHTSA–2006–25311]

Tire Identification and Recordkeeping; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Correcting amendment.

SUMMARY: In order to facilitate notification to consumers of defective or nonconforming tires, our tire recordkeeping regulation sets forth, among other things, the methods by which independent tire dealers and distributors record, on standard registration forms, their names and addresses and the identification number of the tires sold to consumers, and provide these forms to the consumers for reporting their names to the tire manufacturers. One of the figures related to tire registration forms had been inadvertently deleted through an administrative error. This document corrects this inadvertent removal.

DATES: *Effective Date:* This correcting amendment is effective August 11, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Stas, Attorney-Advisor, Office of the Chief Counsel, NCC–112, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: In order to facilitate notification to purchasers of defective or nonconforming tires, 49 CFR Part 574 sets forth, among other things, the methods by which independent tire dealers and distributors record, on standard registration forms, their names and addresses and the identification number of the tires sold to consumers and provide these forms to the consumers so that they report their names to the tire manufacturers. Figure 3(b), depicting the ''address side'' of the registration form, was inadvertently deleted. This document corrects this inadvertent deletion.

The agency examined the amendments to the **Federal Register** notices affecting 49 CFR Part 574 and concluded that Figure 3(b) had been inadvertently removed from the CFR. Without Figure 3(b), the tire registration form examples are incomplete. This document corrects the CFR by adding the inadvertently removed Figure 3(b) to 49 CFR 574.7.

This correction will not impose or relax any substantive requirements or burdens on manufacturers. Therefore, NHTSA finds for good cause that any notice and opportunity for comment on these correcting amendments are not necessary.

List of Subjects in 49 CFR Part 574

Labeling, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ Accordingly, 49 CFR part 574 is corrected by making the following correcting amendment:

PART 574—TIRE IDENTIFICATION AND RECORDKEEPING

■ 1. The authority citation for part 574 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. In § 574.7, add Figure 3(b) after Figure 3(a) as follows:

§ 574.7 Information requirements—new tire manufacturers, new tire brand name owners.

* * * * *

(d) * * *

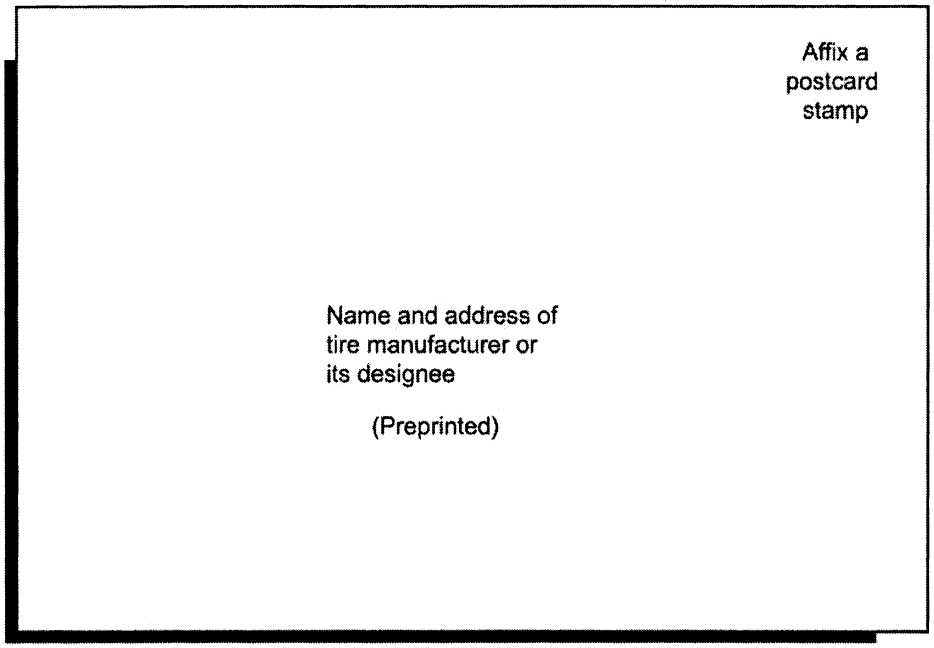

Figure 3b — Registration form for independent distributors and dealers — address side

* * * * *

Issued: July 6, 2006.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E6–10893 Filed 7–11–06; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 71, No. 133
Wednesday, July 12, 2006

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.

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC23

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Investments in Farmers' Notes

AGENCY: Farm Credit Administration.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Farm Credit Administration (FCA or Agency) withdraws its proposed rule to amend regulations governing investments in farmers' notes (Farmers' Notes), and terminates this rulemaking. This notice informs the public that this rulemaking has ended.

FOR FURTHER INFORMATION CONTACT:

Dawn Johnson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, Aurora, CO (303) 696–9737, TTY (303) 696–9259.

or

Richard A. Katz, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: The FCA terminates this rulemaking by withdrawing its proposed rule to amend the Farmers' Notes regulation. This rulemaking began on April 20, 2000 (65 FR 21151), when the FCA published an advance notice of proposed rulemaking that asked the public questions about ways to improve the funding and discount relationship between Farm Credit banks and other financing institutions (OFIs).[1] In addition to recommendations for improving the OFI program, some commenters suggested that the FCA also explore other ways for the Farm Credit System (System or FCS) to provide funding and liquidity to non-System agricultural lenders. In response to these comments, the FCA held a public meeting in Des Moines, Iowa on August 3, 2001, that addressed both OFIs and ''other types of partnering relationships between System and non-System lending institutions that would increase the availability of funds to agriculture and rural America.'' [2] At the public meeting, System and non-System commenters encouraged the FCA to promote other arrangements, in addition to the OFI program, that would make it easier for the FCS to provide funding and liquidity to non-System agricultural lenders. Many commenters expressed their desire for more flexible and informal arrangements between FCS and non-System agricultural lenders.

On August 11, 2003, the FCA adopted a proposed rule (original proposed rule) on OFIs and Farmers' Notes.[3] The FCA received 105 comment letters from both System and non-System lenders that specifically addressed Farmers' Notes. All 98 non-System commenters opposed the original proposed rule primarily because they believed that it would give System associations a competitive advantage over commercial banks. Seven System commenters expressed the view that revising the Farmers' Note program could strengthen cooperation between the FCS and non-System lenders and increase the flow of credit to agriculture. However, many FCS commenters sought significant changes to the proposal.

Based on these comments, the FCA adopted a final rule on OFIs, but reproposed the Farmers' Notes rule.[4] The second proposed rule (reproposed rule) that the FCA issued on September 14, 2004, sought to address the concerns of both System and non-System commenters.[5] The FCA received 776 comment letters in response to the reproposed rule. Six FCS commenters told the FCA that the reproposed rule would dissuade System associations from investing in Farmers' Notes because it was too restrictive. The remaining 770 comment letters came from commercial bankers or their trade associations who opposed the reproposed rule for the same reasons that they opposed the original proposed rule.

These comment letters lead the FCA to conclude that enacting a final rule on Farmers' Notes is unlikely to achieve the Agency's objectives of increasing cooperation between System and non-System lenders so more credit is available for agriculture and rural America. For this reason, the FCA withdraws the proposed rule and terminates this rulemaking.

Dated: July 6, 2006.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E6–10940 Filed 7–11–06; 8:45 am]

BILLING CODE 6705–01–P

[1] *See* 65 FR 21151 (April 20, 2000).

[2] *See* 66 FR 35428 (July 5, 2001).

[3] *See* 68 FR 47502 (August 11, 2003).

[4] *See* 69 FR 29852 (May 26, 2004).

[5] *See* 69 FR 55362 (September 14, 2004).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM348; Notice No. 25–06–07–SC]

Special Conditions: Dassault Aviation Model Falcon 7X Airplane, Windshield Coating in Lieu of Wipers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Dassault Aviation Model Falcon 7X airplane. This airplane will have a novel or unusual design feature(s) associated with use of a hydrophobic coating, rather than windshield wipers, as the means to maintain a clear portion of the windshield during precipitation conditions, as required by the airworthiness standards for transport category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: We must receive your comments by August 28, 2006.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM348, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane

Directorate at the above address. You must mark your comments: Docket No. NM348 You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: John McConnell, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1365; facsimile (425) 227–1320, e-mail *john.mcconnell@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On June 4, 2002, Dassault Aviation applied for a type certificate for its new Model Falcon 7X airplane. The Model Falcon 7X is a 19 passenger transport category airplane, powered by three aft mounted Pratt & Whitney PW307A high bypass ratio turbofan engines. Operation of the airplane is accomplished using a fly-by-wire (FBW) primary flight control system. This will be the first application of a FBW primary flight control system in a private/corporate use airplane.

The Dassault Aviation Model Falcon 7X flightdeck design incorporates a hydrophobic coating to provide adequate pilot compartment view in the presence of precipitation. Primary reliance on such a coating, without windshield wipers, constitutes a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. Therefore, special conditions are required that provide the level of safety equivalent to that established by the regulations.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Dassault Aviation must show that the Model Falcon 7X airplane meets the applicable provisions of part 25, as amended by Amendment 25–1 through Amendment 25–108 thereto.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model Falcon 7X because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model Falcon 7X must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Model Falcon 7X will incorporate the following novel or unusual design feature:

Hydrophobic windshield coating as the primary means to maintain a clear portion of the windshield, during precipitation conditions, sufficient for both pilots to have a sufficiently extensive view along the flight path.

Discussion

Section 25.773(b)(1) requires that both pilots of a transport category airplane be provided a means to maintain a sufficiently clear portion of the windshield during precipitation conditions, and that this clear portion of the windshield must have a sufficiently extensive view along the flight path. The regulations require this means to maintain such an area during precipitation in heavy rain at speeds up to 1.5 V_{SR1}.

This requirement has existed in principle since 1953 in Part 4b of the Civil Air Regulations (CAR). Section 4b.351(b)(1) of CAR 4b required that ''Means shall be provided for maintaining a sufficient portion of the windshield clear so that both pilots are afforded a sufficiently extensive view along the flight path in all normal flight attitudes of the airplane. Such means shall be designed to function under the following conditions without continuous attention on the part of the crew: (i) In heavy rain at speeds up to 1.6 V_{S1}, flaps retracted.'' Effective December 26, 2002, Amendment 25–108 changed the speed for effectiveness of the means to maintain an area of clear vision from up to 1.6 V_{S1} to 1.5 V_{SR1} to accommodate the redefinition of the reference stall speed from the minimum speed in the stall, V_{S1}, to greater than or equal to the 1-g stall speed, V_{SR1}, as the 1-g stall speed. As noted in the preamble to the final rule for that amendment, the reduced factor of 1.5 on V_{SR1} is to maintain approximately the same speed as the 1.6 factor on V_{S1}.

The requirement that the means to maintain a clear area of forward vision must function at high speeds and high precipitation rates is based on the use of windshield wipers as the means to maintain an adequate area of clear vision in precipitation conditions. The requirement in 14 CFR 121.313(b), and in 14 CFR 125.213(b), to provide ''a windshield wiper or equivalent for each pilot station'' has remained unchanged since at least 1953.

The effectiveness of windshield wipers to maintain an area of clear vision normally degrades as airspeed and precipitation rates increase. It is assumed that because high speeds and high precipitation rates represent limiting conditions for windshield wipers, they will also be effective at lower speeds and precipitation levels. Accordingly, § 25.773(b)(1)(i) does not require maintenance of a clear area of forward vision at lower speeds or lower precipitation rates.

A forced airflow blown directly over the windshield has also been used to maintain an area of clear vision in precipitation. The limiting conditions for this technology are comparable to those for windshield wipers. Accordingly, introduction of this technology did not present a need for special conditions to maintain the level

of safety embodied in the existing regulations.

Hydrophobic windshield coatings may depend to some degree on airflow directly over the windshield to maintain a clear vision area. The heavy rain and high-speed conditions specified in the current rule do not necessarily represent the limiting conditions for this new technology. For example, airflow over the windshield, which may be necessary to remove moisture from the windshield, may not be adequate to maintain a sufficiently clear area of the windshield in low speed flight or during ground operations. Alternatively, airflow over the windshield may be disturbed during such critical times as the approach to land, where the airplane is at a higher than normal pitch attitude. In these cases, areas of airflow disturbance or separation on the windshield could cause failure to maintain a clear vision area on the windshield.

In addition to potentially depending on airflow to function effectively, hydrophobic coatings may also be dependent on water droplet size for effective precipitation removal. For example, precipitation in the form of a light mist may not be sufficient for the coating's properties to result in maintaining a clear area of vision.

In summary, the current regulations identify speed and precipitation rate requirements that represent limiting conditions for windshield wipers and blowers, but not for hydrophobic coatings, so it is necessary to issue special conditions to maintain the level of safety represented by the current regulations.

These special conditions provide an appropriate safety standard for the hydrophobic coating technology as the means to maintain a clear area of vision by requiring it to be effective at low speeds and precipitation rates as well as the higher speeds and precipitation rates identified in the current regulation. These are the only new or changed requirements relative to those in § 25.773(b)(1) at Amendment 25–108.

Applicability

As discussed above, these special conditions are applicable to the Model Falcon 7X. Should Dassault Aviation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Dassault Aviation Model Falcon 7X airplanes.

Pilot Compartment View—Hydrophobic Coatings in Lieu of Windshield Wipers

The airplane must have a means to maintain a clear portion of the windshield, during precipitation conditions, enough for both pilots to have a sufficiently extensive view along the flight path in normal flight attitudes of the airplane. This means must be designed to function, without continuous attention on the part of the crew, in conditions from light misting precipitation to heavy rain at speeds from fully stopped in still air, to 1.5 V_{SR1} with lift and drag devices retracted.

Issued in Renton, Washington, on July 3, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–10894 Filed 7–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22559; Directorate Identifier 2005–NM–076–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) 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 Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The existing AD currently requires repetitive inspections for cracks, sealant damage, and corrosion of the main fittings of the main landing gear (MLG), and corrective actions if necessary. This proposed AD would reduce the compliance times for inspecting certain low-utilization airplanes, and provide a terminating action for the repetitive inspections. This proposed AD results from a report of a cracked main fitting of the MLG. We are proposing this AD to detect and correct fatigue cracking of the main fitting of the MLG and consequent failure of the main fitting, which could result in the collapse of the MLG.

DATES: We must receive comments on this proposed AD by August 11, 2006.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Richard Beckwith, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7302; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–22559; Directorate Identifier 2005–NM–076–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the

proposed AD in light of those comments.

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

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System (DMS) receives them.

Discussion

On September 27, 2004, we issued AD 2004–20–09, amendment 39–13814 (69 FR 59790, October 6, 2004), for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That AD requires repetitive inspections for cracks, sealant damage, and corrosion of the main fittings of the main landing gear (MLG), and corrective actions if necessary. That AD resulted from a report of a cracked main fitting of the MLG. We issued that AD to detect and correct fatigue cracking of the main fitting of the MLG and consequent failure of the main fitting, which could result in the collapse of the MLG.

Actions Since Existing AD Was Issued

Since we issued AD 2004–20–09, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has revised its parallel airworthiness directive, and issued Canadian airworthiness directive CF–2004–18R1, dated September 21, 2005. (Canadian emergency airworthiness directive CF–2004–18, dated September 16, 2004, was referenced as the parallel airworthiness directive in AD 2004–20–09.) This revision to the Canadian airworthiness directive specifies the revised inspection intervals in Revision B of Bombardier Alert Service Bulletin A601R–32–099, dated June 16, 2005. (Alert Service Bulletin A601R–32–099, dated September 15, 2004, was referenced in AD 2004–20–09 as the appropriate source of service information for accomplishing the required actions.) The revised inspection intervals apply only to certain low-utilization airplanes, and specify that these airplanes comply with the actions in AD 2004–20–09 sooner than currently required by that AD. This revision to the Canadian airworthiness directive also specifies replacement of the main fittings of the MLG with new fittings, which terminates the repetitive inspections.

In addition, the preamble to AD 2004–20–09 explains that we consider the requirements of AD 2004–20–09 to be ''interim action'' and that we are considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Other Relevant Rulemaking

On November 16, 2001, we issued AD 2001–22–09 (amendment 39–12488, 66 FR 58931, November 26, 2001), for certain Bombardier Model CL–600–2B19 series airplanes. That AD requires repetitive eddy current inspections for cracking of the MLG main fittings, and replacement with a new or serviceable MLG if necessary. That AD also requires servicing the MLG shock struts; inspecting the MLG shock struts for nitrogen pressure, visible chrome dimension, and oil leakage; and performing corrective actions if necessary. That AD was prompted by reports of premature failure of the MLG main fitting. We issued that AD to prevent failure of the MLG main fitting, which could result in collapse of the MLG upon landing.

On June 30, 2004, we issued AD 2004–14–16 (amendment 39–13725, 69 FR 41421, July 9, 2004), for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That AD requires repetitive detailed and eddy current inspections on the main fittings of the MLGs to detect discrepancies, and related investigative/corrective actions if necessary. That AD also requires servicing the shock strut of the MLGs; inspecting the shock strut of the MLGs for nitrogen pressure, visible chrome dimension, and oil leakage; and servicing any discrepant strut. That AD resulted from results of a stress analysis that revealed that certain main fittings of the MLGs are susceptible to premature cracking, starting in the radius of the upper lug. We issued that AD to detect and correct premature cracking of the main fittings of the MLGs, which could result in failure of the fittings and consequent collapse of the MLGs during landing.

Relevant Service Information

Bombardier has issued Alert Service Bulletin A601R–32–099, Revision B, dated June 16, 2005, including Appendices A through D, Revision A, dated December 13, 2004. The procedures in this service bulletin are essentially the same as the procedures in the original issue of Bombardier Alert Service Bulletin A601R–32–099, including Appendices A through D, dated September 15, 2004, which was cited as the appropriate source of service information in AD 2004–20–09.

Bombardier has also issued Service Bulletin 601R–32–093, Revision B, dated July 14, 2005. This service bulletin describes procedures for replacing the main fitting of the MLG with a new main fitting having a new part number.

TCCA mandated the service information and issued Canadian airworthiness directive CF–2004–18R1, dated September 21, 2005, to ensure the continued airworthiness of these airplanes in Canada. TCCA considers Bombardier Service Bulletin 601R–32–093 to be terminating action for the repetitive inspections in Bombardier Alert Service Bulletin A601R–32–099.

Bombardier Service Bulletin 601R–32–093, Revision B, refers to Messier-Dowty Service Bulletin M–DT SB17002–32–24, dated October 9, 2003; and Messier-Dowty Service Bulletin M–DT SB17002–32–25, Revision 1, dated October 17, 2003; as additional sources of service information for replacing the MLG main fitting. Operators should note that P/Ns 601R85001–81/82 (Messier-Dowty P/Ns 17064–105/106), as specified in Bombardier Service Bulletin 601R–32–093, Revision B, and Messier-Dowty Service Bulletin M–DT SB17002–32–25, Revision 1, require different inspections in accordance with AD 2004–14–16. We are considering additional rulemaking to supersede that AD to require replacement of the noted part numbers at a different compliance time.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the

Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2004–20–09. This proposed AD would continue to require repetitive inspections for cracks, sealant damage, and corrosion of the main fittings of the MLG, and corrective actions if necessary. This proposed AD also would reduce the compliance times for inspecting certain affected airplanes, and require that operators do the actions in accordance with a new revision of the service bulletin, described previously, except as discussed under ''Difference Between the Proposed AD and Bombardier Alert Service Bulletin A601R–32–099.''

Difference Between the Proposed AD and Bombardier Alert Service Bulletin A601R–32–099

Although the Accomplishment Instructions of the Bombardier Alert Service Bulletin A601R–32–099, Revision B, describe procedures for reporting crack indications, returning cracked parts to Messier-Dowty, and submitting a comment sheet related to service bulletin quality and a sheet recording compliance with the service bulletin, this AD, like Canadian airworthiness directive CF–2004–18R1, would not require those actions.

Difference Between the Proposed AD and the Canadian Airworthiness Directive

Canadian airworthiness directive CF–2004–18R1, recommends replacing the main fitting of the MLG with a new main fitting having a new part number by June 2007, which is 27 months after the effective date of the Canadian airworthiness directive. We find that a compliance time of within 15 months after the effective date of this proposed AD would allow us to come close to the compliance date of June 2007, and represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with TCCA.

Clarification of Inspection Language

Bombardier Alert Service Bulletin A601R–32–099, Revision B, specifies that operators should do a visual inspection for cracks of the inboard and outboard sides of the main fitting of the MLG; and a visual inspection for sealant damage or corrosion around the forward bushing of the left and right main fittings of the MLG. The Canadian airworthiness directive refers to this inspection as a ''detailed visual inspection.'' In this proposed AD we refer to this inspection as a ''detailed inspection.'' Note 1 of this proposed AD defines this inspection.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD. There are approximately 201 U.S.-registered airplanes. The average labor rate is $80 per hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Detailed inspection for cracks of the main fitting (required by AD 2004–20–09).	1	N/A	$80, per inspection cycle ...	$16,080, per inspection cycle.
Detailed inspection for sealant damage of the bushing (required by AD 2004–20–09).	1	N/A	$80, per inspection cycle ...	$16,080, per inspection cycle.
Ultrasonic inspection for cracks of the main fittings (required by AD 2004–20–09).	1	N/A	$80, per inspection cycle ...	$16,080, per inspection cycle.
Replacement (new proposed action)	56	$105,732	$110,212	$22,152,612.

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. 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 FAA amends § 39.13 by removing amendment 39–13814 (69 FR 59790, October 6, 2004) and adding the following new airworthiness directive (AD):

Bombardier, Inc. (Formerly Canadair):

Docket No. FAA–2005–22559; Directorate Identifier 2005–NM–076–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by August 11, 2006.

Affected ADs

(b) This AD supersedes AD 2004–20–09.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category; serial numbers 7003 through 7067 inclusive, and 7069 through 8999 inclusive; equipped with main landing gear (MLG) main fittings, having part number (P/N) 601R85001–3 or –4 (Messier-Dowty P/N 17064–101, –102, –103, or –104).

Unsafe Condition

(d) This AD results from a report of a cracked main fitting of the MLG. We are issuing this AD to detect and correct fatigue cracking of the main fitting of the MLG and consequent failure of the main fitting, which could result in the collapse of the MLG.

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.

Service Bulletin

(f) Unless otherwise specified in this AD, the term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Bombardier Alert Service Bulletin A601R–32–099, including Appendices A, B, and D, and excluding Appendix C, dated September 15, 2004; or Bombardier Alert Service Bulletin A601R–32–099, Revision A, including Appendices A, B, and D, and excluding Appendix C, dated December 13, 2004; or Bombardier Alert Service Bulletin A601R–32–099, Revision B, dated June 16, 2005, including Appendices A, B, and D, and excluding Appendix C, Revision A, dated December 13, 2004.

(1) After the effective date of this AD, only Revision B of the service bulletin may be used.

(2) Although the service bulletin specifies to submit certain information to the airplane manufacturer and to return cracked main fittings to the supplier, this AD does not include those requirements.

Restatement of the Requirements of AD 2004–20–09

Initial Inspections at New Reduced Compliance Times

(g) Do the actions in Table 1 of this AD.

TABLE 1.—INITIAL INSPECTION THRESHOLDS AT NEW REDUCED COMPLIANCE TIMES

Do the following in Column 1—	At the earlier of the times specified in Column 2 or Column 3—	
Column 1—	Column 2—The latest of—	Column 3—The latest of—
(1) A detailed inspection for cracks of the inboard and outboard sides of the main fitting of the MLG between the pintle pin trunnion and the radius of the shock strut lug, in accordance with Part A of the service bulletin.	(i)(A) Before the accumulation of 8,000 total flight cycles since the main fitting of the MLG was new. (B) Within 8,000 flight cycles since the last overhaul of the MLG done before the effective date of this AD. (C) Within 50 flight cycles after October 21, 2004 (the effective date of AD 2004–20–09).	(ii)(A) Within 48 months since the main fitting of the MLG was new. (B) Within 48 months since the last overhaul of the MLG done before the effective date of this AD. (C) Within 50 flight cycles after the effective date of this AD.
(2) A detailed inspection for sealant damage or corrosion around the forward bushing of the left and right main fittings of the MLG, in accordance with Part B of the service bulletin.	(i)(A) Before the accumulation of 8,000 total flight cycles since the main fitting of the MLG was new. (B) Within 8,000 flight cycles since the last overhaul of the MLG done before the effective date of this AD. (C) Within 500 flight cycles after October 21, 2004.	(ii)(A) Within 48 months since the main fitting of the MLG was new. (B) Within 48 months since the last overhaul of the MLG done before the effective date of this AD. (C) Within 500 flight cycles or 6 months after the effective date of this AD, whichever occurs first.
(3) An ultrasonic inspection for cracks of the left and right main fittings of the MLG, in accordance with Part C of the service bulletin.	(i)(A) Before the accumulation of 8,000 total flight cycles since the main fitting of the MLG was new. (B) Within 8,000 flight cycles, since the last overhaul of the MLG done before the effective date of this AD. (C) Within 500 flight cycles after October 21, 2004.	(ii)(A) Within 48 months since the main fitting of the MLG was new. (B) Within 48 months since the last overhaul of the MLG done before the effective date of this AD. (C) Within 500 flight cycles or 6 months after the effective date of this AD, whichever occurs first.

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.''

Repetitive Inspections

(h) Repeat the inspections in paragraph (g) of this AD thereafter at the applicable interval in paragraph (h)(1) or (h)(2) of this AD, until the terminating action required by paragraph (l) of this AD is accomplished.

(1) For airplanes on which the applicable initial inspection in paragraph (g) of this AD has been done before the effective date of this AD, do the next inspection at the applicable interval in Table 2 of this AD.

(2) For airplanes on which the applicable initial inspection in paragraph (g) of this AD has not been done before the effective date of this AD, repeat the inspection at the applicable interval in Table 2 of this AD.

TABLE 2.—REPETITIVE INSPECTIONS AT NEW INTERVALS

For the inspection required by—	Repeat at intervals not to exceed—	Until the action required by—
(3) Paragraph (g)(1) of this AD	5 days	Paragraph (g)(3) of this AD is done, unless required by paragraph (j) of this AD.
(4) Paragraph (g)(2) of this AD	500 flight cycles or 6 months, whichever occurs first.	Paragraph (j)(2) of this AD is done.
(5) Paragraph (g)(3) of this AD	5,000 flight cycles or 30 months, whichever occurs first, except as required by paragraph (j)(2) of this AD.	(None).

Corrective Actions

(i) If there is an indication of a crack during any inspection required by paragraph (g)(1), (h)(3), or (j)(1) of this AD, before further flight, do the actions specified in paragraph (i)(1) or (i)(2) of this AD in accordance with Part A of the service bulletin; or do the terminating action required by paragraph (l) of this AD.

(1) Replace the cracked main fitting of the MLG with a new or serviceable main fitting.

(2) Do an eddy current inspection to verify whether there is a crack. If there is a crack, replace the cracked main fitting of the MLG with a new or serviceable main fitting.

(j) If any sealant damage or corrosion is found during any inspection required by either paragraph (g)(2) or (h)(4) of this AD, do the actions specified in Table 3 of this AD in accordance with Part B of the service bulletin, until the terminating action required by paragraph (l) of this AD is accomplished.

TABLE 3.—CORRECTIVE ACTIONS FOR SEALANT DAMAGE OR CORROSION

Do the inspection specified in—	Within—	Repeat at intervals not to exceed—	Until the action specified in—
(1) Paragraph (g)(1) of this AD	5 days after doing the inspection required by (g)(2) or (h)(4) of this AD, as applicable.	5 days	Paragraph (j)(2) or (l) of this AD is done.
(2) Paragraph (g)(3) of this AD	500 flight cycles after doing the inspection required by paragraph (g)(2) or (h)(4) of this AD, as applicable.	500 flight cycles	Paragraph (l) of this AD is done.

(k) If there is an indication of a crack during any inspection required by paragraph (g)(3) or (h)(5) of this AD, before further flight, replace the cracked main fitting of the MLG with a new or serviceable main fitting in accordance with Part C of the service bulletin; or do the terminating action required by paragraph (l) of this AD.

New Requirement of This AD

Terminating Action—Replacement

(l) Within 15 months after the effective date of this AD, replace both main fittings of the MLG with new main fittings having new part numbers, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–32–093, Revision B, dated July 14, 2005. Doing this replacement terminates all requirements of paragraphs (g), (h), (i), (j), and (k) of this AD.

Note 2: Bombardier Service Bulletin 601R–32–093, Revision B, refers to Messier-Dowty Service Bulletin M–DT SB17002–32–24, dated October 9, 2003; and Messier-Dowty Service Bulletin M–DT SB17002–32–25, Revision 1, dated October 17, 2003; as additional sources of service information for replacing the MLG main fitting.

Actions Accomplished in Accordance With Earlier Issues of Service Bulletin

(m) Actions done before the effective date of this AD in accordance with the service bulletins listed in Table 4 of this AD are acceptable for compliance with the corresponding action specified in this AD.

TABLE 4.—EARLIER ISSUES OF SERVICE BULLETINS

Service bulletin	Revision level	Date
Bombardier Service Bulletin 601R–32–093	Original	October 17, 2003.
Bombardier Service Bulletin 601R–32–093	A	September 21, 2004.

Parts Installation

(n) As of the effective date of this AD, no person may install a main fitting of the MLG, Bombardier P/N 601R85001–3 or 601R85001–4; also referred to as Messier-Dowty P/N 17064–101, 17064–102, 17064–103, or 17064–104; on any airplane.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, New York 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) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(p) Canadian airworthiness directive CF–2004–18R1, dated September 21, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on July 6, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–10913 Filed 7–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–143–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Model G–159 Airplanes

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

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier supplemental notice of proposed rulemaking (NPRM), applicable to all Gulfstream Aerospace Corporation Model G–159 airplanes, that would have required repetitive non-destructive testing inspections to detect corrosion of the skin of certain structural assemblies, and corrective action if necessary. The first supplemental NPRM also would have required x-ray and ultrasonic inspections to detect corrosion and cracking of the splicing of certain structural assemblies, and repair if necessary. This new action revises the proposed rule by limiting the time certain repetitive inspections may be repeated before corrective action must be taken. The actions specified by this new proposed supplemental AD are intended to detect and correct corrosion and cracking of the lower wing plank splices and spot-welded skins of certain structural assemblies, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 7, 2006.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 96–NM–143–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Michael Cann, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6038; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–143–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this second supplemental NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–143–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Gulfstream Aerospace Corporation Model G–159 airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on March 21, 2006 (71 FR 14123). The first supplemental NPRM would have required repetitive non-destructive testing inspections to detect corrosion of the skin of certain structural assemblies, and corrective action if necessary. The first supplemental NPRM also would have required x-ray and ultrasonic inspections to detect corrosion and cracking of the splicing of certain structural assemblies, and repair if necessary. The first supplemental NPRM was prompted by reports indicating corrosion had been detected in a larger area than previously reported. That condition, if not detected and corrected, could result in cracking of the lower wing plank splices and spot-welded skins of certain structural assemblies, which could result in reduced controllability of the airplane. That action was intended to address the identified unsafe condition.

Comments

Due consideration has been given to the comments received in response to the first supplemental NPRM.

Request To Clarify Paragraph (a)(3) of the Supplemental NPRM

The manufacturer, Gulfstream, requests that the inspection specified in paragraph (a)(3) of the NPRM be revised to specify that the airplane may remain in service for up to 18 months with a proviso that repeat x-ray inspections are accomplished at 9-month intervals until rework or replacement is accomplished.

We agree that further clarification is necessary for paragraph (a)(3) of this second supplemental NPRM and have revised paragraph (a)(3) accordingly.

Request To Clarify the Areas of Inspection

The same commenter, Gulfstream, would like us to clarify the ''Summary'' section of the first supplemental NPRM. The commenter states that Customer Bulletin (CB) 337B, dated August 17, 2005 expands only the wing lower plank inspection from WS 40 to WS 310. Gulfstream points out that all other areas identified within CB 337, Revision B, were established as part of the original CB inspection criteria.

We acknowledge the commenter's point. However, the intent of the first supplemental NPRM was to specify that the wing lower plank inspection was being added to the proposed requirements of the original NPRM. The proposed requirements are in accordance with Gulfstream GI CB 337B, dated August 17, 2005. No change is necessary to this supplemental NPRM as a result of that comment.

Request To Clarify Reference to ''Exfoliation'' Corrosion

Gulfstream also requests that we clarify the reference to ''exfoliation'' in the ''Relevant Customer Bulletin'' section of the preamble of the supplemental NPRM by changing the reference to ''inter-granular/exfoliation'' corrosion. Gulfstream states that, in order to convey the nature of this type of corrosion, it is important to understand that inter-granular starts first with the visible result, exfoliation, typically following significant structural damage. Gulfstream further notes that inter-granular corrosion often cannot be visibly seen as it goes down from the surface, transitions sideways following the boundary layer for a distance, and cannot be seen without non-destructive testing (NDT) inspection.

We acknowledge the commenter's clarification regarding the reference to exfoliation in the supplemental NPRM. However, since the description of the ''Relevant Customer Bulletin'' does not reappear in this supplemental NPRM, it is unnecessary to revise this supplemental NPRM.

Request To Clarify ''Difference Between the CB and the Proposed AD''

Gulfstream also notes that Gulfstream GI CB 337 refers to the Airplane Maintenance Manual (AMM), Chapter 05, which specifies corrective actions and follow-up inspection intervals.

We infer that Gulfstream would like us to clarify that, while the CB does not explicitly specify repetitive inspections, the CB does refer to the AMM, which contains certain corrective actions and repetitive inspection intervals. We acknowledge that Gulfstream CB 337B, dated August 17, 2005, refers to the AMM, and that the AMM specifies certain repetitive inspection intervals. Since the ''Differences Between the CB and the Proposed AD'' section does not reappear in this supplemental AD, no change to this supplemental NPRM is necessary.

Request To Change Reporting Address

Gulfstream requests that we update the address where the reporting requirements are to be sent.

We agree to change the address for the reporting requirements and have revised this supplemental NPRM accordingly.

Editorial Change

We have also revised paragraph (f) of this supplemental NPRM to remove the phrase, ''as defined by paragraphs (f)(1) and (f)(2) of this AD:''. That phrase was intended to define new lower wing planks based on when the new lower wing planks were installed. We removed that phrase, since the compliance time (within 144 months after replacement of the lower wing planks with new lower wing planks, or within 9 months after the effective date of this AD, whichever occurs later) is the same for all new lower wing planks.

Conclusion

Since these changes expand the scope of the first supplemental NPRM, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). These changes are reflected in this supplemental NPRM.

Explanation of Change to Costs of Compliance

After the first supplemental NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $65 per work hour to $80 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 52 airplanes of the affected design in the worldwide fleet. The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately between 300 and 450 work hours per airplane, depending upon how many spot-welded skins have been replaced with bonded skin panels, to accomplish the proposed actions, and that the average labor rate is $80 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $600,000 and $900,000, or between $24,000 and $36,000 per airplane per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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 Impact

The regulations proposed herein 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. Therefore,

it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that 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) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 the following new airworthiness directive:

Gulfstream Aerospace Corporation: Docket 96–NM–143–AD.

Applicability: All Model G–159 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion and cracking of the spot-welded skins of the lower wing plank splices and certain structural assemblies, which could result in reduced controllability of the airplane, accomplish the following:

Note 1: A note in the Accomplishment Instructions of the Gulfstream customer bulletin instructs operators to contact Gulfstream if any difficulty is encountered in accomplishing the customer bulletin. However, any deviation from the instructions provided in the customer bulletin must be approved as an alternative method of compliance (AMOC) under paragraph (h) of this AD.

Non-Destructive Testing Inspections of the Fuselage, Empennage, and Flight Controls

(a) Within 9 months after the effective date of this AD, perform a non-destructive test (NDT) to detect corrosion of the skins of the elevators, ailerons, rudder and rudder trim tab, flaps, aft lower fuselage, and vertical and horizontal stabilizers; in accordance with the Accomplishment Instructions of Gulfstream GI Customer Bulletin (CB) 337B, including Appendix A, dated August 17, 2005. The corrosion criteria must be determined by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Gulfstream Tool ST905–377 is also an acceptable method of determining the corrosion criteria.

(1) If no corrosion or cracking is detected, repeat the inspection thereafter at intervals not to exceed 18 months.

(2) If any corrosion is detected that meets the criteria of ''light'' or ''mild'' corrosion, repeat the NDT inspections of that component thereafter at intervals not to exceed 12 months.

(3) If any corrosion is detected that meets the criteria of ''moderate'' corrosion: Within 9 months after the initial inspection, repeat the NDT inspection of that component, and within 18 months since the initial inspection, repair or replace the component with a serviceable component in accordance with the CB.

(4) If any corrosion is detected that meets the criteria of ''severe'' corrosion, before further flight, replace the component with a serviceable component in accordance with the CB.

Existing Repairs

(b) If any existing repairs are found during the inspections required by paragraph (a) of this AD, before further flight, ensure that the repairs are in accordance with a method approved by the Manager, Atlanta ACO.

Inspections of the Lower Wing Plank

(c) Except as provided in paragraph (f) of this AD: Within 9 months after the effective date of this AD, perform NDT inspections to detect corrosion and cracking of the lower wing plank splices, in accordance with the Accomplishment Instructions of Gulfstream GI CB 337B, including Appendix A, dated August 17, 2005.

(1) If no corrosion or cracking is detected, repeat the NDT inspection at intervals not to exceed 18 months.

(2) If any corrosion or cracking is detected, before further flight, perform all applicable investigative actions and corrective actions in accordance with the customer bulletin.

Repair Removal Threshold

(d) For repairs specified in Appendix A of Gulfstream GI CB 337B, dated August 17, 2005: Within 144 months after the date of the repair installation, remove the repaired component and replace it with a new or serviceable component, in accordance with Gulfstream GI CB 337B, including Appendix A, dated August 17, 2005.

Prior Blending in the Riser Areas

(e) If, during the performance of the inspections required by paragraph (c) or (f) of this AD, the inspection reveals that prior blending has been performed on the riser areas: Before further flight, perform an eddy current or fluorescent penetrant inspection, as applicable, to evaluate the blending, and accomplish appropriate corrective actions, in accordance with the Accomplishment Instructions of Gulfstream GI CB 337B, including Appendix A, dated August 17, 2005. If any blend-out is outside the limits specified in the CB, before further flight, repair in a manner approved by the Manager, Atlanta ACO.

For Airplanes With New Lower Wing Planks

(f) For airplanes with new lower wing planks: Within 144 months after replacement of the lower wing planks with new lower wing planks, or within 9 months after the effective date of this AD, whichever occurs later, perform all of the actions, including any other related investigative actions and corrective actions, specified in paragraph (c) of this AD.

Reporting Requirement

(g) Within 30 days of performing the inspections required by this AD: Submit a report of inspection findings (both positive and negative) to Gulfstream Aerospace Corporation; Attention: Technical Operations—Structures Group, Dept. 893, Mail Station D–25, 500 Gulfstream Road, Savannah, Georgia 31408. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(h)(1) The Manager, Atlanta ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on June 30, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–10911 Filed 7–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25328; Directorate Identifier 2006–NM–130–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400 series airplanes. This proposed AD would require inspecting for fouling and chafing damage of the outboard brake control cable of the main landing gear, replacing the control cable if necessary, reworking the control cable cover, and, if applicable, manufacturing/installing an offset plate on the control cable cover. This proposed AD is prompted by a review of brake control cable operation conducted by the manufacturer. We are proposing this AD to prevent abrasion and wear of the outboard brake control cable, which could lead to cable separation and reduced control of airplane braking.

DATES: We must receive comments on this proposed AD by August 11, 2006.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7320; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–25328; Directorate Identifier 2006–NM–130–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model DHC–8–400 series airplanes. TCCA advises that a review conducted by the manufacturer revealed that the outboard brake control cable can become fouled on two fasteners on the pilot's bulkhead cover assembly. This condition, if not corrected, could result in abrasion and wear of the outboard brake control cable, which could lead to cable separation and reduced control of airplane braking.

Relevant Service Information

Bombardier has issued Service Bulletin 84–53–37, Revision 'C,' dated December 5, 2005. The service bulletin describes procedures for inspecting for fouling and chafing damage of the main landing gear outboard brake control cable, replacing the control cable if necessary, reworking the control cable cover, and, if not already installed, manufacturing/installing an offset plate on the control cable cover. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2006–05, dated March 31, 2006, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Clarification of Inspection Terminology.''

Clarification of Inspection Terminology

The service bulletin specifies a ''visual inspection;'' however, this proposed AD would require a ''general visual inspection.'' We have included the definition of a general visual inspection in a note in the proposed AD.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspect brake cable	1	N/A	$80	17	$1,360.
Rework cable cover	3	N/A	240	17	4,080.
Manufacture/ install offset plate, as applicable	3	200	440	Up to 17	Up to $7,480.

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 adding the following new airworthiness directive (AD):

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2006–25328; Directorate Identifier 2006–NM–130–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 11, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400 series airplanes, certificated in any category; having serial numbers 4003, 4004, 4006, 4008 through 4064 inclusive, 4072, and 4073.

Unsafe Condition

(d) This AD results from a review of brake control cable operation conducted by the manufacturer. We are issuing this AD to prevent abrasion and wear of the outboard brake control cable, which could lead to cable separation and reduced control of airplane braking.

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.

Inspection of Control Cable

(f) Within 12 months after the effective date of this AD, perform a general visual inspection for fouling and chafing damage of the outboard brake control cable of the main landing gear, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–53–37, Revision ''C,'' dated December 5, 2005.

Note 1: 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.''

Control Cable Cover Rework Only

(g) If no fouling or damage is found during the inspection required by paragraph (f) of this AD: Within 24 months after the accomplishment date of the inspection, rework the control cable cover and, as applicable, manufacture/install the offset plate assembly; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–53–37, Revision ''C,'' dated December 5, 2005.

Cable Replacement and Control Cable Cover Rework

(h) If any fouling or damage is found during the inspection required by paragraph (f) of this AD: Before further flight, replace the control cable with a new control cable, rework the control cable cover and, if not already installed, manufacture/install the offset plate assembly; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–53–37, Revision ''C,'' dated December 5, 2005.

Actions Accomplished According to Previous Issue of Service Bulletin

(i) Actions accomplished before the effective date of this AD in accordance with Bombardier Service Bulletin 84–53–37, Revision ''A,'' dated October 17, 2005; or Revision ''B,'' dated November 24, 2005; are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, New York 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) Before using any AMOC approved in accordance with § 39.19 on any airplane to

which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(k) Canadian airworthiness directive CF–2006–05, dated March 31, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on July 3, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–10912 Filed 7–11–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25069; Airspace Docket No. 06–AWP–9]

Proposed Modification of Class E Airspace; Honolulu International Airport, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace area at Honolulu International Airport, HI. The establishment of an Area Navigation (RNAV) Required Navigation Performance (RNP) Instrument Approach Procedures (IAP) to Runway (RWY) 08L and 26L at Honolulu International Airport, Honolulu, HI has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (RNP) IAP to RWY 08L/26L at Honolulu International Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Honolulu International Airport, Honolulu, HI.

DATES: Comments must be received on or before August 28, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–25069/ Airspace Docket No. 06–AWP–9 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Western Terminal Operations, Federal Aviation Administration, at 15000 Aviation Boulevard, Lawndale, California 90261, telephone number (310) 725–6502.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–25069/Airspace Docket No. 06–AWP–9.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov.* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Honolulu International Airport, Honolulu, HI. The establishment of a RNAV (RNP) IAP to RWY 08L/26L at Honolulu International Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV (RNP) IAP to RWY 08L/26L at Honolulu International Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (RNP) IAP to RWY 08L/26L Honolulu International Airport, HI. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9N dated September 1, 2005, and effective September 15, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective, September 15, 2005, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP HI E5 Honolulu International Airport, HI [Amended]

Honolulu International Airport
(Lat. 21°19′07″ N., long. 157°55′21″ W.)
Kalaeloa John Rodgers Field
(Lat. 21°18′26″ N., long. 158°04′13″ W.)
Honolulu VORTAC
(Lat. 21°18′30″ N., long. 157°55′50″ W.)

That airspace extending upward from 700 feet above the surface south and southwest of Honolulu International Airport beginning at lat. 21°20′19″ N, long. 157°49′00″ W., thence southeast to lat. 21°16′20″ N, long. 157°45′00″ W., thence east along the shoreline to where the shoreline intercepts the Honolulu VORTAC 15-mile radius, then clockwise along the 15-mile radius of the Honolulu VORTAC to intercept the Honolulu VORTAC 241° radial, then northeast bound along the Honolulu VORTAC 241° radial to intercept the 4.3-mile radius south of Kalaeloe John Rodgers Field, then counterclockwise along the arc of the 4.3-mile radius of Kalaeloe John Rodgers Field to and counterclockwise along the a 5-mile radius of the Honolulu VORTAC to the Honolulu VORTAC 106° radial, then westbound along the Honolulu 106° radial to the 4-mile radius of the Honolulu VORTAC, then counterclockwise along the 4-mile radius to intercept the Honolulu VORTAC 071° radial, thence to a point of beginning and that airspace beginning at lat. 21°10′35″ N., long. 158°11′22″ W.; to lat. 21°16′05″ N., long. 158°14′35″ W.; to lat. 21°16′30″ N., long. 158°13′46″ W.; to lat. 21°16′50″ N., long. 158°00′00″ W.; to the point of beginning.

* * * * *

Issued in Los Angeles, California, on June 22, 2006.

John Clancy

Area Director, Western Terminal Operations.

[FR Doc. 06–6143 Filed 7–11–06; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1119

Civil Penalty Factors

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed new interpretative rule.

SUMMARY: Sections 20(b) and (c) of the Consumer Product Safety Act, 15 U.S.C. 2069(b), (c), require certain factors to be considered in assessing and compromising penalties. A new interpretative rule is proposed that identifies and explains other factors that may be considered by the Commission and staff in evaluating the appropriateness and amount of a civil penalty.[1]

DATES: The Office of the Secretary must receive written comments not later than August 11, 2006.

ADDRESSES: Written comments should be captioned ''Civil Penalties'' and e-mailed to the Office of the Secretary at *cpsc-os@cpsc.gov.* Written comments may also be sent to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814 or by facsimile at (301) 504–0127.

FOR FURTHER INFORMATION CONTACT: John Gibson Mullan, Assistant Executive Director, Compliance and Field Operations at 301–504–7626.

SUPPLEMENTARY INFORMATION: Proposed new part 1119 describes factors the Commission and staff may consider in determining the appropriateness and amount of a civil penalty for violations of section 19(a), which includes the failure to furnish information required by section 15(b).

The CPSA provides that a knowing violation of the prohibited acts enumerated in section 19(a) could subject a firm to a civil penalty under section 20 of the CPSA. In determining the amount of a civil penalty by commencing an action pursuant to section 20(b) or compromising a civil penalty claim under section 20(c), the Commission and staff consider five statutory factors set forth in the CPSA: The nature of the product defect, the severity of the risk of injury, the number of defective products distributed, the occurrence or absence of injury, and the appropriateness of the penalty in relation to the size of the business of the person charged. The proposed regulation describes that the Commission and staff may also consider, as appropriate, one or more of the following factors in determining the appropriateness and amount of a civil penalty: (1) A firm's previous record of compliance with CPSA requirements; (2) timeliness of a firm's response to relevant information; (3) safety and compliance monitoring; (4) cooperation and good faith; (5) economic gain from any delay or non-compliance with CPSC safety or reporting requirements; (6) a product's failure rate; and (7) any other pertinent factors.

The Commission is proposing this section to provide further clarity and transparency in how it determines civil penalty amounts in individual civil penalty determinations. The Commission believes that adoption of this proposed regulation will result in a better understanding by the public of the Commission's approach to determining the appropriateness and amount of a civil penalty.

List of Subjects in 16 CFR Part 1119

Administrative practice and procedure, Business and Industry, Consumer protection, Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 1119 is proposed to be added to read as follows:

PART 1119—CIVIL PENALTY FACTORS

Sec.
§ 1119.1 Factors considered in determining civil penalties.

Authority: 15 U.S.C. 2058, 2063, 2064, 2067(b), 2068, 2069, 2076(e), 2084.

§ 1119.1 Factors considered in determining civil penalties.

(a) *Statutory Factors.* Section 20 of the Consumer Product Safety Act (CPSA) specifies five factors that shall be considered by the Commission in determining the amount of a civil penalty to be sought for violations of section 19(a), which includes failure to furnish information to the Commission as required by section 15(b). Those factors are: The nature of the product defect, the severity of the risk of injury, the number of defective products distributed, the occurrence or absence of injury, and the appropriateness of [the]

[1] Commissioner Thomas H. Moore filed a statement which is available from the Office of the Secretary or on the Commission's Web site at *http://www.cpsc.gov.*

penalty in relation to the size of the business of the person charged. The Act also allows the Commission to compromise any civil penalty under section 20. In determining the amount of a penalty settlement, the Commission is instructed to consider the same five factors.

(b) *Other factors.* In determining the appropriateness and the amount of any civil penalty to be pursued in negotiations when a violation of the reporting requirements of section 15(b) or other requirements of section 19(a) have occurred, in addition to the statutory factors set forth in section 20 of the CPSA, the Commission and the staff may consider, as appropriate, one or more of the following:

(1) *Previous record of compliance.* The Commission and the staff may consider whether the firm has had previous safety, reporting or other violations, and, if so, whether the firm has taken action to address previous violations and to improve compliance with applicable CPSC safety requirements.

(2) *Timeliness of response.* With regard to the matter under review, the Commission and the staff may consider how quickly the firm responded to relevant information it obtained (or reasonably should have obtained), and the extent to which any injuries might reasonably have been prevented by more timely reporting or other required action.

(3) *Safety and compliance monitoring.* The Commission and the staff may consider the extent to which the firm has adopted a system for collecting and analyzing safety information and for evaluating reporting issues (including such system's application in the matter under review).

(4) *Cooperation and good faith.* The Commission and the staff may consider the degree to which the firm cooperated and acted in good faith to address reporting or other product safety violations or other issues, both generally and with regard to the specific matter under review.

(5) *Economic gain from non-compliance.* The Commission and the staff may consider the extent to which the firm profited or otherwise benefitted from an improper delay in reporting or complying with other applicable CPSC safety requirements.

(6) *Product failure rate.* With regard to the product and matter under review, the Commission and the staff may consider the reasonably expected rate of failure for that type of product over time.

(7) *Any other pertinent factors.* The Commission and staff may consider any other pertinent factors.

Dated: July 7, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–10963 Filed 7–11–06; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1507

Amendment to Fireworks Safety Standards; Advance Notice of Proposed Rulemaking; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is considering whether there may be a need to update and strengthen its regulation of fireworks devices. This advance notice of proposed rulemaking (''ANPR'') initiates a rulemaking proceeding under the Federal Hazardous Substances Act (''FHSA''). The Commission is soliciting written comments concerning the risks of injury associated with fireworks that do not comply with the current fireworks device regulations, the regulatory options discussed in this notice, other possible ways to address these risks, and the economic impacts of the various regulatory alternatives. The Commission also invites interested persons to submit an existing standard, or a statement of intent to modify or develop a voluntary standard, to address the risk of injury described in this notice.[1]

DATES: Written comments and submissions in response to this notice must be received by September 11, 2006.

ADDRESSES: Comments should be e-mailed to *cpsc-os@cpsc.gov.* Comments should be captioned ''FIREWORKS ANPR.'' Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814, or delivered to the same address (telephone (301) 504–0800). Comments also may be filed by facsimile to (301)504–0127.

[1] Commissioner Thomas H. Moore filed a statement which is available from the Office of the Secretary or on the Commission's Web site at *http://www.cpsc.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara E. Parisi, Office of General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–7879 or e-mail: *bparisi@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

On May 14, 1973, the Consumer Product Safety Commission, pursuant to section 30(a) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2079(a)), assumed responsibility for and administration of the FHSA. On September 27, 1973 (38 FR 27012), the Commission transferred existing fireworks regulations under the FHSA from 21 CFR parts 191 and 191d to 16 CFR parts 1500 and 1507.

In addition to these mandatory CPSC regulations, the American Fireworks Standards Laboratory (AFSL) has developed voluntary standards pertaining to fireworks. The AFSL standards incorporate both CPSC and Department of Transportation regulations as well as a number of standards developed by AFSL that are in addition to Federal requirements. AFSL is an independent, non-profit corporation that was established in 1989 by members of the fireworks industry. It is administered by a 12-member Board of Directors representing companies that manufacture or import fireworks into the United States. Currently, AFSL has approximately 140 U.S. importer members in its program. AFSL tests fireworks in China for its members prior to exportation to the United States. Other testing organizations offer similar services in China, generally following the AFSL standards or close variation.

B. The Product

A firecracker is a device consisting of an explosive pyrotechnic composition in a fused container with the primary function of producing an audible effect. The term ''fireworks devices'' includes firecrackers and other devices using a pyrotechnic composition which when ignited produce visual and sometimes audible effects. Fireworks devices include consumer fireworks, which are regulated by the CPSC, and professional/display fireworks, which fall under the jurisdiction of the Bureau of Alcohol, Tobacco, Firearms and Explosives. Consumer fireworks generally fall into the following twelve device classifications: (1) Combination items; (2) Comets, Mines and Shells; (3) Firecrackers; (4) Fountains; (5) Ground Spinners and Chasers; (6) Specialty Items; (7) Party, Trick and Toy Smoke

Devices; (8) Reloadable Tube Aerial Shells; (9) Roman Candles; (10)Sky Rockets, Missiles, and Helicopters; (11) Hand-held Sparkling Devices; and (12) Wheels.

According to a June 27th 2005 press release from the U.S. Census Bureau, the value of fireworks imported from China into the United States in 2004 was $164.2 million. This represented the bulk of all U.S. firework imports ($172.5 million). By comparison, U.S. exports of fireworks came to just $14.3 million.

The CPSC staff regularly samples fireworks imports and tests these samples to determine compliance with the regulations set forth in 16 CFR Part 1507. While the overall percentage rate of compliance of tested fireworks remained relatively steady in the years 2002 through 2004 (71%, 73%, and 72%), the compliance rate dropped to just 59% of the fireworks tested in 2005. Fireworks that had been certified to the AFSL voluntary standard enjoyed a significantly higher percentage of compliance with CPSC standards, *i.e.*, 83% compliance in 2005.

C. The Risk of Injury

In the past few years, there has been an increase in the estimated number of injuries due to fireworks devices. In the Commission's 2005 Fireworks Annual Report, fireworks devices were involved in an estimated 10,800 injuries requiring treatment in U.S. hospital emergency departments, as compared to 9,600 in 2004, 9,300 in 2003, and 8,000 in 2002. According to that report, the Commission had reports of four deaths associated with fireworks during 2005. During 2004, the Commission received reports of eight deaths associated with fireworks. During a one month special study between June 18, 2005 and July 18, 2005, an estimated 6,500 fireworks related injuries were treated in U.S. hospital emergency departments [2] (compared with 6,600 injuries in the 2004 special study and 6,800 injuries during the 2003 special study period).

The results of the one-month special study conducted in 2005 by CPSC staff showed that: injuries to children were a major component of total fireworks-related injuries with children under 15 accounting for 45 percent of the estimated injuries; children and young adults under 20 had 55 percent of the estimated injuries; there were an estimated 100 injuries at public fireworks displays; the parts of the body most often injured were hands (estimated 2,000 injuries), eyes (1,600 injuries) and the head, face and ear (1,300 injuries); and more than half of the injuries involved burns. Burns were the most common injury to all parts of the body except the eyes, where contusions, lacerations, and foreign bodies in the eye occurred more frequently.

D. Relevant Statutory Provisions

This advance notice of proposed rulemaking initiates a rulemaking proceeding under the FHSA. Section 3 of the FHSA specifies the procedure the Commission follows to issue a mandatory consumer product safety standard. The Commission commences the rulemaking by issuing an ANPR, which must identify the product and the risk of injury, summarize regulatory alternatives, and invite comments or suggested standards from the public. 15 U.S.C. 1262(f). After considering any comments submitted in response to the ANPR, the Commission will decide whether to issue a proposed rule and a preliminary regulatory analysis in accordance with section 3(h) of the FHSA.

If a proposed rule is issued, the Commission would then consider the comments received in response to the proposed rule in deciding whether to issue a final rule and a final regulatory analysis. 15 U.S.C. 1262(i).

Additionally, Section 10 of the FHSA provides the Commission with authority to ''promulgate regulations for the efficient enforcement of [the FHSA].'' One option the Commission has under this provision is to issue a rule requiring mandatory certification to the fireworks device regulations of the FHSA.

E. Existing Standards

The Commission regulates fireworks devices under the Federal Hazardous Substances Act (''FHSA''). 15 U.S.C. 1261–1278. Under its current regulations, the Commission has declared certain fireworks devices to be ''banned hazardous substances.'' 16 CFR Parts 1500.17(a)(3), (8), (9), (11) and (12). Other fireworks devices must meet specific requirements to avoid being classified as banned hazardous substances. 16 CFR Part 1507. Commission regulations also prescribe specific warnings required on various legal fireworks devices, 16 CFR 1500.14(b)(7), and designate the size and location of these warnings. 16 CFR 1500.121.

The American Fireworks Standards Laboratory (AFSL) developed performance and labeling standards for twelve categories of consumer fireworks devices. These twelve categories are: (1) Combination items; (2) comets, mines, and shells; (3) firecrackers; (4) fountains; (5) ground spinners and chasers; (6) specialty items; (7) party, trick, and toy smoke devices; (8) reloadable tube aerial shells; (9) roman candles; (10) sky rockets, missiles, and helicopters; (11) hand-held sparkling devices; and (12) wheels. According to AFSL, the standards were developed by a Standards Committee representing various segments of the fireworks industry, Federal and state regulatory authorities, consumers, and technical experts. The AFSL standards incorporate both CPSC and Department of Transportation mandatory regulations as well as a number of standards developed by AFSL that are in addition to Federal requirements.

The Department of Transportation incorporates by reference the American Pyrotechnics Association Standard 87–1 (''Standard'') as part of its regulations. The Standard applies to fireworks devices, pyrotechnic articles, and novelties for entertainment purposes, and is designed to enable manufacturers, importers and distributors of fireworks and novelties to provide their customers with products that can be transported and used safely and without unreasonable risk.

F. Regulatory and Non-Regulatory Alternatives To Address the Risks of Injury

One or more of the following alternatives could be used to reduce the identified risks associated with fireworks devices.

1. *Mandatory Certification.* The Commission could issue a rule requiring mandatory certification to the fireworks device regulations of the FHSA. This would encourage manufacturers to conduct testing or make use of independent testing laboratories as a basis for certification.

2. *Mandatory Standard.* The Commission could issue a rule specifying certain additional requirements fireworks devices must meet. The Commission is required to invite any person to submit to the Commission an existing standard or a portion of a standard as a proposed regulation under section 2(q)(1) or section 3(e) of the Federal Hazardous Substances Act. (15 U.S.C. 1262(f)(5)). If the Commission determines that any standard submitted to it in response to this invitation if promulgated (in whole, in part, or in combination with any other standard submitted to the Commission) as a regulation under the FHSA would eliminate or adequately reduce the risk of injury, the Commission may publish the standard, in whole, in part, or in such combination and with nonmaterial

[2] 95 percent confidence interval 4,900—8,100.

modifications, as a proposed regulation. (15 U.S.C. 1262(g)(1)).

3. *Reliance on Voluntary Standard.* The Commission is required to consider voluntary standards in its mandatory rulemaking. Specifically, the Commission is required to invite any person to submit to the Commission a statement of intention to modify or develop a voluntary standard to address a risk of injury together with a description of a plan to modify or develop the standard. (15 U.S.C. 1262(f)(6)). If the Commission determines that compliance with a standard submitted to it in response to this invitation is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and it is likely that there will be substantial compliance with such standard, then the Commission must terminate the proceeding to promulgate a regulation and publish a notice in the **Federal Register** which includes the determination of the Commission and notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury. Before relying upon any voluntary standard, the Commission must afford interested parties a reasonable opportunity to submit written comments regarding such standard. The Commission must consider such comments in making any determination regarding reliance on the involved voluntary standard.

4. *Corrective Actions Under Section 15 of the FHSA.* The Commission has authority under section 15 of the FHSA, 15 U.S.C. 1274, to pursue corrective actions on a case-by-case basis if the Commission determines that a product constitutes a banned hazardous substance.

G. Request for Information and Comments

In accordance with section 3(f) of the FHSA, the Commission solicits:

1. Written comments with respect to the risk of injury identified by the Commission.

2. Written comments regarding the regulatory alternatives being considered and other possible alternatives for addressing the risk.

3. Any existing standard or portion of a standard which could be issued as a proposed regulation.

4. A statement of intention to modify or develop a voluntary standard to address the risk of injury discussed in this notice, along with a description of a plan (including a schedule) to do so.

In addition, the Commission is interested in receiving information about the testing that is conducted on fireworks before they are distributed, the costs associated with testing, and the impact that testing has on both compliance with the CPSC mandatory fireworks device regulations and on injuries.

Comments should be e-mailed to *cpsc-os@cpsc.gov.* and should be captioned ''FIREWORKS ANPR.'' Comments may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, MD 20814, or delivered to the same address (telephone (301) 504–0800). Comments also may be filed by telefacsimile to (301) 504–0127. All comments and submissions should be received no later than September 11, 2006.

Dated: July 5, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–10881 Filed 7–11–06; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 37

[Docket Nos. RM05–25–000 and RM05–17–000]

Preventing Undue Discrimination and Preference in Transmission Service

June 19, 2006.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking: extension of comment period.

SUMMARY: On May 19, 2006, the Commission issued a notice of proposed rulemaking proposing amendments to its regulations adopted in Order Nos. 888 and 889, and to the *pro forma* open access transmission tariff, to ensure that transmission services are provided on a basis that is just, reasonable and not unduly discriminatory or preferential, 70 FR 32635, June 6, 2006. The reply comment period is being extended at the request of the Edison Electric Institute.

DATES: Reply comments are due September 20, 2006.

ADDRESSES: You may submit comments, identified by Docket Nos. RM05–25–000 and RM05–17–000, by one of the following methods:

- Agency Web site: *http://www.ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures section of the preamble.
- Mail: Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 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:

Daniel Hedberg (Technical Information), Office of Energy Markets and Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6243.

Kathleen Barrón (Legal Information), Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6461.

David Withnell (Legal Information), Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8421.

SUPPLEMENTARY INFORMATION:

Notice Extending Reply Comment Period

On June 16, 2006, Edison Electric Institute filed a motion for an extension of time to file reply comments in response to the Commission's Notice of Proposed Rulemaking issued May 19, 2006 in the above-docketed proceeding. Preventing Undue Discrimination and Preference in Transmission Service, 115 FERC ¶ 61,211 (2006). Upon consideration, the date for filing reply comments in this proceeding is extended to and including September 20, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–10724 Filed 7–11–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0526; FRL–8192–3]

Approval and Promulgation of Implementation Plans; Arizona—Phoenix PM–10 Nonattainment Area; Salt River Area Plan for Attainment of the 24-Hour PM–10 Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve under the Clean Air Act (CAA) provisions of the *Revised PM–10 State Implementation Plan for the Salt River Area* submitted by the State of Arizona to EPA in October and November 2005. These submittals include adopted rules and commitments that address particulate matter (PM–10) emissions from fugitive dust sources. EPA is proposing to approve these submittals as meeting the best available control measure (BACM) requirements of CAA section 189(b)(1)(B) and the most stringent measure requirement (MSM) of section 188(e) or as strengthening the state implementation plan (SIP). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by August 11, 2006. Comments should be addressed to the contact listed below.

ADDRESSES: Submit comments, identified by docket number [DOCKET NUMBER], by one of the following methods:

1. Federal eRulemaking Portal: *www.regulations.gov.* Follow the on-line instructions.
2. E-mail: *irwin.karen@epa.gov*
3. Mail or deliver: Karen Irwin (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available on-line at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action, including the EPA technical support document (TSD) and other relevant material, is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy locations (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

Copies of the state implementation plan (SIP) materials are also available for inspection at the addresses listed below:

Arizona Department of Environmental Quality, 1110 W. Washington Street, Phoenix, AZ 85007.

Maricopa County Air Quality Department, 1001 N. Central Ave., Suite 200, Phoenix, AZ 85004.

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 947–4116, e-mail: *irwin.karen@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Summary of Today's Proposal

A. Arizona Department of Environmental Quality (ADEQ) Submittals for the Salt River Area

The Salt River area, located in metropolitan Phoenix, is a 32-square mile subarea of the Metropolitan Phoenix (Maricopa County) serious PM–10 nonattainment area. ADEQ has submitted multiple PM–10 plans for the Salt River area, beginning with a January 27, 2004 submittal and followed by August 2, 2004 and August 29, 2005 submittals. An October 7, 2005 submittal, *Revised PM–10 State Implementation Plan for the Salt River Area*, and a supplemental November 29, 2005 submittal, *Revised PM–10 State Implementation Plan for the Salt River Area Additional Submittals*, supersede the previous three submittals and contain the measures that are the subject of this proposed rule. Included with the October 7, 2005 plan submittal are attachments, a technical support document (TSD), and appendices to both the plan and TSD. Hereafter, we refer to the October 2005 submittal as ''Salt River plan'' and the TSD as ''Salt River TSD''. We refer to the November 2005 submittal as ''Salt River plan supplement.'' [1]

While measures contained in the Salt River plan address monitored exceedences of EPA's 24-hour PM–10 national ambient air quality standard (NAAQS) [2] that occurred in that area, they apply to the entire Phoenix PM–10 nonattainment area. This is because the Salt River monitors were sited to be representative of air quality at other sites in the Phoenix PM–10 nonattainment area with similar emissions sources. See 62 FR 31025, 31030 (June 6, 1997).

[1] For additional background on the Salt River portion of the Phoenix PM–10 nonattainment area, see 67 FR 19148 (April 18, 2002) and 67 FR 44369 (July 2, 2002). On July 25, 2002, EPA approved multiple documents submitted to EPA by Arizona for the Phoenix area as meeting the CAA requirements for serious PM–10 nonattainment areas for the 24-hour and annual PM–10 national ambient air quality standards (NAAQS). Among these documents is the ''Revised Maricopa Association of Governments (MAG) 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area,'' February 2000 (MAG plan), that includes the BACM demonstrations for all significant source categories (except agriculture) for both the 24-hour and annual PM–10 standards and the State's request and supporting documentation, including the most stringent measure (MSM) analysis (except for agriculture) for an attainment date extension to 2006 for both standards. EPA's July 25, 2002 final action included approval of these elements of the MAG plan. See EPA's proposed and final approval actions at 65 FR 19964 (April 13, 2000), 66 FR 50252 (October 2, 2001) and 67 FR 48718 (July 25, 2002).

[2] The PM–10 24-hour standard is 150 $\mu g/m^3$. 40 CFR 50.6.

The following rules, requirements and resolutions have been submitted as part of the Salt River plan or the Salt River plan supplement.[3] We are proposing to approve them into the Arizona SIP pursuant to the listed CAA sections.

Rule/measure/commitment	Relevant CAA section(s)
MCAQD Rule 316 ''Nonmetallic Mineral Processing'', adopted June 8, 2005.	189(b)(1)(B) and 188(e).
MCAQD Rule 325 ''Brick and Structural Clay Products (BSCP) Manufacturing'', adopted August 10, 2005.	189(b)(1)(B) and 188(e).
Maricopa County Air Quality Department (MCAQD) Rule 310 ''Fugitive Dust'', adopted April 7, 2004.	189(b) and 188(e) for subsections 304.5 and 502. 110(a) for other subsections.
MCAQD Rule 310.01 ''Fugitive Dust From Open Areas, Vacant Lots, Unpaved Parking Lots, and Unpaved Roadways'', adopted February 17, 2005.	110(a).
MCAQD Appendix C ''Fugitive Dust Test Methods'', adopted April 7, 2004.	189(b), and 188(e) for subsection 3.3.2. 110(a) for other subsections.
MCAQD Appendix F ''Soil Designations'', adopted April 7, 2004	189(b) and 188(e).
MCAQD ''Application for Dust Control Permit'', adopted July 1, 2005	189(b) and 188(e) for Section 2, subsections 10 and 11, and Section 3, subsection I. 110(a) for other subsections.
MCAQD ''Guidance for Application for Dust Control Permit'', adopted July 1, 2005.	189(b) and 188(e) for Section 2, subsection 13, and Section 3. 110(a) for other subsections.
Maricopa County Board Resolution No. C–85–05–005–0–00, adopted January 19, 2005.	189(b) for enforcement resource provisions of Measures 1 through 4. 110(a) for other provisions, including Measure 5.
City of Phoenix Resolution No. 20114, adopted June 16, 2004	110(a).
Resolutions from 18 municipalities and the Arizona Department of Transportation, adopted on various dates.	110(a).

We approved versions of MCAQD Rules 310, 310.01 and Appendix C into the SIP on July 25, 2002 and MCAQD Rule 316 on January 4, 2001. 67 FR 48717 and 66 FR 730.

B. Completeness of the SIP Submittal

CAA section 110(k)(1)(B) requires us to determine if a SIP submittal is complete within 60 days of its receipt. This completeness review allows us to quickly determine if the submittal includes all the necessary items and information we need to take action on it. We make completeness determinations using criteria we have established in 40 CFR part 51, Appendix V.

We have reviewed the October 7, 2005 and November 29, 2005 submittals from Arizona and affirmatively determined that they satisfy our completeness criteria and that they are thereby complete for the purposes of section 110(k)(1) of the Act. We notified the State of our completeness determination by a letter to ADEQ dated December 8, 2005.

II. Applicable CAA Requirements

A. Best Available Control Measures (BACM) and Most Stringent Measures (MSM)

CAA section 189(b)(1)(B) requires serious area PM–10 plans to provide for the implementation of BACM, including Best Available Control Technology (BACT), within four years of reclassification to serious. For the Phoenix area this date was June 10, 2000.[4] Since that date has passed, BACM must now be implemented as expeditiously as practicable. See *Delaney* v. *EPA,* 898 F.2d 687 (9th Cir. 1990); 55 FR 41204, 41210 (October 1, 1990); and 63 FR 28898, 28900 (May 27, 1998).

We have issued a General Preamble, 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992), and Addendum to the General Preamble (Addendum), 59 FR 41998 (August 16, 1994), describing our preliminary views on how we intend to review SIPs submitted to meet the Clean Air Act's requirements for PM–10 plans. The General Preamble mainly addresses the requirements for moderate areas and the Addendum, the requirements for serious areas.

In the Addendum, we explain that BACM is required for all source categories in serious areas unless the state adequately demonstrates that a particular source category does not contribute significantly to nonattainment of the PM–10 standards. We have established a presumption that a ''significant'' source category is one that contributes 5 $\mu g/m^3$ or more of PM–10 to a location of 24-hour violation. Addendum at 42011. We have defined BACM to be, among other things, the maximum degree of emission reduction achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic, environmental impacts and other costs. BACT applies to stationary sources and is a subset of BACM. Addendum at 42009.

We have outlined in our guidance a multi-step process for identifying BACM/BACT. Addendum at 42010–42014. The steps are:

1. Develop a detailed emissions inventory of PM–10 sources and source categories,

2. Model to evaluate the impact on PM–10 concentrations over the standards of the various sources and source categories to determine which are significant,

3. Identify potential BACM for significant source categories and evaluate their reasonableness, considering technological feasibility, costs, and energy and environmental impacts and,

4. Provide for the implementation of the BACM or provide a reasoned justification for rejecting any potential BACM. When the process is complete, the individual measures should then be converted into a legally enforceable vehicle (e.g., a regulation or permit). CAA sections 172(6) and 110(a)(2)(A).

Under CAA section 188(e), the State is required to demonstrate to our satisfaction that its serious area plan includes the most stringent measures that are included in the implementation plan of any state or are achieved in practice in any state and can be feasibly implemented in the area. The section 188(e) requirement for MSM is similar to the requirement for BACM and we have therefore defined a ''most stringent

[3] Maricopa County Air Quality Department (MCAQD) Rule 310.01, ''Application for Dust Control Permit,'' and ''Guidance for Application for Dust Control Permit'' can be found in the Salt River plan supplement while the remaining rules and commitments can be found in Appendix B of the Salt River plan.

[4] The Phoenix area's reclassification to serious was effective on June 10, 1996. 61 FR 21372 (May 10, 1996).

measure'' level of control as the maximum degree of emission reduction that has been required or achieved from a source or source category in other SIPs or in practice in other states and can be feasibly implemented in the area. Given this similarity between the BACM and MSM requirements, we believe that determining MSM should follow a process similar to determining BACM, but with one additional step, to compare the potentially most stringent measure against the measures already adopted in the area to determine if the existing measures are most stringent. See, e.g., 66 FR 50252, 50257 and 50282–50284 (October 2, 2001).

B. General SIP Requirements

Generally, SIP rules must be enforceable (see CAA section 110(a)) and must not relax existing requirements (see sections 110(l) and 193).[5] The EPA guidance and policy document we used to help evaluate enforceability is ''Guidance Document for Correcting Common VOC and Other Rule Deficiencies'', U.S. EPA Region IX, August 21, 2001 (the Little Bluebook).

III. Evaluation of Adopted Measures and Commitments

A. Summary

The measures in the Salt River plan consist of: (1) Rules adopted by MCAQD for various fugitive dust sources; (2) MCAQD commitments designed to improve source compliance with fugitive dust requirements; (3) commitments from multiple municipalities, Maricopa County Department of Transportation (MCDOT), and the State addressing paved road re-entrained dust; (4) a City of Phoenix commitment addressing alluvial channels; and (5) MCAQD application and guidance documents for Rule 310 dust control plans.

B. Rules 316 and 325

ADEQ identifies industrial sources as significant contributors to PM–10 24-hour exceedences at the Salt River monitors.[6] Industrial-related emissions fall into three categories: (1) Stationary point (stack) sources; (2) stationary process sources (e.g., aggregate screens and crushers); and (3) area sources, e.g., unpaved roads, open storage piles, and trackout onto paved roads. Given ADEQ's finding that industrial sources contribute significantly to 24-hour PM–10 exceedences, CAA sections 189(b) and 188(e) apply and BACM and MSM demonstrations are required.

ADEQ found that the vast majority of industrial source PM–10 emissions are generated by nonmetallic mineral processing sources. The SIP-approved version of MCAQD Rule 316 contains requirements for stationary stack and process sources at nonmetallic mineral processing plants and rock product plants.[7] With regard to other industrial sources in the Salt River area, ADEQ evaluated permitted industrial stack sources for compliance with BACM/BACT and MSM and found that control measures on all facilities met these requirements except brick and structural clay product manufacturing facilities.[8] Thus, MCAQD adopted Rule 325 based on ADEQ's recommendation that BACM/BACT and MSM must be met for these sources.[9]

ADEQ first identified candidate BACM/BACT and MSM for Rule 316 and Rule 325 sources by researching controls in several areas, including PM–10 nonattainment areas in California, Nevada, Texas, Florida, and Oklahoma.[10] ADEQ then conducted a technical and economic feasibility analysis with specific estimates of control efficiency and cost for each type of emissions point or control measure.[11] For the MSM comparison, ADEQ developed a series of tables that benchmark the most stringent controls in other areas.[12]

Based on its analysis, ADEQ recommended specific augmentations to Rule 316 for purposes of meeting BACM/BACT and MSM requirements. In addition, through its rulemaking process for Rule 316,[13] MCAQD identified additional MSM for nonmetallic mineral processing facilities in South Coast Air Quality Management District (SCAQMD) Rule 1157, ''PM–10 Emissions from Aggregate and Related Operations,'' adopted on January 7, 2005. Finally, ADEQ recommended enhanced enforcement of Rule 316 but did not specify how it was to be achieved.[14]

1. Rule Revisions and New Rule

In revising Rule 316, MCAQD expanded the rule's coverage to include area sources [15] and incorporated additional control measures based on ADEQ's recommendations as well as requirements contained in SCAQMD Rule 1157. As adopted on June 8, 2005, the rule includes the following requirements for nonmetallic mineral processing sources: Opacity standards ranging from 7% to 20% for various nonmetallic mineral processes; venting of stack emissions to a properly sized fabric filter baghouse and compliance with 7% opacity; enclosure on the sides of all shaker screens; and a permanently mounted watering system for crushing and screening inlets and outlets. Additional specific controls and performance standards apply to asphaltic concrete plants and concrete plants and/or bagging operations. With respect to area sources located at nonmetallic mineral processing facilities, Rule 316 requires specific work practice and performance standards for unpaved roads, unpaved parking/staging areas, open storage piles and active material handling, trackout onto paved public access roads,

[5] CAA section 110(l) prohibits us from approving a revision to the applicable implementation plan if that revision would interfere with any applicable requirement of the Act. CAA section 193 prohibits us under certain circumstances from approving a revision to the applicable implementation plan unless the modification insures equivalent or greater emissions reductions.

[6] Based on an emissions inventory and modeling for the Salt River area, ADEQ estimates that industrial sources contributed approximately 26 percent to 2002 average low-wind day exceedences (with a highest contribution of 60 $\mu g/m^3$ at a single monitor) and 16 percent to 2002 exceedences on days with wind speeds over 15 miles per hour (with a highest contribution of 58 $\mu g/m^3$ at a single monitor). Salt River plan, Table 4.2.1, and Salt River TSD, Table 6–8. This estimate excludes industrial source trackout which is quantified in the paved road re-entrained dust source category.

[7] EPA approved a version of Rule 316 adopted on April 21, 1999. 66 FR 730 (January 4, 2001). We were not required to evaluate the rule for BACT because the sources to which it applied were not deemed significant at the time. We did, however, determine that the rule met the CAA requirements for Reasonably Available Control Technology (RACT). See 65 FR 42649, 42651 (July 11, 2000).

[8] Salt River plan, pg. 70.

[9] Rule 325 only applies to stationary sources, as opposed to area sources. Area sources located at facilities subject to Rule 325 are subject to Rule 310 fugitive dust requirements.

[10] Salt River plan, Appendix C.

[11] Salt River plan, Chapter 4, section 4.3.4.

[12] Ibid., Tables 4.3.4.7 through 4.3.4.12.

[13] Ibid., Appendix B, Revision to Maricopa County Rule 316 Nonmetallic Mineral and Processing, Appendix 2, ''Notice of Final Rulemaking, Maricopa County Air Pollution Regulations, Regulation III, Rule 316—Nonmetallic Mineral Processing''.

[14] Salt River plan, pgs. 56 and 78.

[15] Historically, Rule 316 has contained only emission limitations and not fugitive dust control measures specific to area sources located at nonmetallic mineral processing plants and rock processing plants. Facilities subject to Rule 316 have been required to comply with fugitive dust control measures in Rule 310. MCAQD revisions to Rule 316 include control measures specific to fugitive dust sources at these facilities. Sources subject to specific control measures in Rule 316 are no longer subject to Rule 310 while sources not subject to specific Rule 316 control measures are still subject to Rule 310. EPA approved Rule 310, which covers certain industrial area sources, as meeting the CAA's BACM and MSM requirements. 67 FR 48718, 48739. However, new information in the Salt River plan demonstrates a relatively large contribution of industrial area sources to Salt River PM–10 exceedences which warrants an updated BACM/BACT and MSM demonstration for all such sources.

cleaning of internal paved roads, and bulk material hauling/transporting.

As adopted on August 10, 2005, new Rule 325 includes the following requirements for brick and structural clay product manufacturing sources: A 20% opacity standard; a limit of 0.42 lbs of particulate matter per ton of fired product from existing tunnel kilns with a capacity of > 1 ton per hour throughput and new or reconstructed tunnel kilns with a capacity of < 10 tons per hour throughput; and a limit of 0.12 lbs of particulate matter per ton of fired product from new or reconstructed tunnel kilns with a capacity of ≥ 10 tons per hour throughput.

We have evaluated Rule 316 and Rule 325 requirements to determine whether they represent BACM/BACT and MSM. As part of this evaluation, we considered ADEQ's BACM/BACT and MSM analysis and associated recommended control measures, along with reasoned justifications for measures not recommended.[16] We compared ADEQ's recommended measures against the actual measures adopted into Rule 316 and Rule 325. In addition, we compared Rule 316 requirements to those adopted in SCAQMD Rule 1157 and compared Rule 325 requirements to EPA's New Source Performance Standards for clay manufacturing kilns.[17]

With respect to BACM/BACT, we found that Rule 316 and Rule 325 meet BACT requirements for stationary sources. We also found that the Rule 316 requirements satisfy BACM for area sources and are equally or more stringent relative to the Rule 310 requirements we have approved as BACM. With respect to MSM, we found that Rule 316 and Rule 325 measures are equally or more stringent relative to similar adopted requirements in rules applicable in other PM–10 nonattainment areas. We also found Rule 316 and Rule 325 requirements to be consistent with our enforceability criteria.

As noted above, the CAA requires BACM/BACT to be implemented as expeditiously as practicable. Most of the requirements in Rule 316 were effective as of the June 8, 2005 adoption date and all of the requirements are currently applicable. With respect to Rule 325, compliance with the rule is not required until December 31, 2006. MCAQD provided adequate justification for this implementation date based on substantial annualized capital investment costs required of facilities subject to the rule for the purchase of necessary emissions control equipment.

2. Enforcement Resources and Methods

The basic elements of MCAQD's enforcement program include permit review, facility inspections, source testing of equipment, and review of records and activities. MCAQD's enforcement options include orders of abatement, civil actions for injunctive relief or civil penalties, and class 1 misdemeanor citations.[18]

In addressing ADEQ's recommendation for enhanced Rule 316 enforcement, MCAQD committed to increase the inspection frequency for Rule 316 sources from once every two years to four times per year beginning on July 1, 2005.[19] We consider enforcement resources to be part of the CAA section 189(b) requirement that serious area PM–10 plans include provisions to assure the implementation of BACM. MCAQD conducted a workload analysis for the increased Rule 316 inspection frequency based on the number of permitted sources in fiscal year 2004 and determined that one additional inspector and an additional supervisor are needed.[20] This would increase the number of MCAQD inspectors dedicated to non-Title V and general permitted stationary sources, which includes Rule 316 and Rule 325 sources, from seven to eight. In evaluating the level of enforcement resources dedicated to Rule 316 and Rule 325, we consider the number of MCAQD permits associated with facilities subject to these rules. MCAQD issued 107 permits for Rule 316 sources in 2004. Rule 325 applies to two brick and clay structural facilities and one tunnel kiln.[21]

3. Conclusion

In evaluating MCAQD Rules 316 and 325, we have found that they meet the BACM/BACT and MSM requirements of CAA sections 189(b)(1)(B) and 188(e), respectively, and that MCAQD enforcement resources are adequate to provide for the implementation of BACM. We have also found these rules to be consistent with our policy and guidance regarding enforceability and SIP relaxations. Because we believe that Rule 316 and Rule 325 fulfill all relevant requirements, we propose to approve them and the Maricopa County Board Resolution No. C–85–05–005–0–00[22] under CAA section 110(k)(3) as meeting the requirements of CAA sections 189(b)(1)(B) and 188(e). Our detailed analysis of Rule 316 and Rule 325 requirements can be found in the TSD associated with this proposed rule.

C. Rules 310 and 310.01 and Related Submittals

ADEQ identifies construction sources, vacant lots, and miscellaneous disturbed areas as significant contributors to PM–10 24-hour exceedences at the Salt River monitors.[23] Rule 310 applies to dust generating operations including construction/earthmoving and demolition sites. Rule 310.01 applies to vacant lots and miscellaneous disturbed areas, among other sources, which are not subject to Rule 310. Performance standards and test methods for opacity and surface stabilization for Rule 310 and Rule 310.01 sources are found in Appendix C ''Fugitive Dust Test Methods'' of MCAQD Regulation III. Rule 310 also requires construction site owners/operators to develop dust control plans subject to MCAQD approval. MCAQD's ''Application for Dust Control Permit'' and ''Guidance for Application for Dust Control Permit'' provide supplemental information on MCAQD's implementation of the Rule 310 dust control plan requirements.[24]

Upon assessing the contribution of construction sites, vacant lots, and miscellaneous disturbed areas to Salt River exceedences, ADEQ identified a critical need for additional inspectors to enforce Rule 310 and Rule 310.01

[16] Op. Cit., Tables 4.3.4.7 through 4.3.4.13 and accompanying text.

[17] 40 CFR 63.8555(a), subpart KKKKK, table 1 and 40 CFR 63.8405(a), subpart JJJJ, table 1.

[18] Ibid., Maricopa County Board Resolution No. C–85–05–005–0–00, Measures 2 and 4.

[19] Salt River TSD, Appendix D, Maricopa County Board Resolution No. C–85–05–005–0–00, Measure 2.

[20] ''Workload Analysis for Rule 316 Permitted Sources'' is included in the docket associated with this proposed rule. This analysis specifies that the four annual inspections will consist of one full inspection and three partial inspections. A partial inspection involves checking compliance with fugitive dust controls but not necessarily process equipment unless an obvious problem is observed.

[21] Salt River plan, Appendix B, Notice of Final Rulemaking, Rule 325, August 10, 2005, pg. 3450.

[22] Measures 2 and 4 of the Maricopa County Board Resolution are relevant to Rule 316 and Rule 325 sources, respectively.

[23] Based on an emissions inventory and modeling for the Salt River area, ADEQ estimates that construction sources contributed 5.8 percent to 2002 average low-wind day exceedences and 4.4 percent to 2002 exceedences on days with wind speeds over 15 miles per hour (with a highest contribution of 18 $\mu g/m^3$ at a single monitor). These estimates exclude construction-related trackout which is quantified in the paved road re-entrained dust source category. ADEQ estimates that vacant lots and miscellaneous disturbed areas contributed approximately 26 percent to 2002 exceedences on days with wind speeds over 15 miles per hour (with a highest contribution of 52 $\mu g/m^3$ at a single monitor). Salt River plan, Table 4.2.1, and Salt River TSD, Table 6–8.

[24] On July 25, 2002, we approved Rule 310, Rule 310.01 and Appendix C ''Fugitive Dust Test Methods'' of MCAQD Regulation III as meeting the CAA's BACM and MSM requirements.

requirements.[25] EPA last evaluated enforcement resources for Rule 310 and Rule 310.01 sources in 2001.[26] We agree with ADEQ's assessment that the continuing significant contribution of these sources to PM–10 exceedences in the Salt River area (and other sites in the Phoenix PM–10 nonattainment area with similar sources) warrants an updated evaluation of enforcement resources designed to ensure compliance with Rule 310 and Rule 310.01 requirements.

ADEQ did not identify a need for revisions to the requirements of Rule 310 and Rule 310.01[27] beyond fulfilling three MCAQD commitments associated with EPA's BACM and MSM approval for construction sources.[28] These commitments include (1) adding a modified opacity standard/test method to Appendix C tailored to non-process fugitive dust sources that create intermittent plumes; (2) incorporating additional requirements for dust suppression practices/equipment into dust control plans and/or Rule 310; [29] and (3) revising and distributing the sample daily recordkeeping logs for Rule 310 sources to be consistent with rule revisions and to provide sufficient detail documenting dust control measure implementation.

1. Rule Revisions and New Rule

In addressing the BACM and MSM commitments for construction sources in the MAG plan, MCAQD adopted Appendix F of Regulation III on April 7, 2004, revised subsection 3.3.2 of Appendix C of Regulation III and subsections 304.5 and 502 of Rule 310 on April 7, 2004, and revised the Application for Dust Control Permit and the Guidance for Application for Dust Control Permit on July 1, 2005. We have evaluated these submittals for consistency with the BACM and MSM commitments we approved in the MAG plan and our general requirements in CAA section 110.

MCAQD also strengthened and clarified certain requirements in Rule 310 and Appendix C (adopted on April 7, 2004) and in Rule 310.01 (adopted on February 17, 2005). We have evaluated these revisions for consistency with our general requirements in CAA section 110.

Specific MCAQD revisions intended to fulfill the three MAG plan commitments are as follows: In order to meet the commitment concerning Appendix C, MCAQD adopted an opacity test method into Appendix C that is tailored to address intermittent plumes from non-process fugitive dust sources at construction sites.[30] With respect to the commitment to incorporate additional dust suppression practices/equipment into dust control plans and/or Rule 310, MCAQD: (a) Adopted Appendix F which classifies soils into four types based on their PM–10 emissions potential and contains a map delineating the locations in the Phoenix PM–10 nonattainment area of these soil types; (b) revised Rule 310, subsection 304.5, to require that dust control plans disclose which of the four designated soil types described in Appendix F (or as measured at a particular site) is naturally present at or will be imported to the dust generating operation; and (c) added minimum criteria in the Application for Dust Control Permit and Guidance for Application for Dust Control Permit for the amount of water that needs to be available (i.e., water supply in conjunction with water application system) for sites with soils classified in Appendix F as ''moderate'' or ''severe''.[31] These criteria apply to individual permits subject to review and approval by MCAQD.[32] Finally, to meet the commitment concerning recordkeeping requirements, MCAQD revised subsection 502 of Rule 310 to include examples of dust suppression activities for which recordkeeping is required. MCAQD also revised its sample daily recordkeeping logs which are available on MCAQD's Web site to provide various formats for documenting application of measures for specific types of dust generating sources.

Other MCAQD revisions to Rule 310, Rule 310.01, and Appendix C consist of strengthenings and clarifications of existing SIP-approved requirements.[33]

Our detailed evaluation of these submittals can be found in the TSD associated with this proposed rule.

2. Enforcement Resources and Methods

With respect to enforcement resources dedicated to inspecting sources subject to Rule 310 and Rule 310.01, MCAQD conducted a 2005/06 workload analysis of its earthmoving and vacant lot programs and also created an inspection priority plan for Rule 310.01 sources.[34] Maricopa County Board Resolution No. C–85–05–005–0–00,[35] adopted on January 19, 2005, commits MCAQD to increase the number of inspectors dedicated to Rule 310 and Rule 310.01 enforcement, along with other measures designed to improve source compliance. Specifically, the Maricopa County Board Resolution No. C–85–05–005–0–00 commitments include:

(a) Hire ten additional inspectors to enforce MCAQD Rule 310.01 by August 2005; [36]

(b) Develop and submit to EPA by March 2005 an inspection priority plan for vacant lots/open areas and unpaved parking lots in the PM–10 nonattainment area; [37]

(c) Conduct inspections on all vacant lots/open areas, including alluvial channels,[38] in the Salt River area by October 2006 with periodic follow-up inspections;

(d) Hire an additional twelve inspectors, four supervisors, and three support staff by June 2005 to work proactively and directly on compliance and enforcement of the Rule 310 earthmoving fugitive dust program; [39] and

(e) Complete a user fee analysis and have new fees considered by the Board of Supervisors in January 2005 to be effective no later than July 1, 2005, to permanently fund the nineteen Rule 310 positions.[40]

In reviewing the adequacy of these commitments, we compare them to

[25] Salt River plan, pg. 29.

[26] 66 FR 50252, 50271–50273.

[27] One exception is that ADEQ recommended wind breaks as an additional control measure for Rule 310.01 in conjunction with existing measures requiring surface stabilization. We consider this optional but not necessary to meet BACM because the rule relies on surface stabilization standards to demonstrate compliance and the emissions reduction potential of wind breaks is less certain. Also, wind breaks are not economically feasible in all circumstances.

[28] 66 FR 50252, 50256–50257. The commitments are contained in the MAG plan approved by EPA. See footnote 1.

[29] MCAQD also committed to raise awareness of on-site supervisors of dust control plans through contact during inspections and a revised training curriculum.

[30] Appendix C, section 3.3.2.

[31] The criteria apply where water is not combined with a chemical or organic dust suppressant.

[32] We also note that MCAQD addressed its commitment to raise awareness of on-site supervisors of dust control plans by providing an online construction guide and instructing its inspectors to review dust control plans with construction site personnel upon initial and subsequent inspections.

[33] See EPA's TSD associated with this proposed action, section D.3.b.

[34] Salt River plan, Appendix F, Enclosures 1 and 2.

[35] Salt River plan, Appendix D.

[36] As of April 2006, MCAQD had hired all ten of the Rule 310.01 inspectors.

[37] MCAQD developed an inspection priority plan that is included in the Salt River plan.

[38] Alluvial channels in the Salt River area consist of a dry riverbed subject to Rule 310.01.

[39] As of October 2005, MCAQD had hired all twelve of the additional Rule 310 inspectors, the four supervisors, and two of the support staff. MCAQD expects to hire the third support staff shortly. The support staff position does not affect field enforcement efforts.

[40] This commitment has been met through MCAQD's adoption of a revised Rule 280 ''Fees'' on May 18, 2005, with an effective date of July 1, 2005.

enforcement provisions in the currently applicable Phoenix PM–10 SIP.[41] The MAG plan provides for eight fugitive dust inspectors to implement MCAQD's fugitive dust rules. Because the January 2005 Maricopa County Board Resolution provides for an additional twenty-two inspectors to implement MCAQD's fugitive dust rules, this represents a significant increase in personnel resources. The number of additional inspectors needed is based on MCAQD's projected fiscal year 2005/06 workload analysis for its earthmoving and vacant lot programs which accounts for the number of vacant parcels in the Phoenix area and the number of Rule 310 permits, which have increased since 2000.[42]

MCAQD's inspection priority plan for vacant lots/open areas and unpaved parking lots provides for identification of these sources through complaint investigations, field observations, soil maps, the Maricopa County Assessor Geographic Information Systems Web site, and/or aerial photographs. The plan provides for site inspections to be prioritized based on complaint investigations, location within the Salt River area, soil texture potential for wind erosion, size (lots in excess of 10 acres), location within the PM–10 nonattainment area, and location in proximity to sensitive receptors (e.g., schools).[43] The inspection priority plan also provides for an inspection rotation/re-inspection electronic database to rate the dust generating potential of vacant lots/open areas based on criteria such as lot size and compliance history to assist in the scheduling and prioritizing of sites for re-inspection. The inspection priority plan is currently in effect.

The MAG plan does not contain specific criteria for prioritizing vacant lot/open area and unpaved parking lot inspections. Thus, the MCAQD inspection priority plan for these sources would strengthen the SIP.

We described the basic elements of MCAQD's enforcement program in section III.B.2 of this proposed rule.

3. Conclusion

We have found that the January 2005 Maricopa County Board Resolution enforcement resource commitments for Rule 310 and Rule 310.01 adequately provide for the implementation of the BACM requirements in those rules by substantially increasing the number of inspectors and associated personnel for enforcing fugitive dust requirements. We have found that other enforcement-related commitments would strengthen the SIP.

We have reviewed the MCAQD submittals that address the three commitments in the approved MAG plan for construction sources[44] and have found that they are consistent with the BACM and MSM requirements of CAA sections 189(b)(1)(B) and 188(e), respectively, and also are consistent with our policy and guidance regarding enforceability and SIP relaxations. Finally, we have determined that other revisions to Rule 310 and Rule 310.01 and would strengthen the SIP and are consistent with our policy and guidance regarding enforceability and SIP relaxations.

Therefore, we propose to approve Rule 310, Rule 310.01, Maricopa County Board Resolution No. C–85–05–005–0–00,[45] Appendix C, Appendix F, ''Application for Dust Control Permit'', and ''Guidance for Application for Dust Control Permit'' under CAA section 110(k)(3). We propose to approve sections 304.5 and 502 of Rule 310, section 3.3.2 of Appendix C, Appendix F, and the enforcement resource provisions of Measures 1 and 3 of Resolution C–85–05–005–0–00 as meeting the BACM and MSM requirements of sections 189(b)(1)(B) and 188(e). We propose to approve Section 2, subsections 10 and 11, and Section 3, subsection I of the Application for Dust Control Permit as meeting the BACM and MSM requirements of sections 189(b)(1)(B) and 188(e). We propose to approve Section 2, subsection 13, and Section 3 of the Guidance for Application for Dust Control Permit as meeting the BACM and MSM requirements of sections 189(b)(1)(B) and 188(e). We propose to approve all other revisions to these rules, Resolution, Application for Dust Control Permit and Guidance for Application for Dust Control Permit as SIP strengthenings.

D. City of Phoenix Alluvial Channels Commitment

The Salt River area contains dry river channels comprised of alluvial soils. ADEQ assessed the PM–10 impact of alluvial channels in the Salt River area, and found that they contribute significantly to wind-driven exceedences.[46] In assessing the wind erosion potential of alluvial channel soils, ADEQ found that some soils have particularly high-emitting potential relative to average vacant land soils. The City of Phoenix owns a substantial amount of alluvial channel land in the Salt River area.

Alluvial channels are subject to MCAQD Rule 310.01 requirements. ADEQ's recommended approach to addressing alluvial channels throughout the nonattainment area is the same as that for vacant lots/open areas and miscellaneous disturbed surfaces, which is increasing enforcement of Rule 310.01 requirements through the hiring of additional MCAQD inspectors.[47] We have addressed this measure in section III.C.2 of this proposed rule.

ADEQ notes that one of the most effective control methods that can be applied to alluvial channels is establishing barriers to prevent vehicle trespass in combination with stabilization of soils. In order to maximize compliance with Rule 310.01 requirements on its alluvial channel land, the City of Phoenix adopted Resolution No. 20114 on June 16, 2004, which outlines a plan for dust control measures on alluvial channels in the Salt River area.[48] Specifically, the City of Phoenix committed to ''develop and implement a program to control vehicle trespass on City-owned vacant land to address particulate emissions and criminal activity. These lands may include dry river beds, washes, and other open areas where significant trespass occurs. Measures to reduce trespass may include signs, increased police enforcement, such as barriers, fences, berms or other measures. Measures may include stabilization of disturbed soils where feasible.'' The City of Phoenix budgeted $200,000 in fiscal year 2005/06 to implement this measure. The Salt River plan contains a 2004 milestone progress report which

[41] MAG plan, Commitments for Implementation, Volume Four, Maricopa County, Fourth Submittal, Exhibit A, Revised Measure 6 of Resolution No. C 88–00–017–6–A2128, adopted December 15, 1999.

[42] MCAQD was responsible for the issuance of 2,500 earthmoving permits in 2000 (Salt River plan, pg. 29), which have increased to 4,548 permits projected for fiscal year 2005/06 according to MCAQD's workload analysis. The workload analysis staffing conclusions are based on accommodating 9,152 inspections per year of Rule 310 sources and 4,587 inspections per year of Rule 310.01 sources.

[43] We note that lots less than ten acres or that are otherwise not prioritized in MCAQD's inspection priority plan are still subject to proactive inspections. However these lots will receive a lower priority than those meeting the plan's criteria.

[44] These include revisions to Rule 310 (subsections 304.5 and 502), Appendix C, Application for Dust Control Permit, Guidance for Application for Dust Control Permit, and the newly submitted Appendix F.

[45] Measures 1 and 3 of the Maricopa County Board Resolution are relevant to Rule 310.01 and Rule 310 sources, respectively.

[46] Salt River plan, Table 4.2.1. ADEQ estimates that alluvial channels contributed approximately 15 percent to 2002 average exceedences on days with wind speeds over 15 miles per hour (with a highest contribution of 80 $\mu g/m^3$ at a single monitor).

[47] Salt River plan, pgs. 32 and 41.

[48] Ibid., Appendix D, City of Phoenix Resolution No. 20114, Measure 04–DC–3.

specifies City of Phoenix actions to prevent trespass and stabilize soils on City-owned alluvial channel lands.[49]

Because we believe the City of Phoenix Resolution No. 20114, Measure 04–DC–3, strengthens the SIP and is consistent with our policy and guidance regarding enforceability and SIP relaxations, we propose to approve it under CAA section 110(k)(3) as a SIP strengthening.

E. Municipality, County, and State Paved Road Re-Entrained Dust Commitments

ADEQ identifies paved road re-entrained dust as a significant contributor to PM–10 24-hour exceedences at the Salt River monitors.[50] In evaluating sources responsible for paved road dust emissions in the Salt River area, ADEQ found the most significant sources of dust loading on paved roads to be from windblown emissions, soil trackout, and emissions from earthmoving and other dust generating processes in areas of high industrial, construction, and agricultural activity.[51] In order to address the largest sources of the problem, ADEQ recommended enhanced enforcement of Rule 310 and Rule 316 and the adoption of specific Rule 316 requirements for control of trackout.[52] We have addressed these recommendations in sections III.B.2 and C.2 of this proposed rule.

ADEQ also recommended enhanced street sweeping with PM–10 efficient sweepers of paved road segments that typically experience a high level of soil and dust deposition,[53] e.g., in locations with high industrial, construction, and agricultural activity.[54]

Eighteen municipalities in the Phoenix PM–10 nonattainment area, Maricopa County Department of Transportation and the Arizona Department of Transportation adopted resolutions [55] in 2004 and 2005 that address the purchase/use of additional PM–10 efficient street sweepers and more frequent, targeted street sweeping. These resolutions largely reflect a model protocol developed by MAG containing the following four elements: Targeting ''high dust'' arterials and collectors and increasing sweeping frequencies with PM–10 efficient sweepers; describing how the protocol constitutes an enhancement or improvement over previously adopted commitments contained in the MAG plan; addressing trackout associated with facilities and activities regulated by Maricopa County by notifying the County when rule violations are observed, and; providing for annual reevaluation of the protocol.

As an example of specific measures resulting from adopted municipal resolutions, the City of Phoenix developed a protocol to comply with its adopted Resolution No. 20114, Measure 04–DC–1. The protocol specifies that street sweeping schedules will increase from the current 14-day sweeping cycle to a 7-day cycle in a targeted area, defined as bounded by Van Buren Street, Baseline Road, 10th Street, and 59th Avenue in the Salt River area.[56] Also, the City reports that its entire fleet of street sweepers are now PM–10 efficient.[57]

In addition, the City of Phoenix included $330,000 in its 2004/05 budget for the purchase of two street sweepers [58] and provides for street improvements (i.e., curb and gutter) on approximately 0.8 mile of 43rd Avenue between Lower Buckeye Road and the Salt River.[59]

MCDOT adopted the following street sweeping protocol: [60]

(a) Identify and target arterial and collector ''high dust'' roads through routine field supervisor roadway inspections and sweep such roads at least three times per month.[61]

(b) Sweep all targeted roads with certified PM–10 efficient street sweepers by February 2, 2005.

(c) Have all MCDOT field inspectors and supervisors report trackout associated with facilities and activities regulated by Maricopa County to MCAQD when rule violations are observed.

(d) Re-evaluate the protocol annually to ascertain its effectiveness, update the list of roads swept with increased frequency, and submit this list to MCAQD annually.

Because we believe the municipal, County,[62] and State resolutions strengthen the SIP and are consistent with our policy and guidance regarding enforceability and SIP relaxations, we propose to approve them under CAA section 110(k)(3) as SIP strengthenings.

IV. 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 approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

[49] Salt River plan, Appendix E, Table 3. Concentrated enforcement efforts on alluvial channels in the Salt River area from July through November 2004 resulted in fifty-five citations and 220 warnings. Vehicle trespass dropped to zero to two vehicles in December and pedestrian trespassers dropped from forty-five to eight per weekend. Thirty ''no trespass'' signs were installed and maintained. Three-hundred and thirty tons of trash and over 2,000 tires were removed by contractors from the upper riverbank and a thick layer of mulch was applied to twelve acres. Contractors have secured 1,800 feet of fences and berms to prevent trespass along Broadway Road since July 2004. The City treated the entire length of berm on its property with polymer stabilizer. One-thousand, one-hundred feet of guardrail on West side of 35th Avenue have been installed. Installation of concrete barriers at all four corners of the 51st Avenue bridge began in January 2005. Rains in January 2005 formed a crust in the alluvial channel.

[50] Salt River plan, Table 4.2.1. ADEQ estimates that paved road re-entrained dust contributed approximately 64 percent to 2002 average low-wind day exceedences (with a highest concentration of 74 $\mu g/m^3$ at a single monitor) and 13.5 percent to 2002 average exceedences on days with wind speeds over 15 miles per hour (with a highest concentration of 43 $\mu g/m^3$ at a single monitor).

[51] Salt River plan, pg. 72.

[52] Ibid., pg. 78.

[53] Ibid., pg. 79.

[54] EPA approved a variety of paved road re-entrained dust measures on July 25, 2002 as meeting the CAA's BACM and MSM requirements, including city, County, and State resolutions addressing street sweeping. The SIP-approved MAG plan does not contain measures for targeted street sweeping, using PM–10 efficient street sweepers, on road segments identified as having particularly high emissions potential.

[55] Salt River plan, Appendix D.

[56] ''City of Phoenix 2004 Protocol & Implementation Plan For Paved Streets With Potential for Dust Emissions'', Salt River plan, Appendix D.

[57] Ibid., pg. 5.

[58] Salt River plan, Appendix D, City of Phoenix Resolution No. 20114, Measure 04–DC–1.

[59] Ibid., Measure 04–DC–2.

[60] Salt River plan, Appendix D, Maricopa County Resolution No. C–85–05–005–0–00, Measure 5.

[61] The protocol indicates that this sweeping frequency is double the previous frequency.

[62] Measure 5 of the Maricopa County Board Resolution contains the relevant street sweeping commitment.

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: June 30, 2006.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 06–6111 Filed 7–11–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R08–OAR–2006–0098; FRL–8191–7]

40 CFR Part 52

RIN 2008–AA00

Federal Implementation Plan for the Billings/Laurel, Montana, Sulfur Dioxide Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to promulgate a Federal Implementation Plan (FIP) containing emission limits and compliance determining methods for several sources located in Billings and Laurel, Montana. EPA is proposing a FIP because of our previous partial and limited disapprovals of the Billings/Laurel Sulfur Dioxide (SO_2) SIP. The intended effect of this action is to assure attainment of the SO_2 national ambient air quality standard (NAAQS) in the Billings/Laurel, Montana area. EPA is taking this action under sections 110 and 307 of the Clean Air Act (Act).

DATES: *Comments:* Comments on the proposal must be received on or before September 11, 2006.

Public Hearing: If requested by July 26, 2006, EPA will hold a public hearing on August 10, 2006. If a public hearing is requested, EPA will hold the public hearing at the following time and location: 9 a.m. to 2 p.m. at the Lewis and Clark Room, MSU—Billings, 1500 University Drive, Billings, Montana. The purpose of such a hearing would be for EPA to receive comments and ask clarifying questions. The hearing would not be an opportunity for questioning of EPA officials or employees. Call the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you would like to request a hearing, schedule time to speak at the hearing, or confirm whether a hearing will occur. If a hearing is held, speakers will be limited to 10 minutes. It would be helpful, but it is not required, if speakers bring a written copy of their comments to leave with us.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0098, by one of the following methods:

- *Http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: long.richard@epa.gov* and *ostrand.laurie@epa.gov*.
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466.
- *Hand Delivery:* Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2006–0098. 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'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

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 Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202–2466, (303) 312–6437, *ostrand.laurie@epa.gov*.

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *CEMS* mean or refer to continuous emission monitoring system.

(iii) The initials *CO* mean or refer to carbon monoxide.

(iv) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(v) The initials *FIP* mean or refer to Federal Implementation Plan.

(vi) The initials H_2S mean or refer to hydrogen sulfide.

(vii) The initials *MBER* mean or refer to the Montana Board of Environmental Review.

(viii) The initials *MDEQ* mean or refer to the Montana Department of Environmental Quality.

(ix) The initials *MSCC* mean or refer to the Montana Sulphur & Chemical Company.

(x) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(xi) The initials *SIP* mean or refer to State Implementation Plan.

(xii) The initials SO_2 mean or refer to sulfur dioxide.

(xiii) The words *state* or *Montana* mean the State of Montana, unless the context indicates otherwise.

(xiv) The initials *SRU* mean or refer to sulfur recovery unit.

(xv) The initials *SWS* mean or refer to sour water stripper.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. General Background

Billings and Laurel are situated in the Yellowstone River Valley in south-central Montana. The Yellowstone River Valley runs from southwest to northeast and is the dominant topographical feature influencing airflow over the area. Windroses [1] for the area reflect the valley orientation. Southwest winds are the most common, followed by northeast winds.

The terrain in the vicinity of Billings and Laurel is upland bench which is steeply cut by the Yellowstone River and its tributaries. The bench lies at an elevation of 4000 feet while the valley in Billings is approximately 3000 feet above sea level (asl) and in Laurel is approximately 3300 feet asl. A constriction in the Yellowstone Valley occurs between central Billings and the Lockwood area located to the east. The valley is generally 3 or 4 miles wide but narrows to a little over a mile wide at the constriction. Nearby terrain, such as the Sacrifice Cliff to the southeast of Billings and the Rimrocks to the north, rises abruptly and is often higher than the tallest smoke stack. Laurel is located within the Yellowstone Valley approximately 15 miles southwest of Billings. The valley near Laurel is 3 or 4 miles wide. Nearby terrain to the northwest and southeast of Laurel rises abruptly and is often higher than the tallest smoke stack.

The major sulfur dioxide (SO_2) emitting industries in the Billings area are the ConocoPhillips [2] and

[1] A windrose is a diagram showing the relative frequency or frequency and strength of winds from different directions (Websters 9th New Collegiate Dictionary).

[2] When the state originally adopted the Billings/Laurel SO_2 SIP, the ConocoPhillips Refinery was

ExxonMobil [3] Petroleum Refineries, Western Sugar Company, the PPL Montana, LLC J.E. Corette Power Plant,[4] Montana Sulphur & Chemical Company (MSCC) (gas processing plant, sulfur recovery and sulfur products), and Yellowstone Energy Limited Partnership (YELP) (cogeneration power plant). The major SO_2 emitting industry in the Laurel area is the CHS Inc. Petroleum Refinery.[5] Although Laurel and Billings are 15 miles apart, the industries in Billings have some impact on the air quality in Laurel and the industry in Laurel has some impact on the air quality in Billings.

On March 3, 1978 (43 FR 8962), the Laurel area was designated as nonattainment for the primary SO_2 national ambient air quality standard (NAAQS). *See* also 40 CFR 81.327. The nonattainment area consists of an area with a two-kilometer radius around CHS Inc. This designation was based on measured and modeled violations of the NAAQS. EPA reaffirmed this nonattainment designation on September 11, 1978 (43 FR 40412). The 1990 Clean Air Act Amendments, enacted November 15, 1990, again reaffirmed the nonattainment designation of Laurel with respect to the primary SO_2 NAAQS. Since the Laurel nonattainment area had a fully approved part D plan, the state was not required to submit a revised plan for the area under the 1990 Amendments (*see* sections 191 and 192 of the Act).

On March 3, 1978 (43 FR 8962), those areas in the state that had not been identified as not meeting the SO_2 NAAQS were designated as ''Better Than National Standards.'' The Billings area was in that portion of the state that was designated as ''Better Than National Standards.''

The Act requires EPA to establish NAAQS which protect public health and welfare. NAAQS have been established for SO_2. The Act also requires states to prepare and gain EPA approval of a plan, termed a State Implementation Plan (SIP), to assure that the NAAQS are attained and maintained. Dispersion modeling completed in 1991 and 1993 for the Billings/Laurel area of Montana predicted that the SO_2 NAAQS were not being attained.[6] As a result, EPA (pursuant to sections 110(a)(2)(H) and 110(k)(5) of the Act) requested the State of Montana to revise its previously approved SIP for the Billings/Laurel area. In response, the State submitted revisions to the SIP on September 6, 1995, August 27, 1996, April 2, 1997, July 29, 1998, and May 4, 2000.

B. SIP Background

1. SIP Call

We issued a request that the State of Montana revise the Billings/Laurel area SO_2 SIP by letter to the Governor of Montana, dated March 4, 1993 (*see* reference document Z). The request letter reflected our preliminary finding regarding the SIP's substantial inadequacy, and was published in the **Federal Register** on August 4, 1993 (58 FR 41430) (*see* reference document Y). We sometimes refer to such a request as a SIP Call. In the request letter, we declared that the SIP Call would become final agency action when we made a binding determination regarding the State of Montana's response to the SIP Call. We made such a binding determination regarding the SIP Call when we partially and limitedly approved and partially and limitedly disapproved the Billings/Laurel SO_2 SIP revisions submitted by the State of Montana in response to the request letter.[7] *See* 67 FR 22168, 22173 (May 2, 2002) (*see* reference document AA).

2. SIPs Submitted in Response to SIP Call

Our 1993 SIP Call called for the State of Montana to submit a SIP revision for the Billings/Laurel area by September 4, 1994. On September 6, 1995, the Governor of Montana submitted a SIP revision in response to the SIP Call. The SIP was later amended with revisions submitted on August 27, 1996, April 2, 1997, July 29, 1998, and May 4, 2000. Copies of the complete SIP revisions are contained in the docket for our action on the SIP. (*See* docket #R8–99–01.)

3. EPA's Actions on State's Billings/Laurel SO_2 SIP

(a) EPA's May 2, 2002, final action.

On May 2, 2002 (67 FR 22168) [8] (see reference document AA), we partially approved, partially disapproved, limitedly approved and limitedly disapproved provisions of the Billings/Laurel SO_2 SIP.[9] Specifically:

(i) We disapproved the following provisions of the Billings/Laurel SO_2 SIP: [10]

- The escape clause (paragraph 22 in the ExxonMobil and MSCC 1998 stipulations, and paragraph 20 in the CHS Inc., ConocoPhillips, Corette Power Plant, Western Sugar, and YELP 1998 stipulations.)
- The MSCC stack height credit and emission limits on the sulfur recovery unit (SRU) 100-meter stack (paragraph 1 of the ExxonMobil 1998 stipulation, paragraphs 1 and 2 of the MSCC 1998 stipulation, and sections 3(A)(1)(a) and

known as the Conoco Refinery. Throughout this document we will refer to the refinery as ConocoPhillips.

[3] When the state originally adopted the Billings/Laurel SO_2 SIP, the ExxonMobil Refinery was known as the Exxon Refinery. Throughout this document we will refer to the refinery as ExxonMobil.

[4] When the state originally adopted the Billings/Laurel SO_2 SIP, the PPL Montana, LLC J.E. Corette Power Plant was known as the Montana Power Company, J.E. Corette Plant. Throughout this document we will refer to the power plant as the Corette Power Plant.

[5] When the state originally adopted the Billings/Laurel SO_2 SIP, CHS Inc. Petroleum Refinery was known as the Cenex Petroleum Refinery. Throughout this document we will refer to the refinery as CHS Inc.

[6] See the study for the Billings Gasification, Inc. (BGI) (now YELP) permit in 1991 and the GeoResearch, Inc. (GRI) study commissioned by the Billings City Council in 1993 (document #'s II.G–13 and II.G–12, respectively, in Docket #R8–99–01).

[7] In some cases, a SIP rule may contain certain provisions that meet the applicable requirements of the Act, but that are *inseparable* from other provisions that do not meet all the requirements. Although the submittal may not meet all of the applicable requirements, we may consider whether the rule, as a whole, has a strengthening effect on the SIP. If this is the case, limited approval may be used to approve a rule that strengthens the existing SIP as representing an improvement over what is currently in the SIP and as meeting some of the applicable requirements of the Act. At the same time we would disapprove the rule for not meeting all of the applicable requirements of the Act. Under a limited approval/disapproval action, we simultaneously approve and disapprove the entire rule even though parts of the rule satisfy, and parts do not satisfy, requirements under the Act. The disapproval only concerns the failure of the rule to meet a specific requirement of the Act and does not affect incorporation of the rule as part of the approved, federally enforceable SIP. We use this mechanism when the rule, despite its flaws, will strengthen the federally enforceable SIP.

In other cases, a SIP rule may contain certain provisions that meet applicable requirements of the Act, but that are *separable* from other provisions that do not meet applicable requirements. Where a separable portion of the submittal meets applicable requirements, partial approval may be used to approve that part of the submittal and partial disapproval to disapprove the provisions that do not meet applicable requirements of the Act.

EPA's interpretation of the Act regarding approving and disapproving SIPs is discussed further in a July 9, 1992, memorandum title ''Processing of State Implementation Plan (SIP) Submittals,'' from John Calcagni to Regional Air Division Directors. (See reference document A.)

[8] See also June 7, 2002 corrections notice (67 FR 39473) (reference document KKK).

[9] See footnote #7.

[10] The SIP was submitted in the form of orders, stipulations, exhibits and attachments for each source covered by the plan. The majority of the requirements are contained in the exhibits. Throughout this document when we refer to an exhibit, we mean exhibit A to the stipulation for the specified source. For purposes of our May 2, 2002, SIP action the stipulations and exhibits to which we refer were adopted by the Montana Board of Environmental Review (MBER) on June 12, 1998. MBER adopted revised stipulations and exhibits for some sources on March 17, 2000. To distinguish between the two sets of stipulations and exhibits, we refer to either the 1998 stipulation or exhibit for a particular source, or the 2000 stipulation or exhibit.

(b) and 3(A)(3) of the MSCC 1998 exhibit).

• The emission limit on MSCC's auxiliary vent stacks, section 3(A)(4) of MSCC's 1998 exhibit.

• The attainment demonstration, because of improper stack height credit and emission limits at MSCC.

• The attainment demonstration for lack of flare emission limits at CHS Inc., ConocoPhillips, ExxonMobil, and MSCC.

• The attainment demonstration, because of the disapproval of the emission limit for MSCC's auxiliary vent stacks.

• The Reasonably Available Control Measures (RACM) (including Reasonably Available Control Technology (RACT)) and Reasonable Further Progress (RFP) requirements for CHS Inc.

• The provisions that allow sour water stripper overheads to be burned in the flare at CHS Inc. and ExxonMobil (*i.e.*, the following phrase from section 3(B)(2) of CHS Inc.'s 1998 exhibit and section 3(E)(4) of ExxonMobil's 1998 exhibit: ''or in the flare''; the following phrases in section 4(D) of CHS Inc.'s 1998 exhibit and section 4(E) of ExxonMobil's 1998 exhibit: ''or in the flare'' and ''or the flare''.)

(ii) We limitedly approved and limitedly disapproved the following provision:

• The emission limit for the 30-meter stack at MSCC (section 3(A)(2) of MSCC's 1998 exhibit) because it lacked a reliable compliance monitoring method.

(iii) We did not act on the following provisions:

• The provisions in section 6(B)(3) of MSCC's 1998 exhibit that require certain monitoring equipment to support the variable emission limit.[11]

• YELP's emission limits (in sections 3(A)(1) through (3) of YELP's 1998 exhibit).

• ExxonMobil's coker CO-boiler emission limitation (in section 3(B)(1) of ExxonMobil's 1998 exhibit).

• ExxonMobil's F–2 crude/vacuum heater stack emission limits and attendant compliance monitoring methods (sections 3(A)(2), 3(B)(3), 4(E) and method #6A of attachment #2 of ExxonMobil's 1998 exhibit; and the following phrase from section 3(E)(4) of ExxonMobil's 1998 exhibit ''except that the sour water stripper overheads may be burned in the F–1 Crude Furnace (and exhausted through the F–2 Crude/Vacuum Heater stack) or in the flare during periods when the FCC CO Boiler is unable to burn the sour water stripper overheads, provided that: (a) such periods do not exceed 55 days per calendar year and 65 days for any two consecutive calendar years, and (b) during such periods the sour water stripper system is operating in a two tower configuration.'')

• ExxonMobil's fuel gas combustion emission limits and attendant compliance monitoring methods (in sections 3(A)(1), 3(B)(2), 4(B), and 6(B)(3) of ExxonMobil's 1998 exhibit).

• CHS Inc.'s combustion sources emission limitations and attendant compliance monitoring methods (sections 3(A)(1)(d), 4(B), 4(D) and method #6A of attachment #2 of CHS Inc.'s 1998 exhibit; and the following phrase from section 3(B)(2) of CHS Inc.'s 1998 exhibit ''except that those sour water stripper overheads may be burned in the main crude heater (and exhausted through the main crude heater stack) or in the flare during periods when the FCC CO boiler is unable to burn the sour water stripper overheads from the ''old'' SWS, provided that such periods do not exceed 55 days per calendar year and 65 days for any two consecutive calendar years.'')

(iv) In a separate action published on May 2, 2002 (67 FR 22242)[12] *(see reference document BB), we proposed action on some provisions of the Billings/Laurel SO_2 SIP submitted on July 29, 1998, and May 4, 2000.*[13] We later finalized action on these provisions on May 22, 2003 (68 FR 27908) (*see* discussion below and reference document CC).

(v) We approved the following provisions:

• All provisions of the SIP that were not partially disapproved, limitedly disapproved, omitted from our action, or addressed in our May 2, 2002, proposal.

(b) EPA's May 22, 2003, final action.

On May 22, 2003 (68 FR 27908)[14] (see reference document CC), we partially approved, limitedly approved, and limitedly disapproved provisions of the Billings/Laurel SO_2 SIP. Specifically:

(i) We approved the following provisions:

• YELP's emission limits in sections 3(A)(1) through (3) and reporting requirements in section 7(C)(1)(b) of YELP's 2000 exhibit.

• Provisions related to the burning of SWS overheads in the F–1 Crude Furnace (and exhausted through the F–2 Crude/Vacuum Heater stack) at ExxonMobil in sections 3(E)(4) and 4(E) (excluding ''or in the flare'' and ''or the flare'' in both sections), 3(A)(2), and 3(B)(3) of ExxonMobil's 1998 exhibit, and method #6A–1 of attachment #2 of ExxonMobil's 2000 exhibit.

• Minor changes in sections 3, 3(A), and 3(B) (only the introductory paragraphs); and sections 3(E)(3), 6(B)(7), 7(B)(1)(d), 7(B)(1)(j), 7(C)(1)(b), 7(C)(1)(d), 7(C)(1)(f), and 7(C)(1)(l) of ExxonMobil's 2000 exhibit.

(ii) We limitedly approved and limitedly disapproved the following provisions:

• Provisions related to the fuel gas combustion emission limits at ExxonMobil in sections 3(B)(2), 4(B), and 6(B)(3) of ExxonMobil's 1998 exhibit, and section 3(A)(1) of ExxonMobil's 2000 exhibit.

• Provisions related to ExxonMobil's coker CO-boiler emission limit in sections 2(A)(11)(d), 3(B)(1), and 4(C) of ExxonMobil's 2000 exhibit.

• Provisions related to the burning of SWS overheads at CHS Inc. in sections 3(B)(2) and 4(D) (excluding ''or in the flare'' and ''or the flare'' in both sections), 3(A)(1)(d), and 4(B) of CHS Inc.'s 1998 exhibit, and method #6A–1 of attachment #2 of CHS Inc.'s 2000 exhibit.

4. Appeal of EPA's Action on Billings/Laurel SO_2 SIP

On June 10, 2002, MSCC petitioned the United States Court of Appeals for the Ninth Circuit for review of EPA's May 2, 2002, final SIP action. Subsequently, MSCC and EPA agreed to a stay of the litigation pending EPA's final action on this FIP. The case is captioned *Montana Sulphur & Chemical Company* v. *United States Environmental Protection Agency,* No. 02–71657. No petitions for judicial review were filed regarding EPA's May 22, 2003, SIP action.

[11] Since we disapproved MSCC's variable emission limit, we did not believe it made sense to approve section 6(B)(3) of MSCC's 1998 exhibit, which requires MSCC to install certain monitoring equipment to support the use of the variable limit. Section 6(B)(3) would be needed only if we approved MSCC's variable emission limit.

[12] See also June 14, 2002 correction notice (67 FR 40897) (reference document LLL).

[13] On July 28, 1999 (64 FR 40791), we proposed to conditionally approve certain provisions of the SIP based on the Governor's commitment to address concerns we had raised. The Governor submitted a SIP revision on May 4, 2000, which was intended to fulfill the commitments. Since the Governor submitted a SIP revision to fulfill the commentments, we did not finalize our proposed conditional approval and instead proposed separate action on parts of the July 29, 1998, submittal (*i.e.,* those parts we proposed to conditionally approve on July 28, 1999) and all of the May 4, 2000, submission (which in some cases modified the provisions of the July 29, 1998, submittal).

[14] See also June 2, 2003 correction notice (68 FR 32799) (reference document MMM).

C. FIP Background

Under section 110(c) of the Act, whenever we disapprove a SIP in whole or in part we are required to promulgate a FIP. Specifically, section 110(c) provides:

''(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under [section 110(k)(1)(A)] [15], or

(B) disapproves a State implementation plan submission in whole or in part, unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.''

Thus, because we disapproved portions of the Billings/Laurel SO_2 SIP, and the attainment demonstration, we are required to promulgate a FIP.

Section 302(y) defines the term ''Federal implementation plan'' in pertinent part, as:

''[A] plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions or emissions allowances) * * *''

More simply, a FIP is ''a set of enforceable federal regulations that stand in the place of deficient portions of a SIP.'' *McCarthy* v. *Thomas,* 27 F.3d 1363, 1365 (9th Cir. 1994). As the Court of Appeals for the D.C. Circuit noted in a 1995 case, FIPs are powerful tools to remedy deficient state action:

''The FIP provides an additional incentive for state compliance because it rescinds state authority to make the many sensitive technical and political choices that a pollution control regime demands. The FIP provision also ensures that progress toward NAAQS attainment will proceed notwithstanding inadequate action at the state level.''

Natural Resources Defense Council, Inc. v. *Browner,* 57 F.3d 1122, 1124 (D.C. Cir. 1995).

When EPA promulgates a FIP, courts have not required EPA to demonstrate explicit authority for specific measures: ''We are inclined to construe Congress' broad grant of power to the EPA as including all enforcement devices reasonably necessary to the achievement and maintenance of the goals established by the legislation.'' *South Terminal Corp.* v. *EPA, 504* F.2d 646, 669 (1st Cir. 1974). As the Ninth Circuit stated in a case involving a FIP with far-reaching consequences in Los Angeles: ''The authority to regulate pollution carries with it the power to do so in a manner reasonably calculated to reach that end.'' *City of Santa Rosa* v. *EPA,* 534 F.2d 150, 155 (9th Cir. 1976), *vacated and remanded on other grounds sub nom. Pacific Legal Foundation* v. *EPA, 429 U.S. 990 (1976).*

In addition to giving EPA remedial authority, section 110(c) enables EPA to assume the powers that the state would have to protect air quality, when the state fails to adequately discharge its planning responsibility. As the Ninth Circuit held, when EPA acts to fill in the gaps in an inadequate state plan under section 110(c), EPA '' 'stands in the shoes of the defaulting State, and all of the rights and duties that would otherwise fall to the State accrue instead to EPA.' '' *Central Arizona Water Conservation District* v. *EPA*, 990 F.2d 1531, 1541 (9th Cir. 1993). As the First Circuit held in an early case:

''[T]he Administrator must promulgate promptly regulations setting forth 'an implementation plan for a State' should the state itself fail to propose a satisfactory one * * *. The statutory scheme would be unworkable were it read as giving to EPA, when promulgating an implementation plan for a state, less than those necessary measures allowed by Congress to a state to accomplish federal clean air goals. We do not adopt any such crippling interpretation.''

South Terminal Corp. v. *EPA, supra,* at 668 (citing previous version of section 110(c)).

III. FIP Proposal

As discussed above, in this proposed rulemaking, EPA is fulfilling its mandatory duty under section 110(c) of the Act to propose FIP provisions for the Billings/Laurel, Montana area because of our limited and partial disapproval of portions of the Billings/Laurel SO_2 SIP submitted by Montana. Our proposed FIP would not replace the SIP entirely, but instead would only replace elements of the SIP or fill gaps in the SIP as necessary to ensure attainment and maintenance of the SO_2 NAAQS. In cases where the provisions of the FIP would address emissions activities differently or establish different requirements than provisions of the SIP, the provisions of the FIP would take precedence.

Our proposed FIP only impacts four stationary sources: CHS Inc., ConocoPhillips, ExxonMobil and Montana Sulphur & Chemical Company (MSCC). We caution that if any of these sources are subject to more stringent requirements under other provisions of the Act (*e.g.*, section 111 or 112, part C, or SIP-approved permit programs under Part A), our proposal of any FIP requirement would not excuse any of these sources from meeting other more stringent requirements. Also, our proposed FIP is not meant to imply any sort of applicability determination under other provisions of the Act (*e.g.*, section 111 or 112, part C, or SIP-approved permit programs under Part A).

A. Flare Requirements Applicable to All Sources

We disapproved the Billings/Laurel SO_2 SIP as it applied to the attainment demonstration because the SIP lacked enforceable emission limits for flares, while the SIP submission took credit for such emission limits. *See* our May 2, 2002, final rulemaking action at 67 FR 22168. Because of this disapproval we are proposing emission limits and compliance determining methods for flares at CHS Inc., ConocoPhillips (including Jupiter Sulfur),[16] ExxonMobil, and MSCC. The flare emission limits and compliance determining methods are being proposed for the purpose of assuring attainment and maintenance of the SO_2 NAAQS.

Since the state's attainment demonstration assumed that the main flares at each source were limited to 150 pounds of SO_2 per three hour period, and that the Jupiter Sulfur SRU flare would share an emission limit of 75 pounds of SO_2 per three hour period with the Jupiter Sulfur SRU/ATS stack, we are proposing to promulgate flare emission limits that reflect the state's assumption that emissions from these points would not exceed these levels. More specific detail regarding each of the sources' emission limits is provided below in sections III. B, C, D, and E.

While we are proposing that 150 pounds of SO_2 per three hour period be the limit for the main flares, we are soliciting input on whether we should instead limit the main flares to 500 pounds of SO_2 per calendar day. This value is consistent with a trigger point for certain analyses contained in settlements between the United States and CHS Inc., ConocoPhillips, and ExxonMobil. For purposes of our attainment demonstration, we have assumed that the 500 pounds would be emitted from the four main flares over a three-hour period rather than a

[15] Section 110(k)(1)(A) requires the Administrator to promulgate minimum criteria that any plan submission must meet before EPA is required to act on the submission. These completeness criteria are set forth at 40 CFR 51, Appendix V.

[16] The ConocoPhillips Billings Refinery also includes the Jupiter Sulfur Recovery Facility (*see* reference document S).

calendar day. Our evaluation shows that even under these conditions, the 3-hour SO_2 NAAQS would be attained.

Note that if we adopted the 500 pound value for this FIP, we would impose it as an enforceable emission limit, not just a trigger point for further analyses.

We are proposing that the flare limits will apply at all times without exception. We recognize that flares are sometimes used as emergency devices at refineries and that it may be difficult to comply with these flare limits during malfunctions. However, under our interpretations of the Clean Air Act, it is not appropriate to create automatic exemptions from SIP limits needed to demonstrate attainment. (See reference document RRR, September 20, 1999 memorandum titled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' from Steven A. Herman and Robert Perciasepe, to Regional Administrators (referred to hereafter as ''1999 policy statement'').) We do interpret the CAA to allow owners and operators of sources to assert an affirmative defense to penalties in appropriate circumstances, but normally we would not view such an affirmative defense as appropriate in areas where a single source or small group of sources has the potential to cause an exceedance of the NAAQS. See 1999 policy statement. We solicit comment on whether it would be appropriate to include in our final FIP the ability to assert an affirmative defense to penalties only (not injunctive relief) for violations of the flare limits. If we were to establish such a provision, we anticipate it would closely follow the guidance contained in our 1999 policy statement.

We are also proposing that compliance with the emission limits be determined by measurement of the total sulfur concentration and volumetric flow rate of the gas stream to the flare(s), followed by calculation, using appropriate equations, of SO_2 emitted per 3-hour period. The assumption is that when the gas stream is combusted in a flare, all of the sulfur in the gas stream converts to SO_2 and is emitted to the atmosphere. Also, by knowing the volumetric flow rate of the gas stream to the flare(s) we can determine the SO_2 emitted to the atmosphere over a specified timeframe.

With respect to the volumetric flow rate monitoring systems, we developed our proposed approach considering volumetric flow rate monitoring requirements established at refinery flares in California and Texas, vendor literature, technical articles, and information gathered from discussions with vendors. (*See* reference documents *KK* (Bay Area Air Quality Management District (BAAQMD)—documents related to consideration of proposed new regulation 12, Rule 11 Flare Monitoring at Petroleum Refineries); *LL* (final version of BAAQMD Regulation 12, Miscellaneous Standards of Performance, Rule 11, Flare Monitoring at Petroleum Refineries); *BBB* (South Coast Area Air Quality Management District (SCAQMD)—documents related to consideration of revisions to rule 1118, Control of Emissions From Refinery Flares); *CCC* (final version of SCAQMD Rule 1118, Control of Emissions From Refinery Flares); *MM* (Texas Natural Resource Conservation Commission, Chapter 115—Control of Air Pollution from Volatile Organic Compounds, Subchapter H: Highly-Reactive Volatile Organic Compounds, Division 1: Vent Gas Control); *NN* (Fluid Components International LLC (FCI), vendor literature from *www.fluidcomponents.com*); *OO* (GE Sensing, vendor literature); *PP* (''Why and How to measure flare gas'' from Flowmeter Directory (*www.flowmeterdirectory.com*)); *QQ* (''Transit-time Ultrasonic Flowmeters for Gases'' Presented at and Published in Part in the *Proc. 41st Annual CGA (Canadian Gas Association) Gas Measurement School*, Grand Okanagan, Kelowna BC, Canada, June 4–6, 2002); *RR* (''Flare Measurement 'Best Practices' To Comply With National & Provincial Regulations''); *SS* (''Ultrasonic Flowmeter Market is Expected to Grow Strongly''); *TT* (Note to Billings/Laurel SO_2 FIP File, April 7, 2004 Discussion with Peter Klorer, GE Infrastructure, Regarding Panametrics Mass Flowmeter); *HHH* (Note to Billings/ Laurel SO_2 FIP File, April 20, 2006 Discussion with Paul Calef, GE Sensing, Regarding Flare Flowmeter).) Based on what is required elsewhere and what we have learned from vendors and literature, we have determined that there is reliable technology available to continuously monitor and record the volumetric flow rate of the gas stream to a flare. Therefore, we are proposing that sources install, calibrate, maintain and operate a continuous flow monitoring system capable of measuring the total volumetric flow of the gas stream that is combusted in a flare in accordance with the specifications described below. The flow monitoring system may require one or more flow monitoring devices or flow measurements at one or more header locations if one monitor cannot measure all of the volumetric flow to a flare.

We are proposing the following volumetric flow monitoring specifications:

(1) The minimum detectible velocity of the flow monitoring device(s) shall be 0.1 feet per second (fps);

(2) The device(s) shall continuously measure the range of flow rates corresponding to velocities from 0.5 to 275 fps and have a manufacturer's specified accuracy of ±5% over the range of 1 to 275 fps;

(3) For correcting flow rate to standard conditions (defined as 68°F and 760 millimeters of mercury (mmHg)), temperature and pressure shall be monitored continuously;

(4) The temperature and pressure shall be monitored in the same location as the flow monitoring device(s) and shall be calibrated to meet accuracy specifications as follows: temperature shall be calibrated annually to within ±2.0% at absolute temperature and the pressure monitor shall be calibrated annually to within ±5.0 mmHg;

(5) Flow monitoring device(s) shall be initially calibrated, prior to installation, to demonstrate accuracy to within 5.0% at flow rates equivalent to 30%, 60% and 90% of monitor full scale; and

(6) After installation, the flow monitoring devices shall be calibrated annually according to manufacturer's specifications.[17]

With respect to measuring the total sulfur concentration, we developed our proposed approach considering concentration monitoring requirements established at refinery flares in California, vendor iterature, and information gathered from discussions with vendors. (*See* reference documents *UU* (Note to Billings/Laurel SO_2 FIP File, May 11, 2004 Discussion with Robert Hornberger, Galvanic Applied Sciences); *VV* (Galvanic Applied Sciences Inc., H_2S & Total Sulfur Analyzers, vendor literature printed from *www.galvanic.ab.ac*); *KK* (Bay Area Air Quality Management District (BAAQMD)—documents related to consideration of proposed new regulation 12, Rule 11, Flare Monitoring

[17] Volumetric flow monitors meeting the proposed volumetric flow monitoring specifications above should be able to measure the majority of volumetric flow in the gas streams to the flare. However, in rare events (e.g., such as upset conditions) the flow to the flare may exceed the range of the monitor. EPA is not suggesting that multiple monitors be installed to measure extreme flow rates that rarely occur. Rather, in the rare event that the range of the monitor is exceeded, reliable flow estimation parameters may be used to determine the volumetric flow rate to the flare. Flow determined through reliable estimation parameters will be used to calculate SO_2 emissions. In quarterly reports, sources shall indicate when reliable estimation parameters are used and how such parameters were derived.

at Petroleum Refineries); *BBB* (South Coast Area Air Quality Management District (SCAQMD)—documents related to consideration of revisions to rule 1118, Control of Emissions From Refinery Flares); *CCC* (final version of SCAQMD Rule 1118, Control of Emissions From Refinery Flares); *XX* (Note to Billings/Laurel SO_2 FIP File, May 10 and May 31, 2006 Discussions with Tom Kimbel, Analytical Systems International, Regarding Total Sulfur Analyzers); *YY* (Analytical Systems International, Continuous Sulfur Analyzer, vendor literature printed from *www.ASIWebPage.com*); *III* (Note to Billings/Laurel SO2 FIP File, April 19, 2006 Discussion with Bob Kinsella, ThermoElectron, Regarding Total Sulfur Analyzer); *JJJ* (Note to Billings/Laurel SO_2 FIP File, May 12, 2006, and June 7, 2006 Discussions with Eugene Teszler, South Coast Air Quality Management District, regarding Total Sulfur Analyzer).) Based on what is required elsewhere and what we have learned from vendors, we have determined that there is reliable technology available to continuously monitor and record the total sulfur concentration of the gas stream to a flare. Also, we are proposing that the total sulfur concentrations, rather than just H_2S concentrations, be monitored continuously. This is because we believe there are other sulfur compounds in the gas stream to a flare. The total sulfur analyzer system may require one or more total sulfur analyzers or total sulfur concentration measurements at one or more header locations if one analyzer cannot measure all of the total sulfur concentration to a flare.

Therefore, we are proposing that sources install, calibrate, maintain and operate an on-line analyzer system capable of continuously determining the total sulfur concentration of the gas stream sent to a flare. We are proposing that the continuous monitoring occur at a location(s) that is (are) representative of the gas combusted in the flare and be capable of measuring the expected range of total sulfur expected in the gas stream to the flare. Vendor literature and discussions with vendors indicates this is feasible. The total sulfur analyzer shall be installed, certified (on a concentration basis), and operated in accordance with 40 CFR part 60, Appendix B, Performance Specification 5, and be subject to and meet the quality assurance and quality control requirements (on a concentration basis) of 40 CFR part 60, Appendix F. The source shall notify EPA in writing of each Relative Accuracy Test Audit a minimum of twenty-five (25) working days prior to the actual testing.

We are proposing that the volumetric flow and total sulfur concentrations determined by the above procedures be used in calculations to determine the hourly and three hour SO_2 emissions from the flare(s).

We are proposing that each source submit for EPA review and approval a flare monitoring plan prior to establishing continuous monitors on the flare(s). Also, we are proposing that each source submit for EPA review a quality assurance/quality control (QA/QC) plan for each of the continuous monitors.

Finally, we are proposing certain quarterly reporting requirements. The quarterly reporting requirements are similar to the reporting requirements contained in the Billings/Laurel SO_2 SIP and those contained in 40 CFR 60.7(c).

B. CHS Inc.

1. Flare Requirements

The state's attainment demonstration and our subsequent attainment modeling for the FIP assume that CHS Inc.'s flare is limited to 150 pounds of SO_2 per three hour period.[18, 19] This is the limit we are proposing for CHS Inc.'s flare. Compliance with the flare emission limit will be determined as discussed in Section III.A, above.

2. Combustion Sources Emission Limits.

Three of the emission limits contained in CHS Inc.'s portion of the Billings/Laurel SO_2 SIP are combined emission limits for combustion sources. The emission limits, contained in CHS Inc.'s 1998 exhibit, are in pounds of SO_2 per 3-hour, 24-hour and one-year averaging periods.[20] Compliance with the emission limits is determined by measuring the sulfur and H_2S content of the fuels combusted (oil and fuel gas) and the flow of the fuels to the combustion sources. The state's assumption is that when the sulfur/H_2S in the fuel is combusted, all the sulfur/H_2S converts to SO_2 and is emitted to the atmosphere. By measuring sulfur/H_2S content of the fuel and the flow of the fuel to the combustion sources, the amount of SO_2 emitted per 3-hour, 24-hour and one-year averaging periods can be calculated. CHS Inc.'s 1998 exhibit also allows sour water stripper (SWS) overheads (ammonia (NH_3) and H_2S gases removed from the sour water in the sour water stripper), to be combusted in the main crude heater. When the SWS overheads are combusted in the main crude heater, compliance with the combustion source emission limits is determined by summing the SO_2 emissions calculated from the combustion of the fuels and SWS overheads. The SO_2 emissions from the SWS overheads are determined by measuring the sulfur compounds in, and the flow of, the sour water.

We were concerned that the method the state established to measure the amount of sulfur compounds in the sour water at CHS Inc. would not measure all the sulfur compounds in the sour water.[21] Specifically, we concluded that the analytical method submitted in the SIP would not measure all of the sulfur compounds in the sour water because of the potentially high concentrations of sulfur compounds; there would not be enough preservative in the sample container to prevent the loss of the sulfur compounds during sampling and analysis. (*See* reference document X.) Therefore, the emissions of SO_2 from the combustion of SWS overheads in the main crude heater could be underestimated. We concluded that the combustion source emission limits were not enforceable under all scenarios and, therefore, did not meet the requirements of section 110(a)(2)(A) of the Act. On May 22, 2003 (68 FR 27908), we limitedly approved and limitedly disapproved the combustion source emission limits and method used to measure the sulfur compounds in the sour water.

After the state adopted CHS Inc.'s 1998 and 2000 exhibits as part of the SIP, the state modified CHS Inc.'s air quality permit to prohibit the burning of ''old'' sour water stripper overheads in the FCC CO boiler and the main crude heater. *See* Air Quality Permit #1821–11, provision II.C.1. (*See* reference document B.) The state has not modified the SIP to correspond to the changes in CHS Inc.'s air quality permit.[22]

[18] See Modeling discussion in Section III.E.5, below.

[19] Our FIP assumes that CHS Inc. has only one operational flare. *See* reference documents PPP and QQQ.

[20] Section 3(A)(1)(d) of CHS Inc.'s 1998 exhibit. (*See* reference document DD for a copy of the exhibit.)

[21] For measuring the sulfur compounds in the sour water, the state established Method #6A–1 contained in attachment #2 of CHS Inc.'s 2000 exhibit. (*See* reference document EE for a copy of the exhibit.)

[22] Page 11 of the State's CHS Inc. Permit Analysis, attached to Permit #1821–11 (see reference document B) discusses the SWS and indicates that a new SWS stripper was constructed, which replaced the operation of the older existing SWS. The old SWS cannot be removed, however, and functions only as the back-up unit. The Permit Analysis further indicates that the stripper overhead gas containing H_2S and NH_3, is sent to the new SRU for sulfur recovery and incineration of NH_3. This was confirmed in a conversation with the DEQ (see reference document DDD).

To address our limited disapproval of the combustion source emission limits in the SIP, we are proposing a prohibition in the FIP on the burning of SWS overheads in the main crude heater. Prohibiting the burning of SWS overheads in the main crude heater will eliminate our concern regarding the method used to measure the amount of sulfur compounds in the sour water. We believe it is reasonable to make this proposal because the state and CHS Inc. have already agreed to such restrictions in CHS Inc.'s air quality permit.

Compliance with the prohibition to not burn SWS overheads in the main crude heater will be based on methods similar to those contained in CHS Inc.'s 1998 exhibit. Specifically, section 3(B)(3) of the 1998 exhibit requires CHS Inc. to install a chain and lock on the valve that supplies sour water stripper overheads from the ''old'' SWS to the main crude heater to insure that the valve cannot be opened unless the chain and lock are removed. Under our proposed FIP, CHS Inc. would be required to maintain the chain and lock in place and keep the valve closed at all times. CHS Inc. would be required to log and report any noncompliance with this provision.

C. ConocoPhillips

1. Flare Requirements

The state's attainment demonstration and our subsequent attainment modeling for the FIP assume that ConocoPhillips' main refinery flare is limited to 150 pounds of SO_2 per three hour period.[23] We understand that ConocoPhillips actually has two main flares—a north main flare and a south main flare—but only operates one at a time and that Jupiter Sulfur, ConocoPhillips' sulfur recovery unit (SRU), also has one flare. Correspondence from ConocoPhillips, dated February 4, 2004, indicates that the north flare is currently in use but the south flare has been used in alternating 4-year cycles, with switches at full plant turnarounds. (*See* reference document C.) Conversations with the MDEQ on September 1, 2004, confirm that only one flare is used at a time and that a section of the pipe going to the unused flare is removed during the turnaround. (*See* reference document W.) Therefore, with respect to ConocoPhillips, in lieu of establishing a separate emission limit for each main flare, we are proposing one emission limit for the main flare. At any one time, ConocoPhillips may only use either the north or south main flare.

We are proposing that compliance with the main flare emission limit at ConocoPhillips be determined by measuring the total sulfur concentration and volumetric flow rate of the gas stream to the flare. To the extent that a single monitoring location cannot be used for both the north and south main flare, ConocoPhillips will need to monitor flow and measure total sulfur concentration at more than one location to determine compliance with the main flare emission limit.

Regarding the flare at the Jupiter Sulfur Recovery facility located at ConocoPhillips, the SRU flare and SRU/ATS [24] stack, which are roughly the same height, share an emission limit in Montana's air quality permit for ConocoPhillips; the Jupiter SRU/ATS stack and the SRU flare each have an SO_2 emission limit of 25.00 lb/hr and 0.300 tons/day. Emissions from the SRU flare are only permitted during times that the ATS plant is not operating. *See* Air Quality Permit #2619–19, dated May 27, 2004, section II.B.1.a and b. (*See* reference document S.)

However, the Billings/Laurel SO_2 SIP is not clear with respect to the relationship between the SRU flare and SRU/ATS stack. The SIP contains emission limits on the Jupiter Sulfur SRU stack but does not indicate that the limits are shared between the SRU flare and SRU/ATS stack.[25] Since the SIP is not clear, we are proposing to clarify in the FIP that emissions can only be vented from the SRU flare when emissions are not being vented from the SRU/ATS stack. We believe that our proposal is consistent with what the state and ConocoPhillips intended in the SIP. First, the SRU flare and SRU/ATS stack were modeled as one point in the state's attainment demonstration. Second, Air Quality Permit #2619–19, dated May 27, 2004, indicates that emissions from the SRU flare can only occur during times that the ATS plant is not operating.

We are proposing that compliance with the SRU flare emission limit, when Jupiter Sulfur vents emissions to the SRU flare rather than the SRU/ATS stack, be determined by measuring the total sulfur concentration and volumetric flow rate of the gas stream to the flare.[26] Our proposal regarding the SRU flare supports our attainment demonstration.

D. ExxonMobil

1. Flare Requirements

The state's attainment demonstration and our subsequent attainment modeling for the FIP assume that ExxonMobil's primary process and turnaround flares are limited to 150 pounds of SO_2 per three hour period.[27] From correspondence from ExxonMobil, dated February 4, 2004, we understand that ExxonMobil has a turnaround flare that is only used about 30–40 days every five to six years, when the facility's major SO_2 source, the fluid catalytic cracking unit, is not normally operating. (*See* reference document E.) Therefore, in lieu of establishing a separate emission limit for the turnaround flare, we are proposing one combined emission limit for the primary process and turnaround flares.

Our assumption is that the flow and concentration monitoring devices installed to measure the gas stream to the primary process flare will also be able to measure the gas stream to the turnaround flare. To the extent that a single monitoring location cannot be used to measure the gas stream to both the primary process flare and the turnaround flare, we may allow alternative measures to determine volumetric flow rate and total sulfur concentrations of the gas stream to the turnaround flare if the turnaround flare is used infrequently—*e.g.*, only for refinery turnarounds once every five to six years. Such alternative measures could include using good engineering judgment to determine volumetric flow rate to the flare or manually sampling the gas stream to the flare to determine total sulfur concentrations.

2. Compliance Monitoring of Refinery Fuel Gas Combustion Emission Limits

Two of the emission limits contained in the ExxonMobil portion of the Billings/Laurel SO_2 SIP are combined emission limits for refinery fuel gas combustion sources. The emission limits, contained in ExxonMobil's 1998 and 2000 exhibits, are in pounds of SO_2 per 3-hour and 24-hour averaging periods.[28] Compliance with the emission limits is determined by measuring the H_2S content of the refinery fuel gas combusted and the flow of the fuel gas to the combustion

[23] See Modeling discussion in Section III.E.5, below.

[24] ATS stands for Ammonium Thiosulfate.

[25] See section 3(A)(3) of ConocoPhillips' 1998 exhibit. (*See* document FF for a copy of the exhibit.)

[26] Note that the SRU/ATS stack has an SO_2 CEMS and flow monitor to determine compliance when emissions are vented through that stack.

[27] See Modeling discussion in Section III.E.5, below.

[28] See sections 3(A)(1) and 3(B)(2) of ExxonMobil's 1998 and 2000 exhibits. (*See* reference documents GG and HH for copies of the exhibits.)

sources.[29] The state's assumption is that when the fuel is combusted, all the H_2S converts to SO_2 and is emitted to the atmosphere. By measuring H_2S content of the fuel and the flow of the fuel to the combustion sources, the amount of SO_2 emitted per 3-hour and 24-hour averaging periods can be calculated.

We were concerned that the method the state established to measure the H_2S concentration was not adequate under all scenarios. Specifically, we determined that the H_2S concentrations in refinery fuel gas could exceed the levels which the H_2S continuous emission monitoring system (CEMS) would be able to monitor.[30] Therefore, the emissions of SO_2 from the refinery fuel gas combustion sources could be underestimated. We concluded that the refinery fuel gas combustion sources emission limits were not enforceable under all scenarios and, therefore, did not meet the requirements of section 110(a)(2)(A) of the Act. On May 22, 2003 (68 FR 27908), we limitedly approved and limitedly disapproved the refinery fuel gas combustion emission limits and method used to measure the H_2S in the refinery fuel gas.

Because of this limited disapproval, we are proposing a new method for measuring the H_2S concentrations in the refinery fuel gas when the H_2S concentrations in the refinery fuel gas exceed the range of the H_2S CEMS. The method we are proposing is identical to the method included in CHS Inc.'s 1998 exhibit.[31]

Specifically, we are proposing that within 4 hours of the initial determination that the H_2S concentrations in the refinery fuel gas stream exceed the upper range of the H_2S CEMS, ExxonMobil shall initiate sampling of the refinery fuel gas stream at the fuel header on a once-per-three-hour-period frequency using the Tutwiler method in 40 CFR 60.648. The Tutwiler method will determine the H_2S concentration in the refinery fuel gas. We are also proposing that the Tutwiler-derived H_2S refinery fuel gas concentration be used in calculations to determine the hourly, 3-hour and 24-hour SO_2 emission rates, in pounds, from refinery fuel gas combustion. These emission rates would then be used to determine compliance with the refinery fuel gas combustion emission limits in ExxonMobil's 1998 and 2000 exhibits when the H_2S concentrations in the refinery fuel gas stream exceed the upper range of the H_2S CEMS.[32]

We are also proposing reporting requirements similar to the requirements adopted by the state for CHS Inc. and those contained in 40 CFR 60.7(c).

3. Compliance Monitoring of Coker CO-Boiler Emission Limits

Two of the emission limits contained in the ExxonMobil portion of the Billings/Laurel SO_2 SIP are emission limits on the coker CO-boiler stack. The emission limits contained in ExxonMobil's 2000 exhibit are in pounds of SO_2 per 3-hour and 24-hour averaging periods.[33] In the SIP, compliance with the emission limits is based on an equation that was derived from historical testing and CEMS data, whereby one can determine pounds of SO_2 emitted from the coker CO-boiler by multiplying a constant by the coker fresh feed rate (in barrels/day).[34]

We had three concerns with the state's empirical method for determining compliance with ExxonMobil's coker CO-boiler stack emission limits and they were as follows: (1) The empirical method did not apply, and hence there was no compliance monitoring method, when the sulfur content of the reactor feed exceeded 5.11 percent by weight. We believed the SIP should contain a compliance monitoring method for all operating scenarios; (2) The compliance monitoring equation was basically the ''best fit'' line through the test data. To be more conservative, we believed the compliance monitoring equation should be the upper bound of the 95% confidence level of the equation; and (3) Finally, since a feed-rate meter for the coker unit was required for the compliance monitoring method, the feed-rate meter should have been subject to Quality Assurance/Quality Control (QA/QC) requirements similar to those for the FCC feed-rate meter. Therefore, we concluded that the emission limits under section 3(B)(1) of ExxonMobil's 2000 exhibit were enforceable under some but not all scenarios and did not satisfy the requirements of section 110(a)(2)(A) of the Act. (*See* 67 FR 22242, at 22244, col. 2 (May 2, 2002).) On May 22, 2003 (68 FR 27908), we limitedly approved and limitedly disapproved the coker CO-boiler stack emission limits and method used to monitor compliance.

ExxonMobil's 1998 exhibit requires ExxonMobil to install portable CEMS to monitor the SO_2 and flow to the coker CO-boiler stack or implement an Alternative Monitoring Plan approved by the Department and EPA if ExxonMobil exhausts coker unit flue gas through the coker CO-boiler stack more than 336 hours in a calendar quarter.[35] ExxonMobil exceeded the 336 hours per calendar quarter, and on March 20, 2002, the state required ExxonMobil to install SO_2 and flow CEMS on the coker CO-boiler stack. On October 21, 2002, the state sent a letter to ExxonMobil indicating that the reported test results of the monitors demonstrated that the SO_2 CEMS and flow monitors met the testing requirements. (*See* reference documents T & U, respectively.)

Since SO_2 and flow CEMS have already been installed on the coker CO-boiler stack, we are proposing that these CEMS, in conjunction with the appropriate calculations mentioned below, be used to determine compliance with the emission limits established in section 3(B)(1) of ExxonMobil's 2000 exhibit. Specifically, we are proposing that ExxonMobil operate and maintain CEMS to measure SO_2 concentrations from the coker CO-boiler stack and a continuous stack flow rate monitor to measure stack gas flow rates from the coker CO-boiler stack. We are proposing that the SO_2 and flow rate CEMS meet the CEM Performance Specifications contained in sections 6(C) and (D), respectively, of ExxonMobil's 1998 exhibit, except that ExxonMobil shall notify EPA in writing of each annual Relative Accuracy Test Audit a minimum of twenty five (25) working days prior to actual testing.

We are proposing that compliance with ExxonMobil's coker CO boiler emission limits [36] be determined using the data from the CEMS mentioned above and in accordance with the appropriate calculations described in

[29] See section 4(B) of ExxonMobil's 1998 exhibit. (*See* reference document GG for a copy of the exhibit.)

[30] Section 6(B)(3) of ExxonMobil's 1998 exhibit indicates that ExxonMobil shall insure that the H_2S concentration monitor at the refinery fuel header is capable of measuring H_2S concentrations in the range of 0–1200 ppmv. (*See* document GG for a copy of the exhibit.) The information available to us indicated that the H_2S concentrations in the refinery fuel gas could exceed 1200 ppmv. (*See* reference document JJ.)

[31] See section 6(B)(3) of CHS Inc.'s 1998 exhibit. (*See* reference document DD for a copy of the exhibit.)

[32] See sections 3(A)(1) and 3(B)(2) of ExxonMobil's 1998 and 2000 exhibits. (*See* reference documents GG and HH for copies of the exhibits.)

[33] See section 3(B)(1) of ExxonMobil's 2000 exhibit. (*See* reference document HH for a copy of the exhibit.)

[34] See section 4(c) of ExxonMobil's 2000 exhibit. (*See* reference document HH for a copy of the exhibit.)

[35] See section 6(B)(4) of ExxonMobil's 1998 exhibit (*See* reference document GG for a copy of the exhibit.)

[36] See section 3(B)(1) of ExxonMobil's 2000. (*See* reference document HH for a copy of the exhibit.)

ExxonMobil's 1998 exhibit.[37] We are also proposing reporting requirements similar to the requirements adopted in the Billings/Laurel SO_2 SIP and those contained in 40 CFR 60.7(c).

E. Montana Sulphur & Chemical Company (MSCC)

1. Flare Requirements

The state's attainment demonstration and our subsequent attainment modeling for the FIP assume that MSCC's flares are limited to a combined total of 150 pounds of SO_2 per three-hour period.[38] We understand that MSCC actually has three flares at the plant that serve a common flare system. Correspondence from MSCC, dated February 4, 2004, indicates that there is an 80-foot west flare, 125-foot east flare, and 100-meter flare. (*See* reference document H.) In discussions with MSCC on March 9, 2004, we confirmed that MSCC understood that the state's 150 lbs of SO_2/3-hour limit was intended to be a ''bubble'' or combined limit for all three flares. (*See* reference document V.) Therefore, in lieu of establishing a separate emission limit for each of the three flares, we are proposing one combined emission limit for the three flares. Compliance with the flare emission limit will be determined as discussed in Section III.A, above. In the event MSCC cannot monitor all three flares from a single monitoring location, MSCC will need to establish multiple monitoring locations.

2. SRU 100-Meter Stack

On May 2, 2002, EPA disapproved SIP emission limits the state established for the sulfur recovery unit (SRU) 100-meter stack because of improper stack height credit (*see* 67 FR 22168).[39]

Because we disapproved the emission limits, we are proposing the following emission limits for the SRU 100-meter stack: emissions of SO_2 shall not exceed (a) 3,003.1 pounds per three-hour period, (b) 24,025.0 pounds per calendar day, and (c) 9,088,000.0 pounds per calendar year.[40] The emission limits for the SRU 100-meter stack are based on modeling conducted by EPA to show attainment of the SO_2 NAAQS in the Billings/Laurel area. A detailed discussion of the modeling is contained in Section III.E.5 of this document.

We are also proposing that compliance with the above emission limits be determined according to the methods established in MSCC's 1998 exhibit. Finally, we are proposing certain quarterly reporting requirements. The quarterly reporting requirements are similar to the reporting requirements contained in the Billings/Laurel SO_2 SIP and those contained in 40 CFR 60.7(c).

In the Billings/Laurel SO_2 SIP, the State of Montana adopted variable emission limits for several sources, including MSCC's SRU 100-meter stack, which depend on the ''buoyancy flux'' of the SO_2 gas plume as it exits the stack. Buoyancy flux is a function of gas flow rate and gas temperature in the stack, which varies within certain parameters. While we approved variable emission limits for several sources, other than MSCC, we did so with reservations. (*See* our July 28, 1999, proposed rulemaking action on the Billings/Laurel SO_2 SIP, 64 FR 40791, starting at 64 FR 40794, col. 3, and our May 2, 2002, final rulemaking action, 67 FR 22168, starting 67 FR 22206, col. 2, for a full discussion of our concerns with the variable emission limit concept.) We are proposing fixed emission limits, rather than variable emission limits, on MSCC's SRU 100-meter stack because they are less complicated to model, monitor, and enforce. For example, the state's original modeling effort to determine emissions limits that included three variable emission limited sources required a total of 1320 modeling runs. A conventional SIP modeling analysis with fixed emission limits for each source requires only a single modeling run. Additionally, based on actual emissions data for MSCC's SRU 100-meter stack for 2003, 2004 and 2005, MSCC can meet the fixed 3-hour and 24-hour emission limits we are proposing (see reference documents FFF and GGG).

3. SRU 30-Meter Stack

On May 2, 2002, EPA limitedly approved and limitedly disapproved the SRU 30-meter stack emission limits because the SIP did not adequately limit the fuel burned in the boilers and heaters that exhaust through the SRU 30-meter stack, and did not provide a monitoring method that would make the emission limits practically enforceable (*see* 67 FR 22168, at 22171).[41]

Because of this limited disapproval, we are proposing that H_2S concentrations in the fuel gas burned in the boilers and heaters while any boiler or heater is exhausting through the SRU 30-meter stack be limited to 100 ppm or less, averaged over a three-hour period. Our information indicates that limiting H_2S concentrations to this level should assure compliance with the SRU 30-meter stack emission limits. Worst-case conditions would be when all the heaters and boilers are exhausting to the SRU 30-meter stack, operating at maximum heat input capacity, and using fuel with the lowest nominal fuel gas value. Under these conditions, MSCC would be using the maximum volume of fuel, and potential emissions of SO_2 from the SRU 30-meter stack would be greatest.

Using a heat input capacity value of 83 MM Btu/hour and a nominal fuel gas value of 350 Btu/scf, we determined that a limit of 100 ppm H_2S would just ensure compliance with the SRU 30-meter stack's 12.0 pounds of SO_2/3-hour limit.[42] [43] Since the daily and annual limits are merely multiples of the 3-hour limit, this concentration limit would also ensure compliance with the daily and annual limits.

To determine compliance with the 100 ppm H_2S limit, we are proposing that any time fuel other than natural gas is burned in a heater or boiler that exhausts to the SRU 30-meter stack, MSCC must measure the H_2S content of the fuel burned within one hour from when a heater or boiler begins exhausting to the SRU 30-meter stack and on a once-per-three-hour-period frequency until no heater or boiler is exhausting to the SRU 30-meter stack. We are proposing that MSCC use a portable H_2S monitor to determine the H_2S content of the fuel burned. The monitor must have a range of 0–500 ppm of H_2S and an accuracy of $+/-2\%$ of full scale (*i.e.*, the design range of the monitor—in this case 500 ppm). (*See*

[37] See sections 2(A)(1), (8), (11)(a), and (16) of ExxonMobil's 1998 exhibit. (*See* reference document GG for a copy of the exhibit.)

[38] See Modeling discussion in Section III.E.5, below.

[39] The emission limits were contained in sections 3(A)(1)(a) and (b) and 3(A)(3) of MSCC's 1998 exhibit. (*See* reference document II for a copy of the exhibit.)

[40] Our FIP proposes to retain the calendar year emission limit contained in section 3(A)(1)(a)(iv) of MSCC's 1998 exhibit. (*See* reference document II.)

[41] The emission limit is contained in section 3(A)(2) of MSCC's 1998 exhibit. (*See* reference document II for a copy of the exhibit.)

[42] See reference documents TTT and UUU. Reference document TTT contains information supplied by MDEQ, including heat input capacities for the various heaters and boilers, and nominal fuel gas values. These are the values we used in our calculations in reference document UUU.

[43] The state's technical review document for MSCC's Title V operating permit indicates that the maximum heat input capacity for some of the heaters and boilers could be greater than their ''Bigelow'' ratings (see reference document VVV). To ensure attainment even at potentially higher heat input capacities, we modeled the SRU 30-meter stack at an emission rate of 15 lbs of SO_2/3-hours (0.63 g/s), 25% higher than the 12 lbs of SO_2/3-hour emission limit. At 0.63 g/s, we still modeled attainment of the 3-hour and 24-hour SO_2 NAAQS. Thus, the 100 ppm H_2S concentration would be consistent with attainment even if the total heat input capacity of the heaters and boilers were significantly higher.

reference documents ZZ and AAA for vendor literature and discussion notes with vendor.)

While we are proposing the foregoing approach for determining compliance with the SRU 30-meter stack emission limits, we are soliciting input on whether we should promulgate a different compliance determining method. One alternative approach would involve the measurement of H_2S concentrations as described above, but would not create a concentration limit. MSCC would be required to install a fuel gas flow rate monitor that would measure the flow of all the fuel burned in the heaters and boilers, and keep logs of (a) the dates and time periods that emissions were exhausted through the SRU 30-meter stack, (b) the heaters and boilers exhausting to the SRU 30-meter stack, (c) all the heaters and boilers operating during such periods, and (d) the type of fuel that is burned in any heater or boiler at the time that emissions were exhausted to the SRU 30-meter stack.

SO_2 emissions from the SRU 30-meter stack would be calculated based on the H_2S content of the fuel burned and the flow of the fuel to the heaters and boilers. Since the fuel flow meter would be installed in the fuel gas header and would measure all the fuel gas burned regardless of whether or not all the heaters or boilers were exhausting to the SRU 30-meter stack, the calculations of SO_2 emissions from the SRU 30-meter stack would be pro-rated based on the estimated percentage of fuel burned in the heaters and boilers exhausting to the SRU 30-meter stack versus fuel burned in all operating heaters and boilers.

We envision that one way to calculate this pro-ration factor would be to divide the maximum heat input capacity of the heaters and boilers exhausting to the SRU 30-meter stack by the maximum heat input capacity of all operating heaters and boilers during such periods. In order to ensure compliance with the three-hour emission limits, this pro-ration factor would have to be calculated on an hourly or, at most, three-hourly basis.

We solicit input on other possible approaches for determining compliance with the SRU 30-meter stack emission limits.

Finally, we are proposing quarterly reporting requirements. The quarterly reporting requirements are similar to the reporting requirements contained in the Billings/Laurel SO_2 SIP and those contained in 40 CFR 60.7(c).

4. Combined SO_2 Emission Limit From the Auxiliary Vent Stacks

On May 2, 2002, EPA disapproved the combined SO_2 emission limit from the auxiliary vent stacks because the SIP did not restrict the sulfur content of the fuel burned in the heaters and boilers when they exhaust through the auxiliary vent stacks, and lacked a monitoring method that would make the emission limit practically enforceable (*see* 67 FR 22168, at 22171).[44] Because of this disapproval, we are proposing combined SO_2 emission limits for the auxiliary vent stacks and a method for determining compliance with the emission limits.

The emission limits we are proposing are based on the emission limit in MSCC's 1998 exhibit [45] and apply to the auxiliary vent stacks associated with the Railroad Boiler, the H–1 Unit, the H1–A Unit, the H1–1 Unit, and the H1–2 Unit. The issues associated with monitoring compliance with these limits are essentially the same as those associated with monitoring compliance with the SRU 30-meter stack emission limits (*see* 67 FR 22168, at 22202, May 2, 2002, reference document AA). Thus, we are proposing the same approach for monitoring compliance with these emission limits as we describe in section III.E.3, above—H_2S concentrations in the fuel gas burned in the boilers and heaters while any boiler or heater is exhausting to the auxiliary vent stacks would be limited to 100 ppm or less, averaged over a three-hour period, and the same monitoring requirements would apply. Similarly, we are soliciting input on whether we should promulgate a different compliance determining method, as described in section III.E.3 above.

Finally, we are proposing quarterly reporting requirements. The quarterly reporting requirements are similar to reporting requirements contained in the Billings/Laurel SO_2 SIP and those contained in 40 CFR 60.7(c).

5. Modeling To Support Emission Limits

To establish MSCC's SRU 100-meter stack emission limits, EPA re-ran Montana's 1996 SIP modeling analysis with some modifications explained below. Our intent was to retain the state's original attainment modeling analysis (which supports the emission limits established for sources in the Billings/Laurel SO_2), but modify the files as necessary to establish SO_2 emission limits at MSCC's SRU 100-meter stack based on a 65 meter stack height credit and a fixed buoyancy flux. We used the same dispersion model that the state used (per EPA 1996 modeling guidance (*i.e.*, ISC2/Complex1)) and the same meteorological data.

There were several minor modeling input changes made for some of the sources. In December 2003, EPA sent letters (pursuant to section 114 of the Act) to all of the sources in the Billings/Laurel area requesting clarification on the appropriate emission point parameters for modeling. (*See* reference documents L through R.) Based on the responses to the 114 letters, we modified some of the emission point modeling parameters contained in the state's modeling analysis. The June 2006 Technical Support Document titled ''Dispersion Modeling to Support Sulfur Dioxide (SO_2) Emission Limits in Federal Implementation Plan (FIP) for Billings/Laurel, Montana'' (*see* reference document WW) identifies the emission point modeling parameters used in our modeling analysis. The document also identifies changes that were recommended by sources but for various reasons were not incorporated into EPA's modeling. An electronic record (CD) of EPA's modeling input and output files is contained in the docket (*see* reference document EEE).

In the state's 1996 modeling, MSCC's SRU 100-meter stack was modeled with a 97 meter stack height credit and a variable emission limit linked to 10 stack buoyancy flux values. We modeled MSCC's SRU 100-meter stack with a 65 meter stack height credit and a single representative buoyancy flux value. Buoyancy flux is a function of gas flow rate and temperature in the stack. The stack temperature we used in our modeling, 540.0°K, was the mean stack temperature measured with CEMS from October 1, 2001, to September 30, 2003. The mean stack velocity we used in our modeling, 14.0 m/s, was back-calculated from the buoyancy flux equation using the buoyancy flux and temperature values from October 1, 2001, to September 30, 2003.[46] [47] It is EPA's modeling practice to select mean values from historical data because, unless there is some change in plant

[44] The emission limits are contained in section 3(A)(4) of MSCC's 1998 exhibit. (*See* document II for a copy of the exhibit.)

[45] The emission limit is contained in section 3(A)(4) of MSCC's 1998 exhibit. (*See* document II for a copy of the exhibit.)

[46] The buoyancy flux (F) is defined as: $F = (2.45 VD^2 (T_s\text{-}T))/T_s$. Where: F = buoyancy flux in m^4/m^3; V = stack gas exit velocity in meters per second at actual conditions; D = inside stack-top diameter in meters (1.07 m); T_s = stack gas temperature in Kelvin; and T = ambient air temperature in Kelvin (assumed at 281.2 °K). (See reference document II)

[47] See reference document FFF for temperature and buoyancy flux values.

configuration, future operations are likely to reflect similar values.

It should be noted that with the changes mentioned above, the 24-hour highest receptor point modeled showed the 24-hour and 3-hour SO_2 high-second-high (HSH) values to be 365 μg/m^3 and 1243.6 μg/m^3, respectively. The 3-hour highest receptor point modeled showed the 3-hour SO_2 HSH value to be 1291.5 μg/m^3. The SO_2 24-hour and 3-hour SO_2 NAAQS are 365 μg/m^3 and 1300 μg/m^3, respectively. Therefore, the FIP shows attainment of the NAAQS.

When we modeled the four process flares at 500 lbs/3-hour period instead of 150 lbs/3-hour period, the 3-hour HSH concentration at the highest 3-hour receptor point only increased by 2 μg/m^3, to 1293.5 μg/m^3. This means that even if the four process flares were allowed to emit SO_2 at 500 lbs/3-hour period, the FIP would still show attainment of the 3-hour NAAQS. (We modeled this alternative emissions rate because, as discussed earlier, we are inviting comment on whether we should consider an emissions limit for the process flares of 500 lbs SO_2/calendar day instead of 150 lbs/3-hour period. We modeled the 500 pounds of SO_2 emissions over a 3-hour period to ensure attainment of the 3-hour SO_2 NAAQS.)

In the state's modeling analysis submitted with the SIP, the highest receptor point modeled had 24-hour and 3-hour HSH SO_2 values of 354 μg/m^3 and 1245 μg/m^3, respectively. This difference in FIP and SIP modeling outputs is due largely to the fact that EPA modeled MSCC's 100-meter SRU stack at 65 meters. In addition, in their responses to the section 114 letters mentioned above, some sources provided updated locations of emission points. (It was not that emission points had moved; the technology used to describe the emission point locations had changed.) Therefore, peak receptor locations changed in the FIP versus SIP modeling.

IV. Request for Public Comment

EPA is soliciting public comment on all aspects of this proposed FIP. Interested parties should submit comments according to the procedures outlined earlier in the **ADDRESSES** section and in Part (I)(A) of the **SUPPLEMENTARY INFORMATION** section. Comments received on or before September 11, 2006 will be considered in the final action taken by EPA.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), all ''regulatory actions'' that are ''significant'' are subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. A ''regulatory action'' is defined as ''any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to result in the promulgation of a final rule or regulation, including * * * notices of proposed rulemaking.'' A ''regulation or rule'' is defined as ''an agency statement of general applicability and future effect, * * *''

The proposed FIP is not subject to OMB review under E.O. 12866 because it applies to only four specifically named facilities and is therefore not a rule of general applicability. Thus, it is not a ''regulatory action'' under E.O. 12866, and was not submitted to OMB for review.

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *'' 44 U.S.C. 3502(3)(A). Because the proposed FIP only applies to four companies, the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. section 601 *et seq.*, EPA generally must prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. 5 U.S.C. §§ 603, 604 and 605(b).

This proposed FIP will not have a significant economic impact on a substantial number of small entities because this proposed FIP applies to only four sources (CHS Inc., ConocoPhillips, ExxonMobil and MSCC) in the Billings/Laurel, Montana area. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 04–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and for final rules for which EPA published a notice of proposed rulemaking, if those rules contain ''federal mandates'' that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If section 202 requires a written statement, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why EPA did not adopt that alternative. The provisions of section 205 do not apply when they are inconsistent with applicable law. Section 204 of UMRA requires EPA to develop a process to allow elected officers of state, local, and tribal governments (or their designated, authorized employees), to provide meaningful and timely input in the development of EPA regulatory proposals containing significant Federal intergovernmental mandates.

EPA has determined that the proposed FIP contains no federal mandates on state, local or tribal governments, because it will not impose any enforceable duties on any of these entities. EPA further has determined that the proposed FIP will not result in the expenditure of $100 million or more by the private sector in any one year. Although the proposed FIP would impose enforceable duties on entities in the private sector, the costs are expected to be less than $100 million in any one year. Consequently, sections 202, 204, and 205 of UMRA do not apply to the proposed FIP.

Before EPA establishes any regulatory requirements that might significantly or uniquely affect small governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments 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 FIP will not significantly or uniquely affect small governments, because it imposes no requirements on small governments. Therefore, the requirements of section 203 do not apply to the proposed FIP.

E. Executive Order 13132, Federalism

Executive Order 13132, *Federalism* (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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'' include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

The proposed rule does not have federalism implications. This FIP will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule proposes standards appropriate for four companies in the Billings/Laurel, Montana area, and thus does not directly affect any state or local government. It does not alter the relationship or the distribution of power and responsibilities established by the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communication between EPA and State and local governments, EPA specifically solicits comments on the proposed rule from State and local officials.

F. Executive Order 13175, 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.''

This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes as specified in Executive Order 13175. This Action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed FIP is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Further, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed FIP is not subject to Executive Order 13045 because it implements a previously promulgated health and safety based Federal standard.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law No. 104–113 (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards.

While the proposed rulemaking involves technical standards, no voluntary consensus standards have been identified. EPA welcomes comments on this aspect of the proposed FIP and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: June 29, 2006.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

For reasons stated in the preamble, 40 CFR part 52 is proposed to be 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 BB—Montana

2. Subpart BB is proposed to be amended by adding § 52.1392 to read as follows:

§ 52.1392. Federal Implementation Plan for the Billings/Laurel Area.

(a) *Applicability.* This section applies to the owner(s) or operator(s), including any new owner(s) or operator(s) in the event of a change in ownership or operation, of the following facilities in the Billings/Laurel, Montana area: CHS Inc. Petroleum Refinery, Laurel Refinery, 803 Highway 212 South, Laurel, MT; ConocoPhillips Petroleum Refinery, Billings Refinery, 401 South 23rd St., Billings, MT; ExxonMobil Petroleum Refinery, 700 ExxonMobil Road, Billings, MT; and Montana

Sulphur & Chemical Company, 627 Exxon Road, Billings, MT.

(b) *Scope.* The facilities listed in paragraph (a) of this section are also subject to the Billings/Laurel SO_2 SIP, as approved at 40 CFR 52.1370(c)(46) and (52). In cases where the provisions of this FIP address emissions activities differently or establish a different requirement than the provisions of the approved SIP, the provisions of this FIP take precedence.

(c) *Definitions.* For the purpose of this section, we are defining certain words or initials as described in this paragraph. Terms not defined below that are defined in the Clean Air Act or regulations implementing the Clean Air Act, shall have the meaning set forth in the Clean Air Act or such regulations.

(1) *Annual Emissions* means the amount of SO_2 emitted in a calendar year, expressed in pounds per year rounded to the nearest pound.

Where:

Annual emissions = Σ Daily emissions within the calendar year.

(2) *Calendar Day* means a 24-hour period starting at 12:00 midnight and ending at 12:00 midnight, 24 hours later.

(3) *Clock Hour* means a twenty-fourth (1/24) of a calendar day; specifically any of the standard 60-minute periods in a day that are identified and separated on a clock by the whole numbers one through twelve.

(4) *Continuous Emission Monitoring System or CEMS* means all continuous concentration and volumetric flow rate monitors, associated data acquisition equipment, and all other equipment necessary to meet the requirements of this section for continuous monitoring.

(5) *Daily Emissions* (i) means the amount of SO_2 emitted in a calendar day, expressed in pounds per day rounded to the nearest tenth of a pound.

Where:

Daily emissions = Σ Three hour emissions within a calendar day.

(ii) Each calendar day is comprised of eight non-overlapping three-hour periods. The three hour emissions from all the three-hour periods in a calendar day shall be used to determine the day's emissions.

(6) *Exhibit* means for a given facility named in 40 CFR 52.1392(a), exhibit A to the stipulation of the Montana Department of Environmental Quality and that facility, adopted by the Montana Board of Environmental Review on either June 12, 1998 or March 17, 2000.

(7) *1998 Exhibit* means for a given facility named in 40 CFR 52.1392(a), the exhibit adopted by the Montana Board of Environmental Review on June 12, 1998.

(8) *2000 Exhibit* means for a given facility named in 40 CFR 52.1392(a), the exhibit adopted by the Montana Board of Environmental Review on March 17, 2000.

(9) *Flare* means a combustion device that uses an open flame to burn combustible gases with combustion air provided by uncontrolled ambient air around the flame. This term includes both ground and elevated flares.

(10) The initials *Hg* mean mercury.

(11) *Hourly* means or refers to each clock hour in a calendar day.

(12) *Hourly Average* means an arithmetic average of all valid and complete 15-minute data blocks in a clock hour. Four (4) valid and complete 15-minute data blocks are required to determine an hourly average for each CEMS and source per clock hour.

Exclusive of the above definition, an hourly average may be determined with two valid and complete 15-minute data blocks, for two of the 24 hours in any calendar day.

A complete 15-minute data block for each CEMS shall have a minimum of one (1) data point value; however, each CEMS shall be operated such that all valid data points acquired in any 15-minute block shall be used to determine the 15-minute block's reported concentration and flow rate.

(13) *Hourly Emissions* means the pounds per clock hour of SO_2 emissions from a source (flare, stack, fuel oil system, sour water system, or fuel gas system) determined using hourly averages and rounded to the nearest tenth of a pound.

(14) The initials H_2S mean hydrogen sulfide.

(15) The initials *MBER* mean the Montana Board of Environmental Review.

(16) The initials *MDEQ* mean the Montana Department of Environmental Quality.

(17) The initials *mm* mean millimeters.

(18) The initials *MSCC* mean the Montana Sulphur & Chemical Company.

(19) The initials *ppm* mean parts per million.

(20) The initials *SCFH* mean standard cubic feet per hour.

(21) The initials *SCFM* mean standard cubic feet per minute.

(22) *Standard Conditions* means (a) 20 °C (293.2 °K, 527.7 °R, or 68.0 °F) and 1 atmosphere pressure (29.92 inches Hg or 760 mm Hg) for stack and flare gas emission calculations, and (b) 15.6 °C (288.7 °K, 520.0 °R, or 60.3 °F) and 1 atmosphere pressure (29.92 inches Hg or 760 mm Hg) for refinery fuel gas emission calculations.

(23) The initials SO_2 mean sulfur dioxide.

(24) The initials *SWS* mean sour water stripper.

(25) *Three hour emissions* means the amount of SO_2 emitted in each of the eight non-overlapping three-hour periods in a calendar day, expressed in pounds and rounded to the nearest tenth of a pound.

Where:

Three hour emissions = Σ Hourly emissions within the three hour period.

(26) *Three hour period* means any of the eight non-overlapping three-hour periods in a calendar day: midnight to 3 a.m., 3 a.m. to 6 a.m., 6 a.m. to 9 a.m., 9 a.m. to noon, noon to 3 p.m., 3 p.m. to 6 p.m., 6 p.m. to 9 p.m., 9 p.m. to midnight.

(27) *Turnaround* means a planned activity involving shutdown and startup of one or several process units for the purpose of performing periodic maintenance, repair, replacement of equipment or installation of new equipment.

(28) *Valid* means data that is obtained from a monitor or meter serving as a component of a CEMS which meets the applicable specifications, operating requirements, and quality assurance and control requirements of section 6 of ConocoPhillips', CHS Inc.'s, ExxonMobil's, and MSCC's 1998 exhibits, respectively, and 40 CFR 52.1392.

(d) CHS Inc. emission limits and compliance determining methods.

(1) *Introduction:* The provisions for CHS Inc. cover the following units:

(i) The flare.

(ii) Combustion sources, which consist of those sources identified in the combustion sources emission limit in section 3(A)(1)(d) of CHS Inc.'s 1998 exhibit.

(2) *Flare requirements:* (i) *Emission limit:* The total emissions of SO_2 from the flare shall not exceed 150.0 pounds per three hour period.

(ii) *Compliance determining method:* Compliance with the emission limit in 40 CFR 52.1392(d)(2)(i) shall be determined in accordance with 40 CFR 52.1392(h).

(3) *Combustion sources:* (i) *Restrictions:* Sour water stripper overheads (ammonia (NH3) and H2S gases removed from the sour water in the sour water stripper) shall not be burned in the main crude heater. At all times, CHS Inc. shall keep a chain and lock on the valve that supplies sour water stripper overheads from the old

sour water stripper to the main crude heater and shall keep such valve closed.

(ii) *Compliance determining method:* CHS Inc. shall log and report any noncompliance with the requirements of 40 CFR 52.1392(d)(3)(i).

(4) *Data reporting requirements:* (i) CHS Inc. shall submit quarterly reports beginning with the first calendar quarter following [DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. The quarterly reports shall be submitted within 30 days of the end of each calendar quarter. The quarterly reports shall be submitted to the Air Program Contact at EPA's Montana Operations Office, Federal Building, 10 West 15th Street, Suite 3200, Helena, MT 59626. The quarterly report shall be certified for accuracy in writing by a responsible CHS Inc. official. The quarterly report format shall consist of both a comprehensive electronic-magnetic report and a written hard copy data summary report.

(ii) The electronic report submitted to the EPA shall be on magnetic or optical media, and such submittal shall follow the reporting format of electronic data being submitted to the MDEQ. The EPA may modify the reporting format delineated in this section, and thereafter CHS Inc. shall follow the revised format. In addition to submitting the electronic quarterly reports to the EPA, CHS Inc. shall also record, organize and archive for at least five years the same data, and upon request by the EPA, CHS Inc. shall provide the EPA with any data archived in accordance with this provision. The electronic report shall contain the following:

(A) Hourly average total sulfur concentrations in ppm in the gas stream to the flare;

(B) Hourly average volumetric flow rates in SCFH of the gas stream to the flare;

(C) Hourly average temperature (in (F) and pressure (in mm or inches of Hg) of the gas stream to the flare;

(D) Hourly emissions from the flare in pounds per clock hour; and

(E) Daily calibration data for flare CEMS.

(iii) The quarterly written report format submitted to the EPA shall contain the following information:

(A) Three hour emissions in pounds per three hour period from the flare;

(B) The results of the quarterly Cylinder Gas Audits (CGA) or Relative Accuracy Audits (RAA) required by 40 CFR part 60, Appendix F, and the annual Relative Accuracy Test Audit (RATA) for the total sulfur analyzer(s);

(C) For all periods of flare volumetric flow rate monitoring system or total sulfur analyzer system downtime, the written report shall identify:

(*1*) Dates and times of downtime;

(*2*) Reasons for downtime; and

(*3*) Corrective actions taken to mitigate downtime;

(D) For each three hour period in which the flare emission limit is exceeded, the written report shall identify:

(*1*) The date, start time, and end time of the excess emissions;

(*2*) Total hours of operation with excess emissions, the hourly emissions, and the three hour emissions;

(*3*) All information regarding reasons for operating with excess emissions; and

(*4*) Corrective actions taken to mitigate excess emissions.

(E) For all periods that the range of the volumetric flare flow rate monitor(s) is (are) exceeded, the quarterly written report shall identify:

(*1*) Date and time when the range of the flare volumetric flow monitor(s) is (are) exceeded and

(*2*) The reliable estimation parameters used to determine flow in the gas stream to the flare and how the estimation parameters were derived.

(F) The date and time of any noncompliance with the requirements of 40 CFR 52.1392(d)(3)(i).

(G) When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

(e) ConocoPhillips emission limits and compliance determining methods.

(1) *Introduction:* The provisions for ConocoPhillips cover the following units:

(i) The main flare, which consists of two flares—the north flare and the south flare—that are operated on alternating schedules. These flares are referred to herein as the north main flare and south main flare, or generically as the main flare.

(ii) The Jupiter Sulfur SRU flare, which is the flare at Jupiter Sulfur, ConocoPhillips' sulfur recovery unit.

(2) *Flare requirements:* (i) *Emission limits:* (A) Emissions of SO_2 from the main flare (which can be emitted from either the north or south main flare, but not both at the same time) shall not exceed 150.0 pounds three hour period.

(B) Emissions of SO_2 from the Jupiter Sulfur SRU flare and the Jupiter Sulfur SRU/ATS stack (also referred to as the Jupiter Sulfur SRU stack) shall not exceed 75.0 pounds per three hour period, 600.0 pounds per calendar day, and 219,000 pounds per calendar year. At any one time, ConocoPhillips may only vent emissions from either the Jupiter Sulfur SRU flare or the Jupiter Sulfur SRU/ATS stack, but not both simultaneously.

(ii) *Compliance determining method:* (A) Compliance with the emission limit in 40 CFR 52.1392(e)(2)(i)(A) shall be determined in accordance with 40 CFR 52.1392(h). In the event that a single monitoring location cannot be used for both the north and south main flare, ConocoPhillips shall monitor the flow and measure the total sulfur concentration at more than one location in order to determine compliance with the main flare emission limit. ConocoPhillips shall log and report any instances when emissions are vented from the north main flare and south main flare simultaneously.

(B) Compliance with the emission limits and requirements in 40 CFR 52.1392(e)(2)(i)(B) shall be determined pursuant to ConocoPhillips' 1998 exhibit (*see* section 4(A) of the exhibit) for the Jupiter Sulfur SRU/ATS stack and in accordance with 40 CFR 52.1392(h) for the Jupiter Sulfur SRU flare. ConocoPhillips shall log and report any instances when emissions are vented from the Jupiter Sulfur SRU flare and the Jupiter Sulfur SRU/ATS stack simultaneously.

(3) *Data reporting requirements:* (i) ConocoPhillips shall submit quarterly reports on a calendar year basis, beginning with the first calendar quarter following [DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. The quarterly reports shall be submitted within 30 days of the end of each calendar quarter. The quarterly reports shall be submitted to the Air Program Contact at EPA's Montana Operations Office, Federal Building, 10 West 15th Street, Suite 3200, Helena, MT 59626. The quarterly report shall be certified for accuracy in writing by a responsible ConocoPhillips official. The quarterly report format shall consist of both a comprehensive electronic-magnetic report and a written hard copy data summary report.

(ii) The electronic report submitted to the EPA shall be on magnetic or optical media, and such submittal shall follow the reporting format of electronic data being submitted to the MDEQ. The EPA may modify the reporting format delineated in this section, and thereafter ConocoPhillips shall follow the revised format. In addition to submitting the electronic quarterly reports to the EPA, ConocoPhillips shall also record, organize and archive for at least five years the same data, and upon request by the EPA, ConocoPhillips shall provide the EPA with any data archived in accordance with this provision. The electronic report shall contain the following:

(A) Hourly average total sulfur concentrations in ppm in the gas stream to the ConocoPhillips main flare and Jupiter Sulfur SRU flare;

(B) Hourly average volumetric flow rates in SCFH of the gas streams to the ConocoPhillips main flare and Jupiter Sulfur SRU flare;

(C) Hourly average temperature (in °F) and pressure (in mm or inches of Hg) of the gas streams to the ConocoPhillips main flare and Jupiter Sulfur SRU flare;

(D) Hourly emissions in pounds per clock hour from the ConocoPhillips main flare and Jupiter Sulfur SRU flare; and

(E) Daily calibration data for the flare CEMS.

(iii) The quarterly written report submitted to the EPA shall contain the following information:

(A) Three hour emissions in pounds per three hour period from the ConocoPhillips main flare and Jupiter Sulfur SRU flare;

(B) The results of the quarterly Cylinder Gas Audits (CGA) or Relative Accuracy Audits (RAA) required by 40 CFR part 60, Appendix F, and the annual Relative Accuracy Test Audit (RATA) for total sulfur analyzer(s);

(C) For all periods of flare volumetric flow rate monitoring system or total sulfur analyzer system downtime, the written report shall identify:

(*1*) Dates and times of downtime;

(*2*) Reasons for downtime; and

(*3*) Corrective actions taken to mitigate downtime;

(D) For each three hour period in which a flare emission limit is exceeded, the written report shall identify:

(*1*) The date, start time, and end time of the excess emissions;

(*2*) Total hours of operation with excess emissions, the hourly emissions, and the three hour emissions;

(*3*) All information regarding reasons for operating with excess emissions; and

(*4*) Corrective actions taken to mitigate excess emissions.

(E) For all periods that the range of the volumetric flare flow rate monitor(s) is (are) exceeded, the quarterly written report shall identify:

(*1*) Date and time when the range of the flare volumetric flow monitor(s) is (are) exceeded and

(*2*) The reliable estimation parameters used to determine flow in the gas stream(s) to the flare and how the estimation parameters were derived.

(F) Identification of dates, times, and duration of any instances when emissions are vented from the north and south main flares simultaneously or from the Jupiter Sulfur SRU flare and the Jupiter Sulfur SRU/ATS stack simultaneously.

(G) When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

(f) ExxonMobil emission limits and compliance determining methods:

(1) *Introduction:* The provisions for ExxonMobil cover the following units:

(i) The Primary process flare and the Turnaround flare. The Primary process flare is the flare normally used by ExxonMobil. The Turnaround flare is the flare ExxonMobil uses for about 30–40 days every five to six years when the facility's major SO_2 source, the fluid catalytic cracking unit, is not normally operating.

(ii) The following refinery fuel gas combustion units: the FCC CO boiler, F–2 crude/vacuum heater, F–3 unit, F–3X unit, F–5 unit, F–700 unit, F–201 unit, F–202 unit, F–402 unit, F–551 unit, F–651 unit, standby boiler house (B–8 boiler), and coker CO-boiler (only when the Yellowstone Energy Limited Partnership (YELP) facility is receiving ExxonMobil coker unit flue gas or whenever the ExxonMobil coker is not operating).

(iii) Coker CO-boiler stack.

(2) *Flare requirements:* (i) *Emission limit:* The total combined emissions of SO_2 from the Primary process and Turnaround refinery flares shall not exceed 150.0 pounds per three hour period.

(ii) *Compliance determining method:* Compliance with the emission limit in 40 CFR 52.1392(f)(2)(i) shall be determined in accordance with 40 CFR 52.1392(h). If volumetric flow monitoring device(s) installed and concentration monitoring methods used to measure the gas stream to the Primary Process flare cannot measure the gas stream to the Turnaround flare, ExxonMobil may apply to EPA for alternative measures to determine the volumetric flow rate and total sulfur concentration of the gas stream to the Turnaround flare. Before EPA will approve such alternative measures, ExxonMobil must agree that the Turnaround flare will be used only during refinery turnarounds of limited duration and frequency—no more than 60 days once every five years—which restriction shall be considered an enforceable part of this FIP. Such alternative measures may consist of reliable flow estimation parameters to estimate volumetric flow rate and manual sampling of the gas stream to the flare to determine total sulfur concentrations, or such other measures that EPA finds will provide accurate estimations of SO2 emissions from the Turnaround flare.

(3) *Refinery fuel gas combustion requirements:* (i) *Emission limits:* The applicable emission limits are contained in section 3(A)(1) of ExxonMobil's 2000 exhibit and section 3(B)(2) of ExxonMobil's 1998 exhibit.

(ii) *Compliance determining method:* For the limits referenced in 40 CFR 52.1392(f)(3)(i), the compliance determining methods specified in section 4(B) of ExxonMobil's 1998 exhibit shall be followed except when the H_2S concentration in the refinery fuel gas stream exceeds 1200 ppmv as measured by the H_2S CEMS required by section 6(B)(3) of ExxonMobil's 1998 exhibit (the H_2S CEMS.) When such value is exceeded, the following compliance monitoring method shall be employed:

(A) ExxonMobil shall measure the H_2S concentration in the refinery fuel gas according to the procedures in 40 CFR 52.1392(f)(3)(ii)(B) and calculate the emissions according to the equations in 40 CFR 52.1392(f)(3)(ii)(C).

(B) Within 4 hours after the H_2S CEMS measures an H_2S concentration in the fuel gas stream greater than 1200 ppmv, ExxonMobil shall initiate sampling of the fuel gas stream at the fuel header on a once-per-three-hour-period frequency using the Tutwiler method contained in 40 CFR 60.648. ExxonMobil shall continue to use the Tutwiler method at this frequency until the H_2S CEMS measures an H_2S concentration in the fuel gas stream equal to or less than 1200 ppmv continuously over a three-hour period.

(C) When the Tutwiler method is required, SO_2 emissions from refinery fuel gas combustion shall be calculated as follows: the Hourly emissions shall be calculated using equation 1, Three hour emissions shall be calculated using equation 2, and the Daily emissions shall be calculated using equation 3.

Equation 1: $E_H = K^* C_H{}^* Q_H$

Where:

E_H = Refinery fuel gas combustion hourly emissions in pounds per hour, rounded to the nearest tenth of a pound;

$K = 1.688 \times 10^{-7}$ in (pounds/standard cubic feet (SCF))/parts per million (ppm);

C_H = Fuel gas H_2S concentration in ppm determined by the Tutwiler method as required by 40 CFR 52.1392(f)(3)(ii)(B) (since only one sample is taken every three (3) hours, the value for such sample shall be substituted for each hour of the 3-hour period during which the sample is taken); and

Q_H = actual fuel gas firing rate in standard cubic feet per hour (SCFH), as measured by the monitor required by section 6(B)(8) of ExxonMobil's 1998 exhibit.

Equation 2: (Refinery fuel gas combustion three hour emissions) = Σ (Hourly

emissions within the three-hour period as determined by equation 1).

Equation 3: (Refinery fuel gas combustion daily emissions) = Σ (Three hour emissions within the day as determined by equation 2).

(4) *Coker CO-boiler stack requirements.*

(i) *Emission limits:* When ExxonMobil's coker unit is operating and coker unit flue gases are burned in the coker CO-boiler, the applicable emission limits are contained in section 3(B)(1) of ExxonMobil's 2000 exhibit.

(ii) *Compliance determining method:* (A) Compliance with the emission limits referenced in 40 CFR 52.1392(f)(4)(i) shall be determined by measuring the SO_2 concentration and flow rate in the coker CO-boiler stack according to the procedures in 40 CFR 52.1392(f)(4)(ii)(B) and (C) and calculating emissions according to the equations in 40 CFR 52.1392(f)(4)(ii)(D).

(B) Beginning on [DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], ExxonMobil shall at all times operate and maintain a CEMS to measure sulfur dioxide concentrations in the coker CO-boiler stack. This CEMS shall achieve a temporal sampling resolution of at least one concentration measurement per minute, meet the requirements expressed in the definition of ''hourly average'' in 40 CFR 52.1392(c)(12), and meet the CEMS Performance Specifications contained in section 6(C) of ExxonMobil's 1998 exhibit, except that ExxonMobil shall also notify EPA in writing of each annual Relative Accuracy Test Audit a minimum of twenty-five (25) working days prior to actual testing.

(C) Beginning on [DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], ExxonMobil shall at all times operate and maintain a continuous stack flow rate monitor to measure the stack gas flow rates in the coker CO-boiler stack. This CEMS shall achieve a temporal sampling resolution of at least one flow rate measurement per minute, meet the requirements expressed in the definition of ''hourly average'' in 40 CFR 52.1392(c)(12), and meet the Stack Gas Flow Rate Monitor Performance Specifications of section 6(D) of ExxonMobil's 1998 exhibit, except that ExxonMobil shall also notify EPA in writing of each annual Relative Accuracy Test Audit a minimum of twenty-five (25) working days prior to actual testing.

(D) SO_2 emissions from the coker CO-boiler stack shall be determined in accordance with the equations in sections 2(A)(1), (8), (11)(a) and (16) of ExxonMobil's 1998 exhibit.

(5) *Data reporting requirements:* (i) ExxonMobil shall submit quarterly reports beginning with the first calendar quarter following [DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. The quarterly reports shall be submitted within 30 days of the end of each calendar quarter. The quarterly reports shall be submitted to the Air Program Contact at EPA's Montana Operations Office, Federal Building, 10 West 15th Street, Suite 3200, Helena, MT 59626. The quarterly report shall be certified for accuracy in writing by a responsible ExxonMobil official. The quarterly report format shall consist of both a comprehensive electronic-magnetic report and a written hard copy data summary report.

(ii) The electronic report submitted to the EPA shall be on magnetic or optical media, and such submittal shall follow the reporting format of electronic data being submitted to the MDEQ. The EPA may modify the reporting format delineated in this section, and thereafter ExxonMobil shall follow the revised format. In addition to submitting the electronic quarterly reports to the EPA, ExxonMobil shall also record, organize and archive for at least five years the same data, and upon request by the EPA, ExxonMobil shall provide the EPA with any data archived in accordance with this provision. The electronic report shall contain the following:

(A) Hourly average total sulfur concentrations in ppm in the gas stream to the flare(s);

(B) Hourly average SO_2 concentrations in ppm from the coker CO-boiler stack;

(C) Hourly average volumetric flow rates in SCFH in the gas stream to the flare(s) and in the coker CO-boiler stack;

(D) Hourly average H_2S concentrations in ppm from the refinery fuel gas system;

(E) Hourly average refinery fuel gas combustion units' actual fuel firing rate in SCFH;

(F) Hourly average temperature (in °F) and pressure (in mm or inches of Hg) of the gas stream to the flare(s);

(G) Hourly emissions in pounds per clock hour from the flare(s), coker CO-boiler stack, and refinery fuel gas combustion system;

(H) Daily calibration data for the CEMS required by 40 CFR 52.1392(f)(2)(ii), (f)(3)(ii) and (f)(4)(ii).

(iii) The quarterly written report submitted to the EPA shall contain the following information:

(A) Three hour emissions in pounds per three hour period from the flares, coker CO-boiler stack, and refinery fuel gas combustion system;

(B) Daily emissions in pounds per calendar day from the coker CO-boiler stack and refinery fuel gas combustion system;

(C) The results of the quarterly Cylinder Gas Audits (CGA) or Relative Accuracy Audits (RAA) required by 40 CFR part 60, Appendix F, and the annual Relative Accuracy Test Audit (RATA) for the CEMS required by 40 CFR 52.1392(f)(2)(ii) (total sulfur analyzer(s) only), (f)(3)(ii) and (f)(4)(ii);

(D) For all periods of flare volumetric flow rate monitoring system or concentration analyzer system downtime, coker CO-boiler stack CEMS downtime, or refinery fuel gas combustion system CEMS downtime, the written report shall identify:

(*1*) Dates and times of downtime;

(*2*) Reasons for downtime; and

(*3*) Corrective actions taken to mitigate downtime;

(E) For each three hour period and calendar day in which the flare emission limits, the coker CO-boiler stack emission limits, or the fuel gas combustion system emission limits are exceeded, the written report shall identify:

(*1*) The date, start time, and end time of the excess emissions;

(*2*) Total hours of operation with excess emissions, the hourly emissions, the three hour emissions, and the daily emissions;

(*3*) All information regarding reasons for operating with excess emissions; and

(*4*) Corrective actions taken to mitigate excess emissions.

(F) For all periods that the range of the volumetric flare flow rate monitor(s) is (are) exceeded, the quarterly written report shall identify:

(*1*) Date and time when the range of the flare volumetric flow monitor(s) is (are) exceeded and

(*2*) The reliable estimation parameters used to determine flow in the gas stream to the flare and how the estimation parameters were derived.

(G) When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

(g) *Montana Sulphur & Chemical Company (MSCC) emission limits and compliance determining methods:* (1) *Introduction:* The provisions for MSCC cover the following units:

(i) The flares, which consist of the 80 foot west flare, 125 foot east flare, and 100-meter flare.

(ii) The SRU 100-meter stack.

(iii) The auxiliary vent stacks which consist of the vent stacks associated

with the Railroad Boiler, the H–1 Unit, the H1-A unit, the H1–1 unit and the H1–2 unit.

(iv) The SRU 30-meter stack. The units that can exhaust through the SRU 30-meter stack are identified in section 3(A)(2)(d) and (e) of MSCC's 1998 exhibit.

(2) *Flare requirements:* (i) *Emission limit:* Total combined emissions of SO_2 from the 80 foot west flare, 125 foot east flare and 100-meter flare shall not exceed 150.0 pounds per three hour period.

(ii) *Compliance determining method:* Compliance with the emission limit in 40 CFR 52.1392(g)(2)(i) shall be determined in accordance with 40 CFR 52.1392(h). In the event MSCC cannot monitor all three flares from a single location, MSCC shall establish multiple monitoring locations.

(3) *SRU 100-meter stack requirements:* (i) *Emission limits:* Emissions of SO_2 from the SRU 100-meter stack shall not exceed:

(A) 3,003.1 pounds per three hour period,

(B) 24,025.0 pounds per calendar day, and

(C) 9,088,000 pounds per calendar year.

(ii) *Compliance determining method.* (A) Compliance with the emission limits contained in 40 CFR 52.1392(g)(3)(i) shall be determined by the CEMS and emission testing methods required by sections 6(B)(1) and (2) and section 5, respectively, of MSCC's 1998 exhibit.

(B) MSCC shall notify EPA in writing of each annual source test a minimum of 25 working days prior to actual testing.

(C) The CEMS referenced in 40 CFR 52.1392(g)(3)(ii)(A) shall achieve a temporal sampling resolution of at least one concentration and flow rate measurement per minute, meet the requirements expressed in the definition of ''hourly average'' in 40 CFR 52.1392(c)(12), and meet the CEM Performance Specifications in sections 6(C) and (D) of MSCC's 1998 exhibit, except that MSCC shall also notify EPA in writing of each annual Relative Accuracy Test Audit at least twenty five (25) working days prior to actual testing.

(4) *Auxiliary vent stacks:* (i) *Emission limits:* (A) Total combined emissions of SO_2 from the auxiliary vent stacks shall not exceed 12.0 pounds per three hour period,

(B) Total combined emissions of SO_2 from the auxiliary vent stacks shall not exceed 96.0 pounds per calendar day,

(C) Total combined emissions of SO_2 from the auxiliary vent stacks shall not exceed 35,040 pounds per calendar year, and

(D) The H_2S concentration in the fuel gas burned in the Railroad Boiler, the H–1 Unit, the H1–A unit, the H1–1 unit, and the H1–2 unit while any of these units is exhausting to the auxiliary vent stacks shall not exceed 100 ppm per three hour period.

(ii) C*ompliance determining method:* (A) Compliance with the emission limits in 40 CFR 52.1392(g)(4)(i) shall be determined by measuring the H_2S concentration of the fuel burned in the Railroad Boiler, the H–1 Unit, the H1–A unit, the H1–1 unit, and the H1–2 unit (when fuel other than natural gas is burned in one or more of these units) according to the procedures in 40 CFR 52.1392(g)(4)(ii)(C).

(B) Beginning [DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], MSCC shall maintain logs of

(*1*) The dates and time periods that emissions are exhausted through the auxiliary vent stacks;

(*2*) The heaters and boilers that are exhausting to the auxiliary vent stacks during such time periods; and

(*3*) The type of fuel burned in the heaters and boilers during such time periods.

(C) Beginning [DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], MSCC shall measure the H_2S content of the fuel burned when fuel other than natural gas is burned in a heater or boiler that is exhausting to an auxiliary vent stack. MSCC shall begin measuring the H_2S content of the fuel at the fuel header within one hour from when a heater or boiler begins exhausting to an auxiliary vent stack and on a once-per-three-hour period frequency until no heater or boiler is exhausting to an auxiliary vent stack. To determine the H_2S content of the fuel burned, MSCC shall use a portable H_2S monitor with a range of 0—500 ppm of H_2S and an accuracy of (2% of 500 ppm. H_2S concentrations shall be measured on an actual wet basis in ppm.

(5) *SRU 30-meter stack:* (i) *Emission limits:* (A) Emissions of SO_2 from the SRU 30-meter stack shall not exceed 12.0 pounds per three hour period,

(B) Emissions of SO_2 from the SRU 30-meter stack shall not exceed 96.0 pounds per calendar day,

(C) Emissions of SO_2 from the SRU 30-meter stack shall not exceed 35,040 pounds per calendar year, and

(D) The H_2S concentration in the fuel gas burned in the heaters and boilers identified in 40 CFR 52.1392(g)(1)(iv) while any of these units is exhausting to the SRU 30-meter stack shall not exceed 100 ppm per three hour period.

(ii) *Compliance determining method:* (A) Compliance with the emission limits in 40 CFR 52.1392(g)(5)(i) shall be determined by measuring the H_2S concentration of the fuel burned in the heaters and boilers identified in 40 CFR 52.1392(g)(1)(iv) (when fuel other than natural gas is burned in one or more of these heaters or boilers) according to the procedures in 40 CFR 52.1392(g)(5)(ii)(C).

(B) Beginning [DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], MSCC shall maintain logs of

(*1*) The dates and time periods that emissions are exhausted through the SRU 30-meter stack;

(*2*) The heaters and boilers that are exhausting to the SRU 30-meter stack during such time periods; and

(*3*) The type of fuel burned in the heaters and boilers during such time periods.

(C) Beginning [DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], MSCC shall measure the H_2S content of the fuel burned when fuel other than natural gas is burned in a heater or boiler that is exhausting to the SRU 30-meter stack. MSCC shall begin measuring the H_2S content of the fuel at the fuel header within one hour from when any heater or boiler begins exhausting to the SRU 30-meter stack and on a once-per-three-hour period frequency until no heater or boiler is exhausting to the SRU 30-meter stack. To determine the H_2S content of the fuel burned, MSCC shall use a portable H_2S monitor with a range of 0—500 ppm of H_2S and an accuracy of +/-2% of 500 ppm. H_2S concentrations shall be measured on an actual wet basis in ppm.

(6) *Data reporting requirements:* (i) MSCC shall submit quarterly reports beginning with the first calendar quarter following [DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]. The quarterly reports shall be submitted within 30 days of the end of each calendar quarter. The quarterly reports shall be submitted to Air Program Contact at EPA's Montana Operations Office, Federal Building, 10 West 15th Street, Suite 3200, Helena, MT 59626. The quarterly report shall be certified for accuracy in writing by a responsible MSCC official. The quarterly report format shall consist of both a comprehensive electronic-magnetic report and a written hard copy data summary report.

(ii) The electronic report submitted to the EPA shall be on magnetic or optical media, and such submittal shall follow the reporting format of electronic data

being submitted to the MDEQ. The EPA may modify the reporting format delineated in this section, and thereafter, MSCC shall follow the revised format. In addition to submitting the electronic quarterly reports to the EPA, MSCC shall also record, organize and archive for at least five years the same data, and upon request by the EPA, MSCC shall provide the EPA with any data archived in accordance with this provision. The electronic report shall contain the following:

(A) Hourly average total sulfur concentrations in ppm, in the gas stream to the flare(s);

(B) Hourly average SO_2 concentrations in ppm from the SRU 100-meter stack.

(C) Hourly average volumetric flow rates in SCFH in the gas stream to the flare(s) and in the SRU 100-meter stack;

(D) Hourly average temperature (in °F) and pressure (in mm or inches of Hg) in the gas stream to the flare(s);

(E) Hourly emissions in pounds per clock hour from the flare(s) and SRU 100-meter stack;

(F) Daily calibration data for flare CEMS, and the SRU 100-meter stack CEMS;

(iii) The quarterly written report submitted to the EPA shall contain the following information:

(A) Three hour emissions in pounds per three hour period from the flares and SRU 100-meter stack, and three hour H_2S concentrations in the fuel gas burned in the heaters and boilers identified in 40 CFR 52.1392(g)(1)(iii) and (iv) while any of these units is exhausting to the SRU 30-meter stack or auxiliary vent stacks and burning fuel other than natural gas;

(B) Daily emissions in pounds per calendar day from the SRU 100-meter stack;

(C) Annual emissions of SO_2 in pounds per calendar year from the SRU 100-meter stack;

(D) The results of the quarterly Cylinder Gas Audits (CGA) or Relative Accuracy Audits (RAA) required by 40 CFR part 60, Appendix F, the annual Relative Accuracy Test Audit (RATA) for total sulfur analyzer(s) and for the SRU 100-meter stack CEMS;

(E) For all periods of flare volumetric flow rate monitoring system or concentration analyzer system downtime, SRU 100-meter CEMS downtime, or failure to obtain an H_2S concentration sample as required by 40 CFR 52.1392(g)(4)(ii)(C) and (g)(5)(ii)(C), the written report shall identify:

(*1*) Dates and times of downtime or failure;

(*2*) Reasons for downtime or failure; and

(*3*) Corrective actions taken to mitigate downtime or failure;

(F) For each three hour period and calendar day in which the flare emission limit, the SRU 100-meter stack emission limits, the SRU 30-meter stack emission limits, or auxiliary vent stack emission limits are exceeded, the written report shall identify:

(*1*) The date, start time, and end time of the excess emissions;

(*2*) Total hours of operation with excess emissions, the hourly emissions, the three hour emissions, and the daily emissions;

(*3*) All information regarding reasons for operating with excess emissions; and

(*4*) Corrective actions taken to mitigate excess emissions.

(G) For all periods that the range of the volumetric flare flow rate monitor(s) is (are) exceeded, the quarterly written report shall identify:

(*1*) Date and time when the range of the flare volumetric flow monitor(s) is (are) exceeded and

(*2*) The reliable estimation parameters used to determine flow in the gas stream to the flare and how the estimation parameters were derived.

(H) Identification of dates:

(*1*) The dates and time periods that emissions are exhausted through the auxiliary vent stacks or the 30-meter stack;

(*2*) The heaters and boilers that are exhausting to the auxiliary vent stacks or 30-meter stack during such time periods; and

(*3*) The type of fuel burned in the heaters and boilers during such time periods.

(I) When no excess emissions have occurred, the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, or all H_2S concentration samples for the heaters and boilers have been taken as required, such information shall be stated in the report.

(h) *Flare compliance determining method:*

(1) Compliance with the emission limits in 40 CFR 52.1392(d)(2)(i), (e)(2)(i), (f)(2)(i) and (g)(2)(i) shall be determined by measuring the total sulfur concentration and volumetric flow rate of the gas stream to the flare(s) (corrected to 1 atmosphere pressure and 68 °F) and using the methods contained in the flare monitoring plan required by 40 CFR 52.1392(h)(5). Volumetric gas stream flow rate to the flare(s) shall be determined in accordance with the requirements in 40 CFR 52.1392(h)(2) and the total sulfur concentration of the gas stream to the flare(s) shall be determined in accordance with 40 CFR 52.1392(h)(3).

(2) *Flare flow monitoring:* (i) Within 180 days after receiving EPA approval of the flare monitoring plan required by 40 CFR 52.1392(h)(5), each facility named in 40 CFR 52.1392(a) shall install and calibrate, and thereafter calibrate, maintain and operate, a continuous flow monitoring system capable of measuring the total volumetric flow of the gas stream to the flare(s) over the full range of operation. The flow monitoring system may require one or more flow monitoring devices or flow measurements at one or more locations if one monitor cannot measure the total volumetric flow to each flare.

(ii) Volumetric flow monitors meeting the proposed volumetric flow monitoring specifications below should be able to measure the majority of volumetric flow in the gas streams to the flare. However, in rare events (*e.g.*, such as upset conditions) it is possible for the flow to the flare to exceed the range of the monitor. In such cases, reliable flow estimation parameters may be used to determine the volumetric flow rate to the flare, which shall then be used to calculate SO_2 emissions. In quarterly reports, sources shall indicate when reliable estimation parameters are used and how such parameters were derived.

(iii) The flare gas stream volumetric flow rate shall be measured on an actual wet basis in SCFH. The minimum detectable velocity of the flow monitoring device(s) shall be 0.1 feet per second (fps). The flow monitoring device(s) shall continuously measure the range of flow rates corresponding to velocities from 0.5 to 275 fps and have a manufacturer's specified accuracy of ±5% over the range of 1 to 275 fps. The volumetric flow monitor(s) shall feature automated daily calibrations at low and high ranges. The volumetric flow monitors shall be calibrated annually according to manufacturer's specifications.

(iv) For correcting flow rate to standard conditions (defined as 68 °F and 760 mm, or 29.92 inches, of Hg)), temperature and pressure shall be monitored continuously. The temperature and pressure shall be monitored in the same location as the flow monitoring device(s) and shall be calibrated to meet accuracy specifications as follows: temperature shall be calibrated annually to within ±2.0% at absolute temperature and the pressure monitor shall be calibrated annually to within ±5.0 mmHg.

(v) The flow monitoring device(s) shall be initially calibrated, prior to installation, to demonstrate accuracy to within 5.0% at flow rates equivalent to 30%, 60% and 90% of monitor full scale.

(vi) Each flow monitoring device shall achieve a temporal sampling resolution of at least one flow rate measurement per minute, meet the requirements expressed in the definition of hourly average in 40 CFR 52.1392(c)(12), and be installed in a manner and at a location that will allow for accurate measurements of the total volume of the gas stream going to each flare.

(3) *Flare concentration monitoring:*

(i) Within 180 days after receiving EPA approval of the flare monitoring plan required by 40 CFR 52.1392(h)(5), each facility named in 40 CFR 52.1392(a) shall install and calibrate, and thereafter calibrate, maintain and operate, a continuous total sulfur concentration monitoring system capable of measuring the total sulfur concentration of the gas stream to each flare. Continuous monitoring shall occur at a location(s) that is (are) representative of the gas combusted in the flare and be capable of measuring the expected range of total sulfur in the gas stream to the flare. The concentration monitoring system may require one or more concentration monitoring devices or concentration measurements at one or more locations if one monitor cannot measure the total sulfur concentration to each flare.

(ii) The total sulfur analyzer(s) shall achieve a temporal sampling resolution of at least one concentration measurement per fifteen minutes, meet the requirements expressed in the definition of ''hourly average'' in 40 CFR 52.1392(c)(12), be installed, certified (on a concentration basis), and operated in accordance with 40 CFR part 60, Appendix B, Performance Specification 5, and be subject to and meet the quality assurance and quality control requirements (on a concentration basis) of 40 CFR part 60, Appendix F.

(iii) Each affected facility named in 40 CFR 52.1392(a) shall notify the Air Program Contact at EPA's Montana Operations Office, Federal Building, 10 West 15th Street, Suite 3200, Helena, MT 59626, in writing of each Relative Accuracy Test Audit a minimum of twenty-five (25) working days prior to the actual testing.

(4) *Calculation of SO_2 emissions from flares.* Methods for calculating hourly and three hour SO_2 emissions from flares shall be submitted with the flare monitoring plan discussed in 40 CFR 52.1392(h)(5).

(5) By [DATE 180 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], each facility named in 40 CFR 52.1392(a) shall submit a flare monitoring plan. Each flare monitoring plan shall include, at a minimum, the following:

(i) A facility plot plan showing the location of each flare in relation to the general plant layout;

(ii) Information regarding pilot and purge gas for each flare; what is used for pilot and purge gas and how the concentration and volumetric flow rate monitors are analyzing the pilot and purge gases.

(iii) Drawing(s) with dimensions, preferably to scale, and an as built process flow diagram of the flare(s) identifying major components, such as flare header, flare stack, flare tip(s) or burner(s), purge gas system, pilot gas system, ignition system, assist system, water seal, knockout drum and molecular seal.

(iv) A representative flow diagram showing the interconnections of the flare system(s) with vapor recovery system(s), process units and other equipment as applicable.

(v) A complete description of the assist system process control, flame detection system and pilot ignition system.

(vi) A complete description of the gas flaring process for an integrated gas flaring system that describes the method of operation of the flares.

(vii) A complete description of the vapor recovery system(s) which have interconnection to a flare, such as compressor description(s), design capacities of each compressor and the vapor recovery system, and the method currently used to determine and record the amount of vapors recovered.

(viii) Drawing(s) with dimensions, preferably to scale, showing the following information for proposed flare gas stream monitoring system:

(A) Sampling locations; and

(B) Flow monitoring device and total sulfur analyzer locations and the methods used to determine the locations.

(ix) A detailed description of manufacturer's specifications, including but not limited to, make, model, type, range, precision, accuracy, calibration, maintenance, a quality assurance procedure and any other relevant specifications and information referenced in 40 CFR 52.1392(h)(2) and (3) for all existing and proposed flow monitoring devices and total sulfur analyzers.

(x) A complete description of the proposed data recording, collection and management and any other relevant specifications and information referenced in 40 CFR 52.1392(h)(2) and (3) for each flare monitoring system.

(xi) A complete description of the proposed method to determine, monitor and record total volume and total sulfur concentration of gases combusted in the flare.

(xii) A complete description of the method and equations used to calculate the amount of total sulfur, including all conversion factors. The total sulfur concentrations will be used in the methods referenced in 40 CFR 52.1392(h)(4) to determine compliance with the three-hour emission limit.

(xiii) A schedule for the installation and operation of each flare monitoring system consistent with the deadline in 40 CFR 52.1392(h)(2).

(xiv) A complete description of the methods to be used to estimate flare emissions when either the flow monitoring device or total sulfur analyzer are not working or the operating range of the monitor or analyzer is exceeded.

(xv) A complete description of the methods to be used for calculating, and hourly and three-hour SO_2 emission from flares.

(6) Thirty days prior to installing the continuous monitors required by 40 CFR 52.1392(h)(2) and (3), each facility named in 40 CFR 52.1392(a) shall submit for EPA review a quality assurance/quality control (QA/QC) plan for each monitor being installed.

[FR Doc. 06–6096 Filed 7–11–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1308; MB Docket No. 04–318; RM–11040]

Radio Broadcasting Services; Culebra and Vieques, Puerto Rico

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: We deny the petition for rule making filed by Western New Life, Inc., proposing the substitution of Channel 291A for Channel 254A at Culebra, Puerto Rico. To accommodate the substitution, Petitioner also proposed the deletion of vacant Channel 291B at Vieques, Puerto Rico. We find that neither the deletion of Channel 291B, nor the alternative downgrade and substitution of Channel 254A for Channel 291B at Vieques, is in the public interest. Specifically, expressions of interest have been filed to retain the Vieques vacant channel as a Class B allotment.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–318, adopted June 21, 2006, and released June 23, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was denied.)

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–10729 Filed 7–11–06; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 71, No. 133
Wednesday, July 12, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Washington State University Research Foundation of Pullman, Washington, an exclusive license to Plant Variety Protection Number 200600005, the waxy wheat variety designated ''Waxy-Pen,'' filed on October 7, 2005.

DATES: Comments must be received within thirty (30) days of the date of publication of this notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's intellectual property rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. The prospective worldwide exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,
Assistant Administrator.
[FR Doc. E6–10889 Filed 7–11–06; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request an extension of a currently approved information collection in support of Export Enhancement Program (EEP) and Dairy Export Incentive Program (DEIP).

DATES: Comments on this notice must be received by September 11, 2006.

FOR FURTHER INFORMATION CONTACT: William S. Hawkins, Director, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1031, Washington, DC 20250–1031, telephone (202) 720–3241.

SUPPLEMENTARY INFORMATION:

Title: CCC's Export Enhancement Program (EEP) and CCC's Dairy Export Incentive Program (DEIP).

OMB Number: 0551–0028.

Expiration Date of Approval: November 30, 2006.

Type of Request: Extension of a currently approved information collection.

Abstract: The major objective of the EEP and DEIP is to expand U.S. agricultural exports by paying cash to exporters as bonuses, allowing them to sell U.S. agricultural products in targeted countries at competitive prices. Under 7 CFR part 1494, exporters are required to submit the following: (1) Information required for program participation (section 1494.301), (2) performance security (section 1494.401), (3) export sales information in connection with applying for a CCC bonus (section 1494.501), and (4) evidence of export and related information (section 1494.701). In addition, each exporter must maintain accurate records showing sales and deliveries of the eligible commodity exported in connection with an agreement made under the EEP or DEIP as outlined in section 1494.1001. The information collected is used by CCC to manage, plan for, evaluate the use of, and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average 1.08 hours per response.

Respondents: Exporters of U.S. agricultural commodities, banks or other financial institutions, producer association, export trade associations, and U.S. Government agencies.

Estimated Number of Respondents: 40 per annum.

Estimated Number of Responses per Respondent: 47.4 per annum.

Estimated Total Annual Burden on Respondents: 2,047.68 hours.

Copies of this information collection can be obtained from Tamoria Thompson-Hall, the Agency Information Collection Coordinator, at (202) 690–1690.

Requests for comments: Send comments regarding (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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 those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to William S. Hawkins, Director, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1031, Washington, DC 20250–1031, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Persons with disabilities who

require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on July 3, 2006.

Michael W. Yost,

Administrator, Foreign Agricultural Service.

[FR Doc. 06–6158 Filed 7–11–06; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Senior Farmers' Market Nutrition Program (SFMNP): Data Collection Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) invites the general public and other public agencies to provide input on a proposed information collection as set forth in the Proposed Rulemaking entitled ''Senior Farmers' Market Nutrition Program'' (SFMNP) that was published in the **Federal Register** on May 26, 2005. The comment period is open to provide State agencies, local governments, and non-profit organizations the opportunity to comment on the data collection burden.

DATES: Written comments must be received on or before September 11, 2006.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FNS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- *Mail:* Send comments to Debra R. Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302.
- *Web site:* Go to *http://www.fns.usda.gov/wic.* Follow the online instructions for submitting comments through the link at the Supplemental Food Programs Division Web site.
- *E-Mail:* Send comments to *WICHQ-SFPD@fns.usda.gov.* Include Docket Number and title in the subject line of the message.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

In all cases, including when comments are sent via e-mail, please label your comments as ''Proposed Collection of Information: Senior Farmers' Market Nutrition Program.''

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 522, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information should be directed to Debra R. Whitford at the address indicated above or at (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Title: Senior Farmers' Market Nutrition Program.

OMB Number: To be assigned.

Expiration Date: 3 years from date of approval.

Type of Request: New Information Collection.

Abstract: The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171, also known as the Farm Bill) gives the Department of Agriculture the authority to promulgate regulations for the operation and administration of the Senior Farmers' Market Nutrition Program (SFMNP). The purposes of the SFMNP are to provide resources in the form of fresh, nutritious, unprepared, locally grown fruits, vegetables, and herbs from farmers' markets, roadside stands, and community supported agriculture (CSA) programs to low-income seniors; to increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic farmers' markets, roadside stands, and CSA programs; and to develop or aid in the development of new and additional farmers' markets, roadside stands, and CSA programs.

Such requirements include, but are not limited to, financial information used to reconcile and close out SFMNP grants, submission of annual State Plans of Operation that describe in detail the operation and administration of the SFMNP at the State and local levels, local agency and authorized outlet (farmer, farmers' market, roadside stand, and/or community supported agriculture (CSA) program) applications and agreements, racial/ethnic participation data for all program participants, State agency nutrition education agreements, and State agency corrective action plans. FNS will use the collection of this information to assess how each State agency operates and to ensure the accountability of State agencies, local agencies, and authorized farmers/farmers' markets, roadside stands, and CSA programs in administering the SFMNP.

USDA published a proposed rulemaking on the SFMNP on May 26, 2005, that contained an estimated information collection burden based on the proposed rule's requirements for program operation and administration. The Department is now soliciting comments on the accuracy and reasonableness of this estimated burden, prior to publication of a final SFMNP rulemaking.

Burden Estimate

1. Reporting

Estimated Number of Respondents: 904,088.

Respondents include State agencies, local agencies, recipients, and authorized SFMNP outlets (farmers, farmers' markets, roadside stands, and CSA programs).

Estimated Average Number of Responses per Respondent: 1.

Estimated Time per Response: 0.2601 hours.

Estimated Total Annual Burden on Respondents: 235,153 hours.

2. Recordkeeping

Estimated Number of Recordkeepings: 900,235.

Respondents include State and local agencies.

Estimated Average Number of Recordkeepings per Respondent: 1.

Estimated Time per Recordkeeping: 0.25 hours.

Estimated Total Annual Burden on Respondents: 227,209 hours.

Total Annual Reporting/Recordkeeping Requirements: 462,362 hours.

Dated: July 6, 2006.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E6–10960 Filed 7–11–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2006–0011]

Harvard Risk Assessment of Bovine Spongiform Encephalopathy (BSE) Update; Notice of Availability and Technical Meeting

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and announcement of technical meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of an updated risk assessment model and report for BSE. The previous risk assessment, released in October 2003, was revised to incorporate information available through December 2003, including the discovery of a BSE-infected cow in Washington State. The revised risk assessment model evaluates the impact of measures implemented after the discovery of the BSE-positive cow and recommendations made by an international BSE panel. FSIS will also hold a technical meeting to discuss the updated risk assessment model and report.

DATES: The public meeting will be held on July 25, 2006, from 1 p.m. to 4 p.m. Comments on the updated Harvard Risk Assessment must be received by August 11, 2006.

ADDRESSES: The public meeting will take place in the Jefferson Auditorium of the South Building of the U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC, 20250. Meeting attendees must enter the South Building at Wing 1, 14th and Independence Avenue. FSIS will finalize an agenda on or before the meeting date and will post it on the FSIS Internet Web page *http://www.fsis.usda.gov/News/Meetings_&_Events/.* The updated risk assessment is available for viewing by the public in the FSIS docket room and on the FSIS Web site at: *http://www.fsis.usda.gov/Science/Risk_Assessments/index.asp.*

All comments and the official transcript of the meeting will be available for viewing by the public in the FSIS docket room and on the FSIS Web site when they become available.

Comments on the updated Harvard Risk Assessment may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov* and, in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, and then click on ''Submit.'' In the Docket ID column, select FDMS Docket Number FSIS–2006–0011 to submit or view public comments and to view supporting and related materials available electronically. This docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.
- Electronic mail: *fsis.regulationscomments@fsis.usda.gov.*

All submissions received by mail and electronic mail must include the Agency name and docket number FSIS–2006–0011. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted to the *regulations.gov* Web site and on the Agency's Web site at: *http://www.fsis.usda.gov/regulations_&_policies/2006_Notices_Index/index.asp.*

FOR FURTHER INFORMATION CONTACT: Dr. Chuanfa Guo, Senior Risk Analyst, Risk Assessment Division, Office of Public Health Science, 1400 Independence Avenue, SW., Room 344, Aerospace Center, Washington, DC 20250–3700; Telephone (202) 690–0817, e-mail *Chuanfa.guo@fsis.usda.gov.*

Pre-registration for this meeting is recommended. To pre-register, please contact Diane Jones at (202) 720–9692 or by e-mail at *Diane.Jones@fsis.usda.gov.* Persons requiring a sign language interpreter or special accommodations should contact Ms. Jones as soon as possible.

SUPPLEMENTARY INFORMATION:

In April 1998, USDA entered into a cooperative agreement with the Harvard Center for Risk Analysis (HCRA) of the Harvard School of Public Health and the Center for Computational Epidemiology at Tuskegee University to conduct a comprehensive investigation of the BSE risk in the United States. The report,[1] widely referred to as the Harvard Risk Assessment, was completed in 2001 and released by USDA in December of that year. Following a peer review conducted in 2002, the authors of the risk assessment responded to the peer review comments and submitted a revised risk assessment to USDA in October 2003.[2]

Following confirmation on December 23, 2003, of BSE in a cow in Washington State, both USDA and the Department of Health and Human Service's (HHS's) Food and Drug Administration (FDA) implemented measures to strengthen protections against BSE in the United States. In May 2004, USDA contracted with the HCRA to revise the Harvard Risk Assessment model to reflect information available through December 2003. USDA also contracted with the HCRA to develop a new baseline for the risk assessment model, analyze the effects of the measures implemented by USDA and FDA in response to the confirmation of the BSE case in Washington State, and analyze recommendations made by an international expert BSE panel that was convened at the request of the Secretary of Agriculture to review the actions taken by the United States in response the confirmation of the BSE case in Washington State.

The authors submitted an updated risk assessment to FSIS in June 2005, and a peer review of the updated risk assessment was completed in September 2005. The final updated risk assessment and the revised risk assessment model

[1] Harvard Center for Risk Analysis, Harvard School of Public Health, and Center for Computational Epidemiology, College of Veterinary Medicine, Tuskegee University, ''Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States,'' *http://www.aphis.usda.gov/lpa/issues/bse/risk_assessment/mainreporttext.pdf,* 2001.

[2] Research Triangle Institute, ''Review of the Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States,'' accessed online at *http://www.aphis.usda.gov/lpa/issues/bse/BSE_Peer_Review.pdf,* 2002.

Harvard Center for Risk Analysis, Harvard School of Public Health, ''Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States: Response to Reviewer Comments Submitted by Research Triangle Institute,'' *http://www.aphis.usda.gov/lpa/issues/bse/ResponsetoComments.pdf,* 2003.

Harvard Center for Risk Analysis, Harvard School of Public Health, and Center for Computational Epidemiology, College of Veterinary Medicine, Tuskegee University, ''Evaluation of the Potential for Bovine Spongiform Encephalopathy in the United States,'' *http://www.aphis.usda.gov/lpa/issues/bse/madcow.pdf,* 2003.

were submitted following the peer review.

This document announces that FSIS is making the 2005 updated Harvard Risk Assessment available to the public. The Agency will also hold a public technical meeting to provide information on the 2005 updated Harvard Risk Assessment. At this meeting, the developers of the risk assessment model will explain the modifications that have been made to the model and FSIS will present the results of the various risk mitigation scenarios that were analyzed using the updated model.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2006_Notices_Index/index.asp.*

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Barbara J. Masters,

Administrator.

[FR Doc. E6–10928 Filed 7–11–06; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of solicitation of applications.

SUMMARY: This Notice announces the availability of approximately $6 million of grant funds for the RCDI program through the Rural Housing Service (RHS), an agency within the USDA Rural Development mission area herein referred to as the Agency. Applicants must provide matching funds in an amount at least equal to the Federal grant. These grants will be made to qualified intermediary organizations that will provide financial and technical assistance to recipients to develop their capacity and ability to undertake projects related to housing, community facilities, or community and economic development. This Notice lists the information needed to submit an application for these funds.

DATES: The deadline for receipt of an application is 4 p.m. eastern standard time, October 10, 2006. The application date and time are firm. The Agency will not consider any application received after the deadline.

ADDRESSES: Entities wishing to apply for assistance may download the application requirements delineated in this Notice from the RCDI Web site: *http://www.rurdev.usda.gov/rhs/rcdi/index.htm.* Applicants may also request application packages from: William Kenney, Rural Housing Service, Room 0183, Stop 0787, 1400 Independence Ave., SW., Washington, DC 20250–0787, Telephone (202) 720–1506, E-mail: *william.kenney@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: William Kenney, Senior Loan Specialist, Community Programs, RHS, USDA, STOP 0787, Rm. 0183, 1400 Independence Ave., SW., Washington, DC 20250–0787, Telephone (202) 720–1506, Facsimile (202) 690–0471, E-mail: *william.kenney@wdc.usda.gov.* You may also obtain information from the RCDI Web site: *http://www.rurdev.usda.gov/rhs/rcdi/index.htm.*

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.446. This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

The paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB Control Number 0575–0180.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Housing Service.

Funding Opportunity Title: Rural Community Development Initiative.

Announcement Type: Initial Announcement.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.446.

Part I—Funding Opportunity Description

Congress initially created the RCDI in fiscal year (FY) 2000 to develop the capacity and ability of nonprofit organizations, low-income rural communities, or federally recognized tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas. Numerous changes have been made each year since.

Part II—Award Information

Congress appropriated approximately $6 million in FY 2006 for the RCDI. Qualified private, nonprofit and public (including tribal) intermediary organizations proposing to carry out financial and technical assistance programs will be eligible to receive the funding. The intermediary will be required to provide matching funds in an amount at least equal to the RCDI grant. The respective minimum and maximum grant amount per intermediary is $50,000 and $300,000. The intermediary must provide a program of financial and technical assistance to a private nonprofit, community-based housing and

development organization, a low-income rural community or a federally recognized tribe.

Part III—Eligibility Information

A. Eligible Applicants

Qualified private, nonprofit and public (including tribal) intermediary organizations. Definitions that describe eligible organizations and other key terms are listed below:

B. Program Definitions

Agency—The Rural Housing Service (RHS) or its successor.

Beneficiary—Entities or individuals that receive benefits from assistance provided by the recipient.

Capacity—The ability of a recipient to finance and implement housing, community facilities, or community and economic development projects.

Federally recognized tribes—Tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs, based on the Notice in the **Federal Register** published by the Bureau of Indian Affairs on November 25, 2005, (70 FR 71194). Tribally Designated Housing Entities are eligible RCDI recipients.

Financial assistance—Funds used by the intermediary to support the recipient's program, including funds that pass through the intermediary to the recipient for eligible RCDI purposes.

Funds—The RCDI grant and matching money.

Intermediary—A qualified private, nonprofit, or public (including tribal) organization that provides financial and technical assistance to multiple recipients.

Low-income rural community—An authority, district, economic development authority, regional council, or unit of government representing an incorporated city, town, village, county, township, parish, or borough.

Recipient—The entity that receives the financial and technical assistance from the intermediary. The recipient must be a private nonprofit community-based housing and development organization, a low-income rural community, or a federally recognized tribe.

Rural and rural area—Any area other than (i) a city or town that has a population of greater than 50,000 inhabitants; and (ii) the urbanized area contiguous and adjacent to such city or town.

Technical assistance—Skilled help in improving the recipient's abilities in the areas of housing, community facilities, or community and economic development. The Agency will determine whether a specific activity qualifies as technical assistance.

C. Cost Sharing or Matching

Matching funds—Cash or confirmed funding commitments. Matching funds must be at least equal to the grant amount. These funds can only be used for eligible RCDI activities. In-kind contributions cannot be used as matching funds. Grant funds and matching funds must be used in equal proportions. This does not mean funds have to be used equally by line item. The request for reimbursement and supporting documentation must show that RCDI fund usage does not exceed the cumulative amount of matching funds used. Grant funds will be disbursed pursuant to relevant provisions of 7 CFR parts 3015, 3016, and 3019, as applicable.

Matching funds must be used to support the overall purpose of the RCDI program. RCDI funds will be disbursed on a reimbursable basis only. No advances will be made. Matching funds cannot be expended prior to execution of the RCDI Grant Agreement. No reimbursement will be made for any funds expended prior to execution of the RCDI Grant Agreement unless the grantee has requested and received written Agency approval of the costs prior to the actual expenditure. This exception is applicable for up to 90 days prior to grant closing and only applies to grantees that have received written approval but have not executed the RCDI Grant Agreement. The Agency cannot retroactively approve reimbursement for expenditures prior to execution of the RCDI Grant Agreement.

D. Other

Program Requirements

1. The recipient and beneficiary, but not the intermediary, must be located in an eligible rural area. The physical location of the recipient's headquarters office that will be receiving the financial and technical assistance must be in a community with a median household income at or below 80 percent of the State or national median household income. The applicable Rural Development State Office can assist in determining the eligibility of an area. A listing of Rural Development State Offices is included in this Notice.

2. The recipients must be private nonprofit community-based housing and development organizations, low-income rural communities, or federally recognized tribes based on the RCDI definitions of these groups.

3. Documentation must be submitted to verify recipient eligibility. Acceptable documentation varies depending on the type of recipient. Private nonprofit community-based housing and development organizations must provide a letter confirming its tax-exempt status from the IRS, a certificate of incorporation and good standing from the Secretary of State, or other similar and valid documentation of nonprofit status. For low-income rural community recipients, the Agency requires evidence the entity is a public body and census data verifying that the median household income of the community where the office receiving the financial and technical assistance is located is at, or below, 80 percent of the State or national median household income. For Federally recognized tribes, the Agency needs the page listing their name from the current **Federal Register** list of tribal entities recognized and eligible for funding services (see the definition of federally recognized tribes in this Notice for details on this list).

4. Individuals cannot be recipients.

5. The intermediary must provide matching funds at least equal to the amount of the grant.

6. The intermediary must provide a program of financial and technical assistance to the recipient.

7. The intermediary organization must have been legally organized for a minimum of 3 years and have at least 3 years prior experience working with private nonprofit community-based housing and development organizations, low-income rural communities, or tribal organizations in the areas of housing, community facilities, or community and economic development.

8. Proposals must be structured to utilize the grant funds within 3 years from the date of the award.

9. Each intermediary, whether singularly or jointly, may only submit one application for RCDI funds under this NOFA unless the intermediary's participation is limited to providing all or part of the matching funds.

10. Recipients can participate in more than one RCDI application; however, after grant selections are made, the recipient can only participate in multiple RCDI grants if the type of financial and technical assistance they will receive is not duplicative.

11. The intermediary and the recipient cannot be the same entity. The recipient can be a related entity to the intermediary, if it meets the definition of a recipient.

12. A nonprofit recipient must provide evidence that it is a valid nonprofit when the intermediary applies for the RCDI grant.

Organizations with pending requests for nonprofit designations are not eligible.

13. If the recipient is a low-income rural community, identify the unit of government to which the financial and technical assistance will be provided, e.g., town council or village board. The financial and technical assistance must be provided to the organized unit of government representing that community, not the community at large.

14. Nonprofit recipients located in a rural area that is also a census designated place (CDP) are eligible recipients.

15. The indirect cost category in the project budget should be used only when a grant applicant currently has an indirect cost rate approved by the Department of Agriculture or another cognizant Federal agency. If the applicant will charge indirect costs to the grant, enclose a copy of the current rate agreement. If the applicant is in the process of initially developing or renegotiating a rate, the applicant must submit the indirect cost proposal to the cognizant agency immediately after the applicant is advised that an award will be made. In no event, shall the indirect cost proposal be submitted later than three months after the effective date of the award. Consult OMB Circular A–122 for information about indirect costs.

Eligible Fund Uses

Fund uses must be consistent with the RCDI purpose. A nonexclusive list of eligible grant uses includes the following:

1. Provide financial and technical assistance to develop recipients' capacity and ability to undertake projects related to housing, community facilities, or community and economic development, i.e., the intermediary hires a staff person to provide technical assistance to the recipient or the recipient hires a staff person, under the supervision of the intermediary, to carry out the financial and technical assistance provided by the intermediary.

2. Develop the capacity of recipients to conduct community development programs, *e.g.*, homeownership education or training for business entrepreneurs.

3. Develop the capacity of recipients to conduct development initiatives, *e.g.*, programs that support micro-enterprise and sustainable development.

4. Develop the capacity of recipients to increase their leveraging ability and access to alternative funding sources by providing training and staffing.

5. Develop the capacity of recipients to provide the financial and technical assistance component for essential community facilities projects.

6. Assist recipients in completing pre-development requirements for housing, community facilities, or community and economic development projects by providing resources for professional services, *e.g.*, architectural, engineering, or legal.

7. Improve recipient's organizational capacity by providing training and resource material on developing strategic plans, board operations, management, financial systems, and information technology.

8. Purchase computers, software, and printers at the recipient level when directly related to the financial or technical assistance program being undertaken by the intermediary.

9. Provide funds to recipients for training-related travel costs and training expenses related to RCDI.

Ineligible Fund Uses

1. Funding a revolving loan fund (RLF).

2. Construction (in any form).

3. Intermediary preparation of strategic plans for recipients.

4. Funding illegal activities.

5. Grants to individuals.

6. Funding a grant where there may be a conflict of interest, or an appearance of a conflict of interest, involving any action by the Agency.

7. Paying obligations incurred before the beginning date or after the ending date of the grant agreement.

8. Purchasing real estate.

9. Improvement or renovation of the grantee's office space or for the repair or maintenance of privately owned vehicles.

10. Any other purpose prohibited in 7 CFR parts 3015, 3016, and 3019, as applicable.

11. Using funds for recipient's general operating costs.

12. Using grant or matching funds for Individual Development Accounts.

Program Examples

The purpose of this initiative is to develop or increase the recipient's capacity through a program of financial and technical assistance to perform in the areas of housing, community facilities, or community and economic development. Strengthening the recipient's capacity in these areas will benefit the communities they serve. The RCDI structure requires the intermediary (grantee) to provide a program of financial and technical assistance to recipients. The recipients will, in turn, provide programs to their communities (beneficiaries). The following are examples of eligible and ineligible purposes under the RCDI program. (These examples are illustrative and are not meant to limit the activities proposed in the application. Activities that meet the objective of the RCDI program will be considered eligible.)

1. The intermediary must work directly with the recipient, not the beneficiaries. As an example: The intermediary provides training to the recipient on how to conduct homeownership education classes. The recipient then provides ongoing homeownership education to the residents of the community—the ultimate beneficiaries. This ''train the trainer'' concept fully meets the intent of this initiative. The intermediary is providing financial and technical assistance that will build the recipient's capacity by enabling them to conduct homeownership education classes for the public. This is an eligible purpose. However, if the intermediary directly provided homeownership education classes to individuals in the recipient's service area, this would not be an eligible purpose because the recipient would be bypassed.

2. If the intermediary is working with a low-income community as the recipient, the intermediary must provide the financial and technical assistance to the entity that represents the low-income community and is identified in the application. Examples of entities representing a low-income community are a village board or a town council. If the intermediary provides technical assistance to the board of directors of the low-income community on how to establish a cooperative, this would be an eligible purpose. However, if the intermediary works directly with individuals from the community to establish the cooperative, this is not an eligible purpose. The recipient's capacity is built by learning skills that will enable them to support sustainable economic development in their communities on an ongoing basis.

3. The intermediary may provide technical assistance to the recipient on how to create and operate a Revolving Loan Fund (RLF). The intermediary may not monitor or operate the RLF. RCDI funds, including matching funds, cannot be used to fund RLFs.

Part IV—Application and Submission Information

A. Address to Request Application Package

Entities wishing to apply for assistance may download the application documents and requirements delineated in this Notice from the RCDI Web site: *http://www.rurdev.usda.gov/rhs/rcdi/*

index.htm. Application information for electronic submissions may be found at *http://www.grants.gov*. Applicants may also request paper application packages from: William Kenney, Rural Housing Service, Room 0183, Stop 0787, 1400 Independence Ave., SW., Washington, DC 20250–0787, Telephone (202) 720–1506, e-mail: *william.kenney@wdc.usda.gov*.

B. Content and Form of Application Submission

A complete application for RCDI funds must include the following:

1. A summary page, double-spaced between items, listing the following: (This information should not be presented in narrative form.)

a. Applicant's name,

b. Applicant's address,

c. Applicant's telephone number,

d. Name of applicant's contact person and telephone number,

e. Applicant's fax number,

f. County where applicant is located,

g. Congressional district number where applicant is located,

h. Amount of grant request,

i. Applicant's Tax Identification Number,

j. Data Universal Numbering System (DUNS) number (Applicant Only),

k. Number of recipients, and

l. Source and amount of matching funds.

2. A detailed Table of Contents containing page numbers for each component of the application.

3. A project overview, no longer than five pages, including the following items, which will also be addressed separately and in detail under ''Building Capacity'' of the ''Evaluation Criteria.''

a. The type of financial and technical assistance to be provided to the recipients and how it will be implemented.

b. How the capacity and ability of the recipients will be improved.

c. The overall goals to be accomplished.

d. The benchmarks to be used to measure the success of the program.

4. Organizational documents, such as a certificate of incorporation and good standing from the Secretary of State where the applicant is incorporated and other similar and valid documentation of non-profit status, from the intermediary that confirms it has been legally organized for a minimum of 3 years as the applicant entity.

5. Verification of matching funds, i.e., a copy of a bank statement if matching funds are in cash or a copy of the confirmed funding commitment from the funding source. The applicant will be contacted by the Agency prior to grant award to verify that the matching funds continue to be available. The applicant will have 10 working days from the date of contact to submit verification of matching funds. If the applicant is unable to provide the verification within that timeframe, the application will be considered ineligible.

6. Applicant should verify that they have a DUNS number. Applicants can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711.

7. The following information for each recipient:

a. Recipient's entity name,

b. Complete address (mailing and physical location, if different),

c. County where located,

d. Number of Congressional district where recipient is located, and

e. Contact person's name and telephone number.

8. Submit evidence that each recipient entity is eligible:

a. Nonprofits—provide a valid letter from the IRS, confirming certificate from the Secretary of State, or other valid documentation of nonprofit status of each recipient.

b. Low-income rural community—provide evidence the entity is a public body, and a copy of the 2000 census data to verify the population, and evidence that the median household income is at, or below, 80 percent of either the State or national median household income. We will only accept data from *http://www.census.gov*. The specific instructions to retrieve data from this site are detailed under the ''Evaluation Criteria'' for ''Population'' and ''Income.''

c. Federally recognized tribes—provide the page listing their name from the current **Federal Register** list of tribal entities published on November 25, 2005, (70 FR 71194).

9. Each of the ''Evaluation Criteria'' must be addressed specifically and individually by category. Present these criteria in narrative form. Documentation must be limited to three pages per criterion. The ''Population'' and ''Income'' criterions for recipient locations can be provided in the form of a list; however, the source of the data must be included on the page(s).

10. A timeline identifying specific activities and proposed dates for completion.

11. A detailed project budget that includes the RCDI grant amount and matching funds for the duration of the grant. This should be a line-item budget, by category. Categories such as salaries, administrative, other, and indirect costs that pertain to the proposed project must be clearly defined. Supporting documentation listing the components of these categories must be included.

12. Form SF–424, ''Application for Federal Assistance.'' (Do not complete Form SF–424A, ''Budget Information.'' A separate line-item budget should be presented as described in No. 11 of this section.) The budget should be dated: year 1, year 2, year 3.

13. Form SF–424B, ''Assurances—Non-Construction Programs.''

14. Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''

15. Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions.''

16. Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements.''

17. Certification of Non-Lobbying Activities.

18. Standard Form LLL, ''Disclosure of Lobbying Activities,'' if applicable.

19. Form RD 400–4, ''Assurance Agreement,'' for the applicant and each recipient.

20. Identify and report any association or relationship with Rural Development employees.

The required forms and certifications can be downloaded from the RCDI Web site at: *http://www.rurdev.usda.gov/rhs/rcdi/index.htm.*

C. Other Submission Information

The original application package must be submitted to: William Kenney, Rural Housing Service, STOP 0787, 1400 Independence Ave., SW., Washington, DC 20250–0787, and must be submitted to the Rural Development State Office where the applicant is located. A listing of Rural Development State Offices is included in this Notice.

Applicants may file an electronic application at *http://www.grants.gov.* Applications will not be accepted via facsimile or electronic mail. Applicants must still submit a paper copy of the application to the Rural Development State Office even though the application is being submitted electronically. Grants.gov contains full instructions on all required passwords, credentialing, and software. Follow the instructions at Grants.gov for registering and submitting an electronic application. If a system problem or technical difficulty occurs with an electronic application, please use the customer support resources available at the Grants.gov Web site.

First time Grants.gov users should go to the ''Get Started'' tab on the

Grants.gov site and carefully read and follow the steps listed. These steps need to be initiated early in the application process to avoid delays in submitting your application online. Step three, Registering with the Central Contractor Registry (CCR), will take some time to complete. Keep that in mind when beginning the application process.

In order to register with the CCR, your organization will need a Data Universal Numbering System (DUNS) Number. A DUNS number is a unique nine-character identification number provided by the commercial company, Dun & Bradstreet (D&B). To investigate if your organization already has a DUNS number or to obtain a DUNS number, contact Dun & Bradstreet at 1–866–705–5711. Be sure to complete the Marketing Partner ID (MPIN) and Electronic Business Primary Point of Contact fields during the CCR registration process. These are mandatory fields that are required when submitting grant applications through Grants.gov. Information about registering with CCR was published in a Notice in the **Federal Register** entitled ''HHS Managing Partner Grants.gov E-Government Initiative on January 17, 2006. (See 71 FR 2549.) Additional application instructions for submitting an electronic application can be found by selecting this funding opportunity on Grants.gov.

The deadline for receipt of an application is 4 p.m. eastern time October 10, 2006. The application deadline date and time are firm and apply to submission of the original application to the National Office in Washington, DC. The Agency will not consider any application received after the deadline. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact is provided elsewhere in this Notice.

D. Funding Restrictions

Meeting expenses. In accordance with 31 U.S.C. 1345, ''Expenses of Meetings,'' appropriations may not be used for travel, transportation, and subsistence expenses for a meeting. RCDI grant funds cannot be used for these meeting-related expenses. Matching funds may be used to pay for these expenses. RCDI funds may be used to pay for a speaker as part of a program, equipment to facilitate the program, and the actual room that will house the meeting. RCDI funds can be used for travel, transportation, or subsistence expenses for training and technical assistance purposes. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345. Travel and per diem expenses will be similar to those paid to Agency employees. Rates are based upon location. Rate information can be accessed on the Internet at *http://policyworks.gov/perdiem*. Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Grantees and recipients may exceed the Government rate for lodging by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees. Mileage and gas reimbursement will be the same rate used by Agency employees. The current mileage and gas reimbursement rate is 44.5 cents per mile.

Part V—Application Review Information

A. Evaluation Criteria

Applications will be evaluated using the following criteria and weights:

1. Building Capacity—Maximum 60 Points

The applicant must demonstrate how they will improve the recipients' capacity, through a program of financial and technical assistance, as it relates to the RCDI purposes. Capacity-building technical assistance should provide new functions to the recipients or expand existing functions that will enable the recipients to undertake projects in the areas of housing, community facilities, or community and economic development that will benefit the community. The program of financial and technical assistance provided, its delivery, and the measurability of the program's effectiveness will determine the merit of the application. All applications will be competitively ranked with the applications providing the most improvement in capacity development and measurable activities being ranked the highest. Capacity-building technical assistance may include, but is not limited to: Training to conduct community development programs, *e.g.*, homeownership education, or the establishment of minority business entrepreneurs, cooperatives, or micro-enterprises; organizational development, *e.g.*, assistance to develop or improve board operations, management, and financial systems; instruction on how to develop and implement a strategic plan; instruction on how to access alternative funding sources to increase leveraging opportunities; staffing, *e.g.*, hiring a person at intermediary or recipient level to provide technical or financial assistance to recipients; and purchasing technology equipment at the recipient level, *e.g.*, computers, printers, and software.

a. The narrative response must:

1. Describe the nature of financial and technical assistance to be provided to the recipients and the activities that will be conducted to deliver the financial and technical assistance;

2. Explain how financial and technical assistance will develop or increase the recipient's capacity. Indicate whether a new function is being developed or if existing functions are being expanded or performed more effectively;

3. Identify which RCDI purpose areas will be addressed with this assistance: Housing, community facilities, or community and economic development; and

4. Describe how the results of the financial and technical assistance will be measured. What benchmarks will be used to measure effectiveness?

b. The maximum 60 points for this criteria will be broken down as follows:

1. Type of financial and technical assistance and implementation activities. 35 points.

2. An explanation of how financial and technical assistance will develop capacity. 10 points.

3. Identification of the RCDI purpose. 5 points.

4. Measurement of outcomes. 10 points.

2. Expertise—Maximum 30 Points

The applicant must demonstrate that it has conducted programs of financial and technical assistance and achieved measurable results in the areas of housing, community facilities, or community and economic development in rural areas. Provide the name, contact information, and amount of the financial and technical assistance the applicant organization has provided to the following for the last 5 years:

a. Nonprofit organizations in rural areas.

b. Low-income communities in rural areas, (also include the type of entity, e.g., city government, town council, or village board).

c. Federally recognized tribes or any other culturally diverse organizations.

3. Population—Maximum 30 Points

Population is based on the average population from the 2000 census data for the communities in which the recipients are located. Community is defined for scoring purposes as a city, town, village, county, parish, borough, or census-designated place where the recipient's headquarters office is physically located. The applicant must submit the census data from the

following Web site to verify the population figures used for each recipient. The data can be accessed on the Internet at *http://www.census.gov;* click on ''American FactFinder'' from the left menu; click on ''Fact Sheet''from the left menu; at the right, fill in one or more fields and click 'Go'; the name and population data for each recipient location must be listed in this section. The average population of the recipient locations will be used and will be scored as follows:

Population	Scoring (points)
5,000 or less	30
5,001 to 10,000	20
10,001 to 20,000	10
20,001 to 50,000	5

4. Income—Maximum 30 Points

The average of the median household income for the communities where the recipients are physically located will determine the points awarded. Applicants may compare the average recipient median household income to the State median household income or the national median household income, whichever yields the most points. The national median household income to be used is $41,994. The applicant must submit the income data from the following Web site to verify the income for each recipient. The data being used is from the 2000 census. The data can be accessed on the Internet at *http://www.census.gov;* click on ''American FactFinder'' from the left menu; click on ''Fact Sheet'' from the left menu; at the right, fill in one or more fields and click 'Go'; the name and income data for each recipient location must be listed in this section. Points will be awarded as follows:

Average Recipient Median Income Is: Scoring.

Less than 60 percent of the State or national median household income. 30 points.

Between 60 and 70 percent of the State or national median household income. 20 points.

Greater than 70 percent of the State or national median household income. 10 points.

5. Soundness of Approach—Maximum 50 Points

The applicant can receive up to 50 points for soundness of approach. The overall proposal will be considered under this criterion. Applicants must list the page numbers in the application that address these factors.

a. The ability to provide the proposed financial and technical assistance based on prior accomplishments has been demonstrated.

b. The proposed financial and technical assistance program is clearly stated and the applicant has defined how this proposal will be implemented. The plan for implementation is viable.

c. Cost effectiveness will be evaluated based on the budget in the application. The proposed grant amount and matching funds should be utilized to maximize capacity building at the recipient level.

d. The proposal fits the objectives for which applications were invited.

6. Purpose Distribution Points—20 Points

The applicant must state the primary purpose of the application, i.e., housing, community facilities, or community and economic development. The applicant may identify any special needs for the rural community regarding the purposes listed above. A special need, for example, may include showing the need of a rural community affected by a Presidential declared natural disaster. After applications have been evaluated and awarded points under the first 5 criteria, the Agency may award 20 points per application to promote diversity of RCDI purposes and special needs.

7. Proportional Distribution Points—20 Points

This criteria does not have to be addressed by the applicant. After applications have been evaluated and awarded points under the first 5 criteria, the Agency may award 20 points per application to promote an even distribution of grant awards between the range of $50,000 to $300,000.

B. Review and Selection Process

Rating and ranking. Applications will be rated and ranked on a national basis by a review panel based on the ''Evaluation Criteria'' contained in this Notice. If there is a tied score after the applications have been rated and ranked, the tie will be resolved by reviewing the scores for ''Building Capacity'' and the applicant with the highest score in that category will receive a higher ranking. If the scores for ''Building Capacity'' are the same, the scores will be compared for the next criterion, in sequential order, until one highest score can be determined.

Initial screening. The Agency will screen each application to determine eligibility during the period immediately following the application deadline. Listed below are many of the reasons for rejection from the previous funding rounds to help the applicant prepare a better application. The following reasons for rejection are not all inclusive; however, they represent the majority of the applications previously rejected.

1. Recipients were not located in eligible rural areas based on the definition in this Notice.

2. Applicants failed to provide evidence of recipient's status, i.e., documentation supporting nonprofit evidence of organization.

3. Application did not follow the RCDI structure with an intermediary and recipients.

4. Recipients were not identified in the application.

5. Intermediary did not provide evidence it had been incorporated for at least 3 years as the applicant entity.

6. Applicants failed to address the ''Evaluation Criteria.''

7. The purpose of the proposal did not qualify as an eligible RCDI purpose.

8. Inappropriate use of funds (e.g., construction or renovations).

9. Providing financial and technical assistance directly to individuals.

Part VI—Award Administration Information

A. General Information

Within the limit of funds available for such purpose, the awarding official of the Agency shall make grants to those responsible, eligible applicants whose applications are judged meritorious under the procedures set forth in this Notice.

B. Award Notice

Applicant will be notified of selection by letter. In addition, applicant will be requested to verify that components of the application have not changed. The award is not approved until all information has been verified, and the awarding official of the Agency has signed Form RD 1940–1, ''Request for Obligation of Funds.''

C. Administrative and National Policy Requirements

Grantees will be required to do the following:

1. Execute a Rural Community Development Initiative Grant Agreement, which is published at the end of this NOFA.

2. Execute Form RD 1940–1, ''Request for Obligation of Funds.''

3. Use Form SF 270, ''Request for Advance or Reimbursement,'' to request reimbursements.

4. Provide financial status and project performance reports on a quarterly basis starting with the first full quarter after the grant award.

5. Maintain a financial management system that is acceptable to the Agency.

6. Ensure that records are maintained to document all activities and expenditures utilizing RCDI grant funds and matching funds. Receipts for expenditures will be included in this documentation.

7. Provide annual audits or management reports on Form RD 442–2, ''Statement of Budget, Income, and Equity,'' and Form RD 442–3, ''Balance Sheet,'' depending on the amount of Federal funds expended and the outstanding balance.

8. Collect and maintain data provided by recipients on race, sex, and national origin and ensure recipients collect and maintain the same data on beneficiaries. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should *not* be submitted with the application but should be available upon request by the Agency.

9. Provide a final project performance report.

10. Identify and report any association or relationship with Rural Development employees on a format provided by the Agency.

11. The intermediary and recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Executive Order 12250.

12. The grantee must comply with policies, guidance, and requirements as 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 Government);

b. OMB Circular A–122 (Cost Principles for Nonprofit Organizations);

c. OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations);

d. 7 CFR part 3015 (Uniform Federal Assistance Regulations);

e. 7 CFR part 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

f. 7 CFR part 3017 (Governmentwide Debarment and Suspension (Nonprocurement));

g. 7 CFR part 3019 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations); and

h. 7 CFR part 3052 (Audits of States, Local Governments, and Non-Profit Organizations).

D. Reporting

Reporting requirements can be found in the Grant Agreement included in this Notice.

Part VII—Agency Contact

William Kenney, Rural Housing Service, Room 0183, Stop 0787, 1400 Independence Ave., SW., Washington, DC 20250–0787, Telephone (202) 720–1506, e-mail: *william.kenney@wdc.usda.gov.*

Grant Amount Determination

In the event the applicant is awarded a grant that is less than the amount requested, the applicant will be required to modify its application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or withdraw the award if acceptable modifications are not submitted by the awardee within 15 working days from the date the request for modification is made. Any modifications must be within the scope of the original application.

Rural Development State Office Contacts

Note: Telephone numbers listed are not toll-free.

Alabama State Office
Suite 601, Sterling Centre
4121 Carmichael Road,
Montgomery, AL 36106–3683
(334) 279–3400
TDD (334) 279–3495
James B. Harris

Alaska State Office
800 West Evergreen, Suite 201
Palmer, AK 99645
(907) 761–7705
TDD (907) 761–8905
Merlaine Kruse

Arizona State Office
230 North 1st Avenue, Suite 206
Phoenix, AZ 85003
(602) 280–8747
TDD (602) 280–8705
Leonard Gradillas

Arkansas State Office
700 W. Capitol Ave., Rm. 3416
Little Rock, AR 72201–3225
(501) 301–3250
TDD (501) 301–3200
Jerry Virden

California State Office
430 G Street, Agency 4169
Davis, CA 95616–4169
(530) 792–5810
TDD (530) 792–5848
Janice Waddell

Colorado State Office
655 Parfet Street, Room E–100
Lakewood, CO 80215
720–544–2928
TDD 720–544–2976
Mike Bailey

Connecticut

Served by Massachusetts State Office

Delaware and Maryland State Office
1221 College Park Dr., Suite 200
Dover, DE 19904–8713
(302) 857–3580
TDD (302) 697–4303
James E. Waters

Florida & Virgin Islands State Office
4440 NW. 25th Place
P.O. Box 147010
Gainesville, FL 32614–7010
(352) 338–3485
TDD (352) 338–3499
Michael Langston

Georgia State Office
Stephens Federal Building
355 E. Hancock Avenue
Athens, GA 30601–2768
(706) 546–2171
TDD (706) 546–2034
Jerry M. Thomas

Guam

Served by Hawaii State Office

Hawaii, Guam, & Western Pacific Territories State Office
Room 311, Federal Building
154 Waianuenue Avenue
Hilo, HI 96720
(808) 933–8380
TDD (808) 933–8321
Ted Matsuo

Idaho State Office
9173 West Barnes Dr., Suite A1
Boise, ID 83709
(208) 378–5617
TDD (208) 378–5600
Daniel H. Fraser

Illinois State Office
2118 West Park Court, Suite A
Champaign, IL 61821
(217) 403–6200
TDD (217) 403–6240
Gerald A. Townsend

Indiana State Office
5975 Lakeside Boulevard
Indianapolis, IN 46278
(317) 290–3100 (ext. 431)
TDD (317) 290–3343
Gregg Delp

Iowa State Office
873 Federal Building
210 Walnut Street
Des Moines, IA 50309
(515) 284–4663
TDD (515) 284–4858
Dorman Otte

Kansas State Office
1303 SW. First American Place
Suite 100
Topeka, KS 66604–4040
(785) 271–2730
TDD (785) 271–2767
Gary L. Smith

Kentucky State Office
771 Corporate Drive, Suite 200
Lexington, KY 40503
(859) 224–7336
TDD (859) 224–7300

Vernon Brown

Louisiana State Office
3727 Government Street
Alexandria, LA 71302
(318) 473–7962
TDD (318) 473–7920
Richard Hoff Pauir

Maine State Office
967 Illinois Ave., Suite 4
P.O. Box 405
Bangor, ME 04402–0405
(207) 990–9124
TDD (207) 942–7331
Ron Lambert

Maryland
Served by Delaware State Office

Massachusetts, Connecticut, & Rhode Island State Office
451 West Street, Suite 2
Amherst, MA 01002–2999
(413) 253–4300
TDD (413) 253–7068
Daniel R. Beaudette

Michigan State Office
3001 Coolidge Road, Suite 200
East Lansing, MI 48823
(517) 324–5208
TDD (517) 337–6795
Frank J. Tuma

Minnesota State Office
410 Farm Credit Service Building
375 Jackson Street
St. Paul, MN 55101–1853
(651) 602–7800
TDD (651) 602–3799
William Slininger

Mississippi State Office
Federal Building, Suite 831
100 W. Capitol Street
Jackson, MS 39269
(601) 965–4316
TDD (601) 965–5850
Bettye Oliver

Missouri State Office
601 Business Loop 70 West
Parkade Center, Suite 235
Columbia, MO 65203
(573) 876–0995
TDD (573) 876–9480
Clark Thomas

Montana State Office
900 Technology Blvd., Suite B
Bozeman, MT 59771
(406) 585–2530
TDD (406) 585–2562
John Guthmiller

Nebraska State Office
Federal Building, Room 152
100 Centennial Mall N.
Lincoln, NE 68508
(402) 437–5559
TDD (402) 437–5551
Denise Brosius-Meeks

Nevada State Office
1390 South Curry Street
Carson City, NV 89703–9910
(775) 887–1222 (ext. 19)
TDD (775) 885–0633
Herb Shedd

New Hampshire State Office
Concord Center
Suite 218, Box 317
10 Ferry Street
Concord, NH 03301–5004
(603) 223–6055
TDD (603) 223–6083
William Konrad

New Jersey State Office
8000 Midlantic Drive
5th Floor North, Suite 500
Mt. Laurel, NJ 08054
(856) 787–7750
Michael P. Kelsey

New Mexico State Office
6200 Jefferson St. NE., Room 255
Albuquerque, NM 87109
(505) 761–4950
TDD (505) 761–4938
Martha Torrez

New York State Office
The Galleries of Syracuse
441 S. Salina Street, Suite 357
Syracuse, NY 13202–2541
(315) 477–6400
TDD (315) 477–6447
Gail Giannotta

North Carolina State Office
4405 Bland Road, Suite 260
Raleigh, NC 27609
(919) 873–2000
TDD (919) 873–2003
Roger Davis

North Dakota State Office
Federal Building, Room 208
220 East Rosser
P.O. Box 1737
Bismarck, ND 58502–1737
(701) 530–2037
TDD (701) 530–2113
Dale VanEchout

Ohio State Office
Federal Building, Room 507
200 North High Street
Columbus, OH 43215–2418
(614) 255–2400
TDD (614) 255–2554
David M. Douglas

Oklahoma State Office
100 USDA, Suite 108
Stillwater, OK 74074–2654
(405) 742–1000
TDD (405) 742–1007
Michael W. Schrammel

Oregon State Office
1201 NE Lloyd Blvd, Suite 801
Portland, OR 97232
(503) 414–3300
TDD (503) 414–3387
Wayne Dunlap

Pennsylvania State Office
One Credit Union Place, Suite 330
Harrisburg, PA 17110–2996
(717) 237–2299
TDD (717) 237–2261
Gary Rothrock

Puerto Rico State Office
IBM Building—Suite 601
654 Munos Rivera Avenue
San Juan, PR 00918–6106
(787) 766–5095
TDD (787) 766–5332
Ramon Melendez

Rhode Island
Served by Massachusetts State Office

South Carolina State Office
Strom Thurmond Federal Building
1835 Assembly Street, Room 1007
Columbia, SC 29201
(803) 253–3656
TDD (803) 765–5697
Ken King

South Dakota State Office
Federal Building, Room 210
200 Fourth Street, SW.
Huron, SD 57350
(605) 352–1100
TDD (605) 352–1147
Doug Roehl

Tennessee State Office
Suite 300
3322 West End Avenue
Nashvile, TN 37203–1084
(615) 783–1300
TDD (615) 783–1397
Keith Head

Texas State Office
Federal Building, Suite 102
101 South Main
Temple, TX 76501
(254) 742–9700
TDD (254) 742–9712
Francesco Valentin

Utah State Office
Wallace F. Bennett Federal Building
125 South State Street, Room 4311
P.O. Box 11350
Salt Lake City, UT 84138
(801) 524–4326
TDD (801) 524–3309
Bonnie Carrig

Vermont State Office
City Center, 3rd Floor
89 Main Street
Montpelier, VT 05602
(802) 828–6000
TDD (802) 223–6365
Rhonda Shippee

Virgin Islands
Served by Florida State Office

Virginia State Office
Culpeper Building, Suite 238
1606 Santa Rosa Road
Richmond, VA 23229
(804) 287–1550
TDD (804) 287–1753
Carrie Schmidt

Washington State Office
1835 Black Lake Boulevard, SW.
Suite B
Olympia, WA 98501–5715
(509) 664–0203
Sandi Boughton

Western Pacific Territories
Served by Hawaii State Office

West Virginia State Office
Federal Building
75 High Street, Room 320
Morgantown, WV 26505–7500
(304) 284–4860
TDD (304) 284–4836
Randy Plum

Wisconsin State Office
4949 Kirschling Court
Stevens Point, WI 54481
(715) 345–7614
TDD (715) 345–7610
Mark Brodziski

Wyoming State Office
Federal Building, Room 1005

100 East B
P.O. Box 11005
Casper, WY 82601–5006
(307) 261–6300
TDD (307) 261–6333
Kaylyn Nerby

Dated: June 13, 2006.

Russell T. Davis,

Administrator, Rural Housing Service.

OMB No. 0575–0180

United States Department of Agriculture

Rural Housing Service

Rural Community Development Initiative Grant Agreement

THIS GRANT AGREEMENT (Agreement), effective the date the Agency official signs the document, is a contract for receipt of grant funds under the Rural Community Development Initiative (RCDI).

BETWEEN _____ a private or public or tribal organization, (Grantee or Intermediary) and the United States of America acting through the Rural Housing Service, Department of Agriculture, (Agency or Grantor), for the benefit of recipients listed in Grantee's application for the grant.

WITNESSETH:

The principal amount of the grant is $_____(Grant Funds). Matching funds, in an amount equal to the grant funds, will be provided by Grantee. The Grantee and Grantor will execute Form RD 1940–1, ''Request for Obligation of Funds.''

WHEREAS,

Grantee will provide a program of financial and technical assistance to develop the capacity and ability of nonprofit organizations, low-income rural communities, or federally recognized tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas;

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0180. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

NOW, THEREFORE, in consideration of the grant;

Grantee agrees that Grantee will:

A. Provide a program of financial and technical assistance in accordance with the proposal outlined in the application, (see Attachment A), the terms of which are incorporated with this Agreement and must be adhered to. Any changes to the approved program of financial technical assistance must be approved in writing by the Grantor;

B. Use Grant Funds only for the purposes and activities specified in the application package approved by the Agency including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance;

C. Charge expenses for travel and per diem that will not exceed the rates paid Agency employees for similar expenses. Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Lodging rates may exceed the Government rate by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees, which is based upon location. Mileage and gas will be reimbursed at the existing Government rate. Rates can be accessed on the Internet at *http://policyworks.gov/perdiem;*

D. Charge meeting expenses in accordance with 31 U.S.C. 1345. Grant funds may not be used for travel, transportation, and subsistence expenses for a meeting. Matching funds may be used to pay these expenses. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345;

E. Request quarterly reimbursement for grant activities during the previous quarter. Reimbursement will be made on a pro rata basis with matching funds. Form SF 270, ''Request for Advance or Reimbursement,'' will be used to request reimbursement. A project performance report, in narrative form, and a financial report, reflecting the activities conducted, must accompany the request for reimbursement. Matching fund usage must be included in all reports;

F. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a quarterly basis (due 30 working days after each calendar quarter). The financial status report must show how grant funds and matching funds have been used to date. A final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include, but are not limited to, the following:

1. Describe the activities that the funds reflected in the financial status report were used for;

2. A comparison of actual accomplishments to the objectives for that period;

3. Reasons why established objectives were not met, if applicable;

4. Problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation;

5. Objectives and timetables established for the next reporting period;

6. If available, a summary of the race, sex, and national origin of the recipients and a summary from the recipients of the race, sex, and national origin of the beneficiaries; and

7. The final report will also address the following:

a. What have been the most challenging or unexpected aspects of this program?

b. What advice would you give to other organizations planning a similar program? Please include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

c. Are there any post-grant plans for this project? If yes, how will they be financed?

d. If an innovative approach was used successfully, the grantee must describe their program in detail for replication by other organizations and communities.

G. Consider potential recipients without discrimination as to race, color, religion, sex, national origin, age, marital status, sexual orientation, or physical or mental disability;

H. Ensure that any services or training offered by the recipient, as a result of the financial and technical assistance received, must be made available to all persons in the recipient's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, sexual orientation, or physical or mental disability at reasonable rates, including assessments, taxes, or fees. Programs and activities must be delivered from accessible locations. The recipient must ensure that, where there are non-English speaking populations, materials are provided in the language that is spoken;

I. Ensure recipients are required to place nondiscrimination statements in

advertisements, notices, pamphlets and brochures making the public aware of their services. The Grantee and recipient are required to provide widespread outreach and public notification in promoting any type of training or services that are available through grant funds;

J. The Grantee must collect and maintain data on recipients by race, sex, and national origin. The grantee must ensure that their recipients also collect and maintain data on beneficiaries by race, sex, and national origin as required by Title VI of the Civil Rights Act of 1964 and must be provided to the Agency for compliance review purposes;

K. Upon any default under its representations or agreements contained in this instrument, Grantee, at the option and demand of Grantor, will immediately repay to Grantor any legally permitted damages together with any legally permitted interest from the date of the default. At Grantor's election, any default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Agreement may be enforced by Grantor, without regard to prior waivers of this Agreement, by proceedings in law or equity, in either Federal or State courts as may be deemed necessary by Grantor to ensure compliance with the provisions of this Agreement and the laws and regulations under which this grant is made;

L. Provide Financial Management Systems that will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis;

2. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income related to Grant Funds and matching funds;

3. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

4. Accounting records supported by source documentation; and

5. Grantee tracking of fund usage and records that show matching funds and grant funds are used in equal proportions. The grantee will provide verifiable documentation regarding matching fund usage, *i.e.*, bank statements or copies of funding obligations from the matching source.

M. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts;

N. Provide an A–133 audit report if $500,000 or more of Federal funds are expended in a 1-year period. If Federal funds expended during a 1-year period are less than $500,000 and there is an outstanding loan balance of less than $500,000, a management report may be submitted on Forms RD 442–2, ''Statement of Budget, Income and Equity,'' and 442–3, ''Balance Sheet'';

O. Not encumber, transfer, or dispose of the equipment or any part thereof, acquired wholly or in part with Grantor funds without the written consent of the Grantor; and

P. Not duplicate other program activities for which monies have been received, are committed, or are applied to from other sources (public or private).

Grantor agrees that:

A. It will make available to Grantee for the purpose of this Agreement funds in an amount not to exceed the Grant Funds. The funds will be disbursed to Grantee on a pro rata basis with the Grantee's matching funds; and

B. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be:

1. Advisable to further the purpose of the grant or to protect Grantor's financial interest therein; and

2. Consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Both Parties Agree:

A. Extensions of this grant agreement may be approved by the Agency, in writing, provided in the Agency's sole discretion the extension is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the application package during the extension period;

B. The Grantor must approve any changes in recipient or recipient composition;

C. The Grantor has agreed to give the Grantee the Grant Funds, subject to the terms and conditions established by the Grantor: PROVIDED, HOWEVER, That any Grant Funds actually disbursed and not needed for grant purposes be returned immediately to the Grantor. This agreement shall terminate 3 years from this date unless extended or unless terminated beforehand due to default on the part of the Grantee or for convenience of the Grantor and Grantee. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement or the applicable regulations; Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the program will not produce beneficial results commensurate with the further expenditure of funds.

D. As a condition of the Agreement, the Grantee certifies that it is in compliance with, and will comply in the course of the Agreement with, all applicable laws, regulations, Executive Orders, and other generally applicable requirements, which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein.

E. The Grantee will ensure that the recipients comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and Executive Order 12250. Each recipient must sign Form RD 400–4, ''Assurance Agreement'';

F. The provisions of 7 CFR part 3015, ''Uniform Federal Assistance Regulations,'' part 3016, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' or part 3019, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations,'' and the fiscal year 2006 ''Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)'' are incorporated herein and made a part hereof by reference;

IN WITNESS WHEREOF, Grantee has this day authorized and caused this Agreement to be executed by

Attest

By _____
(Grantee)

(Title) _____

Date _____

UNITED STATES OF AMERICA
RURAL HOUSING SERVICE

By _____
(Grantor) (Name)

(Title)

Date _____

ATTACHMENT A

[Application proposal submitted by grantee.]

[FR Doc. 06–6150 Filed 7–11–06; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted 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: Basic Requirements for Special Exemption Permits and Authorizations to Take, Import, and Export Marine Mammals, Threatened and Endangered Species, and for Maintaining a Captive Marine Mammal Inventory Under the Marine Mammal Protection, the Fur Seal, and the Endangered Species Acts (formerly, Basic Requirements for All Marine Mammal Special Exception Permits to Take, Import and Export Marine Mammals, and for Maintaining a Captive Marine Mammal Inventory under the Marine Mammal Protection Act, the Fur Seal Act, and the Endangered Species Act).

Form Number(s): None.

OMB Approval Number: 0648–0084.

Type of Request: Regular submission.

Burden Hours: 6,728.

Number of Respondents: 518.

Average Hours Per Response: Scientific research and enhancement (SR/EN) permits, 32 hours; public display permits, 20 hours; photography and general authorization permits, 10 hours; amendments to existing permits and authorizations: major, 20 hours; minor, 3 hours; reports for SR/EN authorizations, 12 hours; reports for public display, photography and public display authorizations, 2 hours, reports for general authorizations, 8 hours; recordkeeping for all authorizations and notifications of retaining or transfering rehabilitated animals, 2 hours.

Needs and Uses: The information in this collection instrument will be used to determine whether a proposed activity is consistent with the requirements of the Marine Mammal Protection Act, the Fur Seal Act, and the Endangered Species Act for issuance of permits and authorizations for research, enhancement, photography, and public display. The respondents will be researchers, photographers, other members of the general public, and holders of marine mammals in captivity.

Affected Public: Individuals or households; not-for-profit institutions; business or other for-profit organizations; State, Local or Tribal Government; Federal Government.

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: July 6, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10895 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted 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: Alaska Region Permit Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648–0206.

Type of Request: Regular submission.

Burden Hours: 378.

Number of Respondents: 886.

Average Hours Per Response: Federal fisheries permits and processor permits, 21 minutes; and exempted fishing permits, 20 hours.

Needs and Uses: The information from this collection is used to monitor and manage participation in groundfish fisheries by National Marine Fisheries Service, Alaska Region, and consists of the following permits: Federal fisheries permit, Federal processor permit, and exempted fishing permit. The permit information provides: harvest gear types; descriptions of vessels, shoreside processors, and stationary floating processors; and expected fishery activity levels. The identification of the participants and expected activity levels are needed to measure the consequences of management controls, and is an effective tool in the enforcement of other fishery regulations.

Affected Public: Individuals or households; business or other for-profit organizations.

Frequency: Federal fisheries permits and processor permits, every three year; exempted fishing permits, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: July 5, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10897 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted 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: Atlantic Highly Migratory Species Recreational Landings Reports.

Form Number(s): None.

OMB Approval Number: 0648–0328.

Type of Request: Regular submission.

Burden Hours: 1,403.

Number of Respondents: 10,968.

Average Hours Per Response: Landing cards, 10 minutes; telephone reports, 5 minutes; Maryland and North Carolina state weekly reports, 1 hour; and annual reports, 4 hours.

Needs and Uses: This information collection consists of a mandatory catch reporting program in the recreational fishery for Atlantic bluefin tuna, Atlantic swordfish, Atlantic blue marlin, Atlantic white marlin, and Atlantic sailfish. The anglers harvesting these species must report through a toll-free telephone system or an Internet site, or through landing card programs administered by some states. Catch monitoring and collection of catch and effort statistics in these fisheries are required under the Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and Management Act. The information collected through this program is essential for the United States to meet its reporting obligations to the International Commission for the Conservation of Atlantic Tunas (ICCAT) and to assure the harvest of these species remains within ICCAT required quotas and landings limits.

Affected Public: Individuals or households; business or other for-profit organizations; State, Local or Tribal Government.

Frequency: Weekly, 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: July 5, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10898 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted 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: Reporting Requirements for Commercial Fisheries Authorization under Section 118 of the Marine Mammal Protection Act.

Form Number(s): None.

OMB Approval Number: 0648–0292.

Type of Request: Regular submission.

Burden Hours: 30.

Number of Respondents: 200.

Average Hours Per Response: 9 minutes.

Needs and Uses: The reporting of injury and/or mortalities of marine mammals is mandated under Section 118 of the Marine Mammal Protection Act. This information is required to determine the impacts of commercial fishing on marine mammal populations. This information is also used to categorize commercial fisheries into Category I, II or III. Participants in the first two categories have to be authorized to take marine mammals, while those in Category III are exempt from that requirement. All categories must report injuries or mortalities on the National Marine Fisheries Service Marine Mammal Authorization Program marine mammal mortality/injury form.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: 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: June 5, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10899 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted 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: Socioeconomic Monitoring Program for the Florida Keys National Marine Sanctuary.

Form Number(s): None.

OMB Approval Number: 0648–0409.

Type of Request: Regular submission.

Burden Hours: 790.

Number of Respondents: 107.

Average Hours Per Response: Fishing panel interviews, 3 hours; and collection of data from monthly dive shop logs, 10 hours.

Needs and Uses: The purpose of this information collection is to gather socioeconomic monitoring information in the Florida Keys National Marine Sanctuary. In 1997 regulations created a series of ''no take zones'' in the sanctuary. Monitoring will evaluate the socioeconomic impacts of these zones. The results will be used to help guide revisions to the management plan for the sanctuary.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and monthly.

Respondent's Obligation: Voluntary.

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: June 5, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10900 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted 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: NOAA Coastal Ocean Program Grants Proposal Application Package.

Form Number(s): None.

OMB Approval Number: 0648–0384.

Type of Request: Regular submission.

Burden Hours: 900.

Number of Respondents: 300.

Average Hours Per Response: Application summary, 30 minutes; annual progress report, 5 hours; project final report, 10 hours.

Needs and Uses: The Coastal Ocean Program (COP) provides direct financial assistance for the management of coastal ecosystems. Applicants for assistance are required to provide information in addition to the Standard Forms and grant application information. The additional requirement is a COP project summary. Successful applicants must file annual progress reports and a project final report in accordance with COP format.

Affected Public: Not-for-profit institutions; individuals or households; business or other for-profit organizations; State, Local or Tribal Government.

Frequency: Annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

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: July 6, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10901 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Export License Services—Transfer of License Ownership, Requests for a Duplicate License.

Agency Form Number: None.

OMB Approval Number: 0694–0126.

Type of Request: Extension of a currently approved collection.

Burden: 38 hours.

Average Time Per Response: 1 to 15 minutes per response.

Number of Respondents: 200 respondents.

Needs and Uses: In certain circumstances (i.e., company mergers, takeovers, etc.), it is necessary to transfer ownership of licenses to another party, or in instances where records are lost or destroyed, to issue a duplicate license. In the case of a transfer of ownership, the information collected is necessary to ensure that all parties are aware of and agree to the transfer, both of the ownership as well as responsibilities associated with export authorizations. The issuance of a duplicate requires that certain actions be taken if the original license is found. Both are services to exporters provided to the public after export licenses have been issued.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

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, e-mail address, *David_Rostker@omb.eop.gov,* or fax number, (202) 395–7285.

Dated: July 6, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10902 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Report of Sample Shipments of Chemical Weapon Precursors.

Agency Form Number: None.

OMB Approval Number: 0694–0086.

Type of Request: Renewal of an existing collection.

Burden: 12 hours.

Average Time Per Response: 35 minutes per response.

Number of Respondents: 20 respondents.

Needs and Uses: This collection of information will be used to monitor sample shipments of chemical weapon precursors in order to facilitate and enforce provisions of the EAR that permit limited exports of sample shipments without a validated export license. The reports will be reviewed by the Bureau of Export Administration to monitor quantities and patterns of shipments that might indicate circumvention of the regulation by entities seeking to acquire chemicals for chemical weapons purposes.

Affected Public: Individuals, businesses or other for-profit institutions.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

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, e-mail address, *David_Rostker@omb.eop.gov,* or fax number, (202) 395–7285.

Dated: July 6, 2006.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10903 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted 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: Northwest Region Logbook Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648–0271.

Type of Request: Regular submission.

Burden Hours: 1,374.

Number of Respondents: 70.

Average Hours Per Response: Daily fishing and cumulative production log: Catchers, 13 minutes; catcher-processors, 26 minutes; daily report of fish received and cumulative production log, 13 minutes; processor weekly/daily production report, 4 minutes; product transfer/offloading log, 1 minute; and activity start/stop notifications, 1 minute.

Needs and Uses: This data collection requires the submission and preparation of logbooks and reports on the Pacific Coast Groundfish Fishery from processing vessels larger than 125 feet in length and from catcher vessels that deliver to them. The information is necessary to monitor catch, effort, and production for fishery management purposes.

Affected Public: Business or other for-profit organizations; State, Local or Tribal Government.

Frequency: Weekly, quarterly 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: July 6, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10904 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 28–2006]

Foreign–Trade Zone 123—Denver, Colorado, Application for Expansion

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board) by the City and County of Denver, Colorado, grantee of FTZ 123, requesting authority to expand its zone to include a site in Windsor, Colorado, adjacent to the Denver Customs port of entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 5, 2006.

FTZ 123 was approved on August 16, 1985 (Board Order 311, 50 FR 34729, 8/27/85). The general–purpose zone currently consists of the following sites: *Site 1* (6 acres, 200,000 sq. ft.)—located at 11075 East 40th Avenue, Denver; and, *Site 2* (7 acres, 116,000 sq. ft.)—located at the South Air Cargo development area along East 75th Avenue within the new Denver International Airport, Denver.

The applicant is now requesting authority to expand the zone to include a site in Weld County: *Proposed Site 3* (766 acres)—within the Great Western Industrial Park bordered by Eastman Park Drive to the north and County Road 23 to the east in Windsor. The site is owned by Broe Land Acquisitions II, LLC and Front Range Energy, LLC. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 11, 2006. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 25, 2006.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce, Export Assistance Center, 1625 Broadway, Suite 680, Denver, CO 80202; and, Office of the Executive Secretary, Foreign–Trade Zones Board, Room 1115, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

Dated: July 7, 2006.

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–10957 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1461]

Approval for Manufacturing Authority, DEMAG Plastics Group (Plastic Production Machinery) Within Foreign–Trade Zone 40, Strongsville, Ohio

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland–Cuyahoga County Port Authority, grantee of Foreign–Trade Zone 40, has requested authority under § 400.32(b)(2) of the Board's regulations on behalf of the DEMAG Plastics Group to manufacture plastic production machinery under zone procedures within Site 6B of FTZ 40 in Strongsville, Ohio (FTZ Docket 65–2005, filed December 20, 2005);

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 77375, 12/30/05); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for the manufacture of plastic production machinery within Site 6B of FTZ 40, as described in the application, and subject to the FTZ Act and the Board's regulations, including Sec. 400.28.

Signed at Washington, DC, this 30th day of June 2006.

David M. Spooner,

Assistant Secretary for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–10955 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1462]

Grant of Authority for Subzone Status, Benteler Automotive Corporation (Automotive Suspension Components), Duncan, South Carolina

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for ''. . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the South Carolina State Ports Authority, grantee of Foreign–Trade Zone 38, has made application for authority to establish special–purpose subzone status at the automotive suspension components manufacturing plant of Benteler Automotive Corporation, located in Duncan, South Carolina (Docket 50–2005, filed 10–17–2005);

Whereas, notice inviting public comment was given in the **Federal Register** (70 FR 61430, 10–24–2005); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to automotive suspension components manufacturing at the Benteler Automotive Corporation plant located in Duncan, South Carolina (Subzone 38F), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 30th day of June 2006.

David M. Spooner,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–10956 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1460]

Grant of Authority for Subzone Status, WLS Drilling Products, Inc. (Mining Drill Bits), Montgomery, Texas

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for '' . . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City of Conroe (Texas), grantee of Foreign–Trade Zone 265, has made application to the Board for authority to establish special–purpose subzone status at the warehousing and distribution facility (mining drill bits) of WLS Drilling Products, Inc., located in Montgomery, Texas (FTZ Docket 10–2005, filed 2/25/2005);

Whereas, notice inviting public comment has been given in the **Federal Register** (70 FR 10951–10952, 3/7/2005); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for distribution activity involving mining drill bits at the warehousing/distribution facility of WLS Drilling Products, Inc., located in Montgomery, Texas (Subzone 265A), as described in the application and **Federal Register** notice, for an initial period of five years (to July 1, 2011), subject to extension upon review, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 30th day of June 2006.

David M. Spooner,

Assistant Secretary of Commerce, for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Acting Executive Secretary,

[FR Doc. E6–10954 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No: 060705186–6186–01]

Revision to the Unverified List—Guidance as to ''Red Flags''

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: On June 14, 2002, the Bureau of Industry and Security (''BIS'') published a notice in the **Federal Register** that set forth a list of persons in foreign countries who were parties to past export transactions where pre-license checks or post-shipment verifications could not be conducted for reasons outside the control of the U.S. Government (''Unverified List''). Additionally, on July 16, 2004, BIS published a notice in the **Federal Register** that advised exporters that the Unverified List would also include persons in foreign countries in transactions where BIS is not able to verify the existence or authenticity of the end-user, intermediate consignee, ultimate consignee, or other party to the transaction. These notices advised exporters that the involvement of a listed person as a party to a proposed transaction constitutes a ''red flag'' as described in the guidance set forth in Supplement No. 3 to 15 CFR part 732,

requiring heightened scrutiny by the exporter before proceeding with such a transaction. This notice adds three entities to the Unverified List. The entities are: Sheeba Import Export, Hadda Street, Sanaa, Yemen; Aerospace Consumerist Consortium FZCO, Sheikh Zayed Road, P.O. Box 17951, Jebel Ali Free Zone, Dubai, United Arab Emirates (UAE) and Dubai International Airport, Dubai, 3365, UAE; and Medline International LLC, P.O. Box 86343 Dubai, UAE.

DATES: This notice is effective July 12, 2006.

FOR FURTHER INFORMATION CONTACT: Ariel Leinwand, Office of Enforcement Analysis, Bureau of Industry and Security, Telephone: (202) 482–4255.

SUPPLEMENTARY INFORMATION: In administering export controls under the Export Administration Regulations (15 CFR parts 730 to 774) (''EAR''), BIS carries out a number of preventive enforcement activities with respect to individual export transactions. Such activities are intended to assess diversion risks, identify potential violations, verify end-uses, and determine the suitability of end-users to receive U.S. commodities or technology. In carrying out these activities, BIS officials, or officials of other Federal agencies acting on BIS's behalf, selectively conduct pre-licence checks (''PLCs'') to verify the bona fides of the transaction and the suitability of the end-user or ultimate consignee. In addition, such officials sometimes carry out post-shipment verifications (''PSVs'') to ensure that U.S. exports have actually been delivered to the authorized end-user, are being used in a manner consistent with the terms of a license or license exception, and are otherwise consistent with the EAR.

In certain instances BIS officials, or other federal officials acting on BIS's behalf, have been unable to perform a PLC or PSV with respect to certain export control transactions for reasons outside the control of the U.S. Government (including a lack of cooperation by the host government authority, the end-user, or the ultimate consignee). BIS listed a number of foreign end-users and consignees involved in such transactions in the Unverified List that was included in BIS's **Federal Register** notice of June 14, 2002. *See* 67 FR 40910. On July 16, 2004, BIS published a notice in the **Federal Register** that advised exporters that the Unverified List would also include persons in foreign countries where BIS is not able to verify the existence or authenticity of the end user, intermediate consignee, ultimate consignee, or other party to an export transaction. *See* 69 FR 42652.

The June 14, 2002 and July 16, 2004 notices advised exporters that the involvement of a listed person in a transaction constituted a ''red flag'' under the ''Know Your Customer'' guidance set forth in Supplement No. 3 to 15 CFR part 732 of the EAR. Under that guidance, whenever there is a ''red flag,'' exporters have an affirmative duty to inquire, verify, or otherwise substantiate the proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity prohibited in 15 CFR part 744, and does not violate other provisions of the EAR. The **Federal Register** notices further stated that BIS may periodically add persons to the Unverified List based on the criteria set forth above, and remove persons when warranted.

This notice advises exporters that BIS is adding Sheeba Import Export in Yemen, Aerospace Consumerist Consortium FZCO in the UAE, and Medline International LLC in the UAE to the Unverified List. BIS has determined that it is appropriate to add these entities to the Unverified List because BIS was unable to conduct a PLC, a PSV, and/or was unable to verify the existence or authenticity of an end user, intermediate consignee, ultimate consignee, or other party to an export transaction. A ''red flag'' now exists for transactions involving these entities due to their inclusion on the Unverified List. As a result, exporters have an affirmative duty to inquire, verify, or otherwise substantiate the proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity prohibited in 15 CFR part 744, and does not violate other provisions of the EAR.

The Unverified List, as modified by this notice, is set forth below.

Dated: July 6, 2006.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

Unverified List (as of July 12, 2006)

The Unverified List includes names, countries, and last known addresses of foreign persons involved in export transactions with respect to which: The Bureau of Industry and Security (''BIS'') could not conduct a pre license check (''PLC'') or a post shipment verification (''PSV'') for reasons outside of the U.S. Government's control; and/or BIS was not able to verify the existence or authenticity of the end user, intermediate consignee, ultimate consignee or other party to an export transaction. Any transaction to which a listed person is a party will be deemed to raise a ''red flag'' with respect to such transaction within the meaning of the guidance set forth in Supplement No. 3 to 15 CFR part 732. The red flag applies to the person on the Unverified List regardless of where the person is located in the country included on the list.

Name	Country	Last known address
Lucktrade International	Hong Kong Special Administrative Region.	P.O. Box 91150, Tsim Sha Tsui, Hong Kong.
Brilliant Intervest	Malaysia	14–1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, 53000.
Dee Communications M SDN. BHD	Malaysia	G5/G6, Ground Floor, Jin Gereja Johor Bahru.
Peluang Teguh	Singapore	203 Henderson Road #09–05H, Henderson Industrial Park.
Lucktrade International PTE Ltd	Singapore	35 Tannery Road #01–07 Tannery Block, Ruby Industrial Complex, Singapore 347740.
Arrow Electronics Industries	United Arab Emirates	204 Arbift Tower, Benyas Road, Dubai.
Jetpower Industrial Ltd	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Onion Enterprises Ltd	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Lucktrade International	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Litchfield Co. Ltd	Hong Kong Special Administrative Region.	Room 311, 3rd Floor, Wing On Plaza, 62 Mody Road, Tsim Sha Tsui East, Kowloon.
Sunford Trading Ltd	Hong Kong Special Administrative Region.	Unit 2208, 22/F, 118 Connaught Road West.

Name	Country	Last known address
Parrlab Technical Solutions, Ltd	Hong Kong Special Administrative Region.	1204, 12F Shanghai Industrial Building, 48–62 Hennesey Road, Wan Chai.
T.Z.H. International Co. Ltd	Hong Kong Special Administrative Region.	Room 23, 2/F, Kowloon Bay Ind Center, No. 15 Wany Hoi Rd, Kowloon Bay.
Design Engineering Center	Pakistan	House 184, Street 36, Sector F–10/1, Islamabad.
Kantry	Russia	13/2 Begovaya Street, Moscow.
Etalon Company	Russia	20B Berezhkovskaya Naberezhnaya, Moscow.
Pskovenergo Service	Russia	47–A Sovetskaya Street, Pskov, Russia Federation, 180000.
Sheeba Import Export	Yemen	Hadda Street, Sanaa.
Aerospace Consumerist Consortium FZCO.	United Arab Emirates	Sheikh Zayed Road, P.O. Box 17951, Jebel Ali Free Zone, Dubai, and Dubai International Airport, Dubai, 3365.
Medline International LLC	United Arab Emirates	P.O. Box 86343, Dubai.

[FR Doc. 06–6165 Filed 7–11–06; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–475–826)

Certain Cut–to-Length Carbon–Quality Steel Plate Products From Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 6, 2006, the Department of Commerce (the ''Department'') published the preliminary results of the administrative review of the antidumping duty order on certain cut–to-length carbon–quality steel plate products (''CTL Plate'') from Italy. *See Certain Cut–To-Length Carbon–Quality Steel Plate Products From Italy: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 11178 (March 6, 2006) (''Preliminary Results''). This review covers five producers/exporters of CTL Plate. The period of review (''POR'') is February 1, 2004, through January 31, 2005.

Based upon our analysis of the record evidence, the Department finds that the application of adverse facts available (''AFA'') is warranted with respect to Palini and Bertoli S.p.A. (''Palini''). Further, the Department is rescinding the review with respect to Trametal S.p.A. (''Trametal'') because there is no entry against which to collect duties. The Department is also rescinding the review for Metalcam S.p.A. (''Metalcam'') and Riva Fire S.p.A. (''Riva Fire'') because they had no shipments during the POR. The Department is also rescinding this review with respect to Ilva S.p.A. (''Ilva'') because Ilva was improperly included in this administrative review.

EFFECTIVE DATE: July 12, 2006.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Mark Manning, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2006, the Department published the *Preliminary Results* in the **Federal Register** and invited interested parties to comment on those results. On April 27, 2006, the Department received case briefs from Palini and its customer, Wirth Steel of Canada (''Wirth''). On May 10, 2006, the Department received a rebuttal brief from Nucor Corporation (''Nucor''), a petitioner.

Scope of the Order

The products covered by the scope of this order are certain hot–rolled carbon–quality steel: (1) Universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but no exceeding 1250 mm, and of a nominal or actual thickness of not less then 4 mm, which are cut–to-length (not in coils) and without patterns in relief), of iron or non–alloy-quality steel; and (2) flat–rolled products, hot–rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut–to-length (not in coils). Steel products to be included in this scope are of rectangular, square, circular or other shape and of rectangular or non–rectangular cross-section where such non–rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')-for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non–metallic substances are included within this scope. Also, specifically included in this scope are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products to be included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of cooper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this order unless otherwise specifically excluded. The following products are specifically excluded from this order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non–metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion–resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S. or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

The merchandise subject to this order is classified in the HTSUS under

subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.000, 7208.90.000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.90.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to this order is dispositive.

Analysis of Comments Received

The issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, dated concurrently herewith (the ''Issues and Decision Memorandum''), which is adopted herein, by reference. Attached, as an appendix to this notice, is a list of the comments the Department received from interested parties, all of which are discussed in the Decision Memorandum. The Issues and Decision Memorandum is on file in the Central Records Unit, room B–099 of the Herbert C. Hoover Building, and may be accessed on the Web at http://ia.ita.doc.gov/frn/index.html.

Changes Since the Preliminary Results

Based on our analysis of the comments received, the Department has made a change from the *Preliminary Results*. Specifically, for these final results, the Department has selected a dumping margin of 10.31 percent as AFA for Palini.

Adverse Facts Available

For the reasons discussed below, we determine that it is appropriate to apply AFA toward Palini for these final results of review.

A. Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended (the ''Act''), provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadlines for submission of the information, or in the form or manner requested, subject to section 782 of the Act, (C) significantly impedes a proceeding under this title, or (D) provides information that cannot be verified as provided in section 782(i) of the Act, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act further states that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

As discussed in more detail below, Palini did not submit the information requested by the Department in the May 11, 2005, questionnaire by the established deadline, leaving the Department with no information to review or verify. Section 782(d) of the Act directs the Department to notify a respondent when the Department finds its response deficient. Since there was no response to the May 11, 2005, questionnaire, there is no information for the Department to review. Thus, section 782(d) of the Act does not apply in this case. In addition, Palini's failure to respond to the Department's May 11, 2005, request for information resulted in an incomplete record of review, which could not serve as a reliable basis for the Department to reach an applicable determination, thereby impeding this review. Thus, in deciding these final results of review, pursuant to sections 776(a)(2)(A) and (C) of the Act, we have based Palini's dumping margin on facts otherwise available because Palini (1) withheld information specifically requested by the Department in the May 11, 2005, questionnaire and (2) significantly impeded the antidumping proceeding because the incomplete record of review cannot serve as a reliable basis for the Department to reach an applicable determination.

In this case, although the Department provided Palini with notice of the consequences of failure to respond adequately to the May 11, 2005, questionnaire before the applicable deadline, Palini chose not respond to the questionnaire. *See* May 11, 2005, questionnaire at page G–3. Specifically, the Department requested, in its May 11, 2005, questionnaire, that Palini report the total quantity and value of the merchandise under review sold during the POR in (or to) the United States. *Id.* at question one. In addition, this questionnaire stated ''{i}f you are aware that any of the merchandise you sold to third countries was ultimately shipped to the United States, please contact the official in charge within two weeks of the receipt of this questionnaire.'' *Id.* at question nine. As discussed below, Palini failed to respond to question one of the Department's questionnaire even though it had two sales that it shipped directly to the United States during the POR. In addition, even though it had sales to a third country, of which some portion was ultimately shipped to the United States, Palini failed to contact the official in charge as requested by the questionnaire.

Rather than immediately conclude that Palini was a non–cooperative respondent, the Department, on June 6, 2005, issued a letter, pursuant to 19 CFR 351.213(d)(3), to Palini in which the Department requested that Palini indicate whether the reason for its failure to respond to the May 11, 2005, questionnaire was because Palini had no shipments or sales to the United States during the POR. In response to the June 6, 2005, letter, Palini informed the Department that ''all of our exports to {the} USA were made through our Canadian customer Wirth Steel. They purchase steel from us mainly for shipment to Windsor, Ontario and we have no knowledge of the portion of the orders that ultimately are delivered 'in bond' into the U.S. market.'' *See* Memorandum from Thomas Martin, International Trade Compliance Analyst, to the File, ''Receipt of Emailed, Faxed, and Mailed Communication,'' dated October 2, 2005, at Attachment 1, which includes Palini's June 14, 2005, email. We note that Palini made no mention in its response to the Department's June 6, 2005, letter that it shipped two of its sales directly from Italy to the United States.

Prompted by Palini's June 14, 2005, assertion that it had no knowledge of which sales entered the United States, the Department requested documentation from CBP in an attempt to confirm Palini's statements in the June 14, 2005, email. *See* Memorandum from Thomas Martin, International Trade Compliance Analyst, to The File, ''Request for U.S. Entry Documents'' dated June 29, 2005. When the Department received information from CBP that Palini had sales shipped directly from Italy, some portion of which were entered for consumption

into the U.S. market, thereby contradicting Palini's June 14, 2005, assertion, it made several requests to CBP for more detailed information. *See* Memorandum from Thomas Martin, International Trade Compliance Analyst, to The File, ''Request for U.S. Entry Documents'' dated October 4, 2005. In the end, the Department requested and obtained a large number of customs entries from CBP pertaining to Palini and Wirth, and conducted analysis of these documents. *See* Memoranda from Thomas Martin, International Trade Compliance Analyst, to The File, ''U.S. Entry Summary Documents'' dated January 4, 2006, and January 18, 2006. After analyzing the relevant documentation from CBP, the Department sent a supplemental questionnaire to Palini to give it an opportunity to explain the discrepancies between its June 14, 2005, email and the CBP documents demonstrating direct shipments from Italy and consumption entries. *See* January 6, 2006, supplemental questionnaire.

Palini submitted its supplemental questionnaire response on January 27, 2006. In response to the Department's request to clarify its initial statement that it has ''no knowledge of the portion of the orders that ultimately are delivered 'in bond' into the U.S. market,'' Palini replied that ''the portion {of Palini's sales} that Wirth Steel shipped to Canada, part of it was kept in bond in Canada and then shipped later to the USA. Alternatively some of the steel delivered to U.S. ports was kept in bond and {subsequently} shipped to Canada.'' *See* Palini's January 27, 2006, submission at 3. Thus, Palini clarified that it knew that some of its sales to Wirth were delivered to U.S. ports, but that it did not know which portion of those sales remained within the U.S. market.

Palini also stated in its supplemental response that Wirth provided it with the destinations for each shipment and that Palini included this information in its commercial invoices and shipping documents. *Id.* at 3–4. Palini provided its commercial invoices and bills of lading for the two sales in question, which are kept in the normal course of business. *Id.* at pages 12–15, 48, and 50 of the Attachment. These documents list U.S. destinations, thereby demonstrating that Palini had knowledge that these two sales were shipped directly to U.S. destinations. In the *Preliminary Determination*, the Department applied the knowledge test to these facts and found that Palini had knowledge of direct shipments to the United States of subject merchandise. *See Preliminary Determination* at 71 FR at 11180. For these final results, we continue to find that Palini had knowledge that two of its sales to Wirth were destined for the United States. However, as discussed concurrently in the Issues and Decision Memorandum, the Department's knowledge test does not require Palini to know the final destination of the subject merchandise. *See* Issues and Decision Memorandum at 6–7.

In sum, Palini failed to respond to the Department's May 11, 2005, questionnaire or to request an extension of the deadline prior to the due date for the questionnaire, as required by section 351.302(c) of the Department's regulations. Palini did not report its two sales of subject merchandise shipped to the United States, nor did Palini indicate in response to the Department's June 6, 2005, letter that it knew that two of its sales were destined for the United States. Palini only acknowledged that two of its sales were shipped directly to the United States after the Department informed Palini that CBP documents contradicted its earlier assertions. The Department, therefore, finds that Palini withheld information that the Department specifically requested. Additionally, by not responding to the initial questionnaire and waiting to reveal its knowledge that two of its sales were shipped directly to the United States, Palini impeded this segment of the proceeding by preventing the Department from issuing supplemental questionnaires to obtain and examine its sales of subject merchandise, and from calculating a dumping margin for Palini's sales within the statutory time for completing this review. Therefore, the Department has determined that it must base Palini's dumping margin on the facts otherwise available pursuant to sections 776(a)(2)(A) and (C) of the Act.

B. Application of Adverse Inferences for Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' The Court of Appeals for the Federal Circuit (''Federal Circuit'') has held that the statutory mandate that a respondent act to the ''best of its ability'' requires the respondent to do the maximum it is able to do. *See*, *e.g.*, *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003). In the instant case, Palini knew that its two sales were destined for the United States. However, Palini failed to report its sales of subject merchandise to the United States or even to respond to the May 11, 2005, questionnaire. Further, Palini did not disclose these two sales in response to the Department's June 6, 2005, letter asking Palini to inform the Department if ''it had no shipments or sales of cut–to-length carbon quality steel plate to the United States during the POR.'' Rather than doing the maximum it was able to do in response to the Department's requests for information, Palini chose to not report sales it knew had been shipped to the United States. Therefore, the Department finds that Palini failed to cooperate to the best of its ability in complying with the Department's requests for information. Because Palini did not cooperate to the best of its ability, the Department, in selecting from among the facts otherwise available will use an inference that is adverse to the interests of Palini. *See* section 776(b) of the Act.

Section 776(b) of the Act authorizes the Department to use as AFA information derived from (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information on the record. *Id.* It is the Department's practice normally to select as AFA the highest margin calculated in any segment of the proceeding for any respondent. *See*, *e.g.*, *Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Rescission: Certain Cut–to-Length Carbon Steel Plate from Romania*, 71 FR 7008 (February 10, 2006). The CIT and the Federal Circuit have consistently upheld Commerce's practice. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990); *see also NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004); *see also Kompass Food Trading Int'l v. United States*, 24 CIT 678, 689 (CIT 2000); and *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339 (CIT 2005). In this case, because there have been no administrative reviews since the investigation and no interested party has placed information on the record to be used as a source of the AFA rate, the only information available from which to derive the AFA rate is information from the investigation and the petition.

Section 776(c) of the Act requires that, where the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary

information is described in the Statement of Administrative Action as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316 at 870 (1994) (''SAA''). The SAA states that ''corroborate'' means to determine that the information used has probative value. *Id.* The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id*; *see also Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181 (March 11, 2005).

The Department attempted to corroborate the petition rate. In the petition, the petitioners estimated export price based on the Average Unit Values (''AUVs'') of imports of subject merchandise from Italy during the period of investigation (''POI'') and based normal value (''NV'') on their own production experience. The Department examined the AUV data for the POR and found that the AUVs for subject merchandise have increased between the POI and POR. *See* Memorandum from Thomas Martin, International Trade Compliance Analyst, ''Comparison of Average Unit Values,'' dated July 5, 2006. Regarding NV, there is no information on the record of this review with which to use in corroborating the petition's NV. Therefore, the Department has found that the information from the petition is not probative in this review.

Because the petition rate is not probative in this review, there have been no prior administrative reviews of this order, and no interested party has placed information on the record to be used as a source of the AFA rate, the Department must look to information from the investigation as the basis for the AFA rate. *See* section 776(b) of the Act. The only information on the record of the investigation which can serve as a basis for an adverse margin is Palini's own information. The Department continues to find that using Palini's own rate from the investigation would not be sufficiently adverse so as ''to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less Than Fair Value*, 63 FR 8909, 8932 (February 32, 1998). The Department also finds that using Palini's rate from the investigation would not prevent Palini from obtaining a more favorable result by failing to cooperate than if it had cooperated fully. *See* SAA at 870; *see also D&L Supply Co. v. United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997). The Federal Circuit recognized in *F.Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027 (Fed. Cir. 2000) (''*De Cecco*'') that the AFA rate must necessarily be higher than any estimate of the respondent's actual rate. *See De Cecco*, 216 F. 3d at 1032. For this reason, the Department has chosen the highest dumping margin calculated for any model for Palini in the LTFV investigation, 10.31 percent, as AFA. *See* Memorandum from Thomas Martin, International Trade Compliance Analyst, to the File, ''Amended Final Determination Calculation Memorandum,'' dated July 5, 2006. This rate is reliable as it is based on Palini's own information and is relevant to Palini's own practices in selling CTL Plate to the United States. Therefore, given the record evidence from the petition and from the instant review, the Department finds that the 10.31 percent rate is the most appropriate to use as AFA and is assigning it to Palini.

Partial Rescission of Administrative Review

Pursuant to the February 28, 2005, request made by Nucor Corporation, a petitioner to this proceeding, the Department initiated this review with respect to Ilva and four other producers of subject merchandise. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 14643 (March 23, 2005). The Department preliminarily intended to rescind this review due to an assertion of no shipments by Ilva. *See Preliminary Results*. However, upon review of the record of the proceeding the Department determined that initiation of a review of Ilva was improper because Ilva is excluded from the order due to receiving a *de minimis* final margin in the less than fair value investigation. *See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut–To-Length Carbon–Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000). For this reason, the Department is rescinding the review with respect to Ilva.

The Department's practice, supported by substantial precedent, requires that there be entries during the POR upon which to assess antidumping duties, to conduct an administrative review. *See Granular Polytetrafluoroethylene Resin from Japan: Notice of Rescission of Antidumping Duty Administrative Review*, 70 FR 44088 (August 1, 2005). Pursuant to 19 CFR § 351.213(d)(3), the Department will rescind an administrative review in whole or only with respect to a particular exporter or producer if it concludes that during the POR there were ''no entries, exports, or sales of the subject merchandise.'' In response to the Department's questionnaire Metalcam and Riva Fire informed the Department via letters dated May 24, 2005, and May 30, 2005, that they did not ship subject merchandise to the United States during the POR. The Department corroborated these statements through CBP entry data, which indicate that there were no entries of subject merchandise from these companies during the POR. Since the *Preliminary Results*, no party has provided the Department with any evidence that Metalcam or Riva Fire had entries or sales during the POR. Therefore, in accordance with 19 CFR § 351.213(d)(3), the Department is rescinding the administrative review with respect to Metalcam and Riva Fire.

On June 13, 2005, Trametal responded to the Department's May 11, 2005, questionnaire and informed the Department that it made one sale of subject merchandise to the United States. The Department confirmed Trametal's claim of a single U.S. sale by reviewing CBP import data and entry documents. Although the entry documents appear to indicate that Trametal shipped subject merchandise in its single sale to the United States during the POR, the importer did not enter the goods as subject to the antidumping order, and CBP liquidated the entry under its own authority. There is no evidence to indicate that Trametal has any connection to this importer.

Trametal has no entries during the POR against which to collect duties. It is the Department's practice not to conduct an administrative review when there are no entries to be reviewed. *See Notice of Final Results of Antidumping Duty Administrative Review: Portable Electric Typewriters from Japan*, 56 FR 14072, 14073 (April 5, 1991); and *Notice*

of Proposed Rulemaking and Final Comments: Antidumping Duties; Countervailing Duties, 61 FR 7308, 7318 (February 27, 1996). Liquidation of entries is final for all parties unless protested within the prescribed period. *See* 19 U.S.C. § 1514(a)(5). Because the liquidation of Trametal's entry is final, the Department cannot assess antidumping duties against that entry pursuant to the final results of this administrative review. Since the *Preliminary Results*, no party has provided the Department with any evidence that Trametal had additional entries or sales during the POR, or that the liquidation has been protested. Therefore, the Department is rescinding the review with respect to Trametal, pursuant to 19 CFR § 351.213(d)(3).

Final Results of Review

As a result of this review, the Department determines that the following weighted–average dumping margin exists for the period February 1, 2004, through January 31, 2005:

Manufacturer/Exporter	Margin (percent)
Palini and Bertoli S.p.A.	10.31

Assessment

The Department has determined, and CBP shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR § 351.212(b). The Department calculates importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales. Where an importer–specific assessment rate is above *de minimis*, the Department will instruct CBP to assess the importer–specific rate uniformly on the entered value of all entries of subject merchandise by that importer.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (''*Assessment Clarification*''). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, the Department will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Assessment Clarification*.

In the instant review, the record evidence demonstrates that Palini had knowledge that two of its sales were destined for the United States because Palini's commercial invoices and bills of lading identify U.S. destinations. Record evidence also indicates that Palini had no knowledge of U.S. destinations for its remaining sales because these sales were destined for Canada where Wirth then decided which sales, or which portion of a particular sale, would remain in Canada or would be exported to the United States. Further, the Department notes that Wirth does not have its own cash deposit rate in the proceeding. Pursuant to the Department's cash deposit hierarchy, Wirth appropriately entered its sales under the CBP case number for Palini. Therefore, in accordance with our *Assessment Clarification*, entries of subject merchandise during the POR produced by Palini and delivered by Wirth to the United States without Palini's knowledge will be liquidated at the all–others rate in effect on the date of entry, 7.85 percent, as Palini had no knowledge that these sales were destined for the United States. Given the entry–specific information on the record of this review, the Department will identify to CBP entries of subject merchandise from the two shipments for which Palini had knowledge of U.S. destinations, and will instruct CBP to liquidate those entries at the AFA rate of 10.31 percent. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

In addition, the Department has rescinded the review with respect to Metalcam, Riva Fire, and Trametal due to no shipments made by these producers. Metalcam, Riva Fire, and Trametal have never participated in any segment of this proceeding, and for this reason, do not have their own CBP case numbers. Therefore, entries of subject merchandise produced by Metalcam, Riva Fira, and Trametal made during the POR through intermediaries will be liquidated at the all–others rate in effect on the date of entry.

Cash Deposits

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act. In this case (1) the cash–deposit rate for Palini will be the rate established in the final results of this review; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash–deposit rate will be 7.85 percent, the all–others rate established in the LTFV investigation. These cash deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review. *See* section 751(a)(2)(C) of the Act.

Notification to Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the concomitant assessment of double antidumping duties. This notice is also the only reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR § 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

The Department is publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 5, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–10952 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–357–812

Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review: Honey from Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 12, 2006.

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0408 or(202) 482–0469, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published an antidumping duty order on honey from Argentina on December 10, 2001 (*see Notice of Antidumping Duty Order; Honey From Argentina*, 66 FR 63672). On January 3, 2006, Patagonik S.A., an Argentine exporter of subject merchandise, requested that the Department conduct a new shipper review. On January 20, 2006, the Department initiated this new shipper review. *See Honey from Argentina: Initiation of New Shipper Antidumping Duty Review*, 71 FR 4349 (January 26, 2006). The preliminary results of this administrative review are currently due no later than July 19, 2006.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930 as amended (the Act), the Department shall issue preliminary results in a new shipper review of an antidumping duty order within 180 days after the date on which the new shipper review was initiated. The Act further provides, however, that the Department may extend the deadline for completion of the preliminary results of a new shipper review from 180 days to 300 days if it determines that the case is extraordinarily complicated. *See* section 751(a)(2)(B)(iv) of the Act. We determine that this new shipper review is extraordinarily complicated because of issues involving cost, third country sales, and the nature of the U.S. sale.

Section 751(a)(2)(B) of the Act and section 351.214(i)(2) of the Department's regulations allow the Department to extend the deadline for the preliminary results to a maximum of 300 days from the date on which the new shipper review was initiated. For the reasons noted above, we are extending the time for the completion of preliminary results until no later than November 16, 2006, which is 300 days from the date on which the new shipper review was initiated. The deadline for the final results of this administrative review continues to be 90 days after the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(2)(B) of the Act.

Dated: June 30, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–10875 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–421–807

Certain Hot–Rolled Carbon Steel Flat Products from the Netherlands; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 12, 2006.

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0408 or (202) 482–0469, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On December 22, 2005, in response to a request from petitioners, (United States Steel Corporation), and interested parties (Mittal Steel USA Inc. and Nucor Corporation), we published a notice of initiation of this administrative review in the **Federal Register**. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 76024 (December 22, 2005).

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 or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete a review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

The Department has determined that it is not practicable to complete the preliminary results of this review within the original time limit (*i.e.*, by August 2, 2006) because of significant issues that require additional time to evaluate. These include the examination of sales by respondent Corus Staal, BV's many affiliated parties in the U.S. market and in the home market and further examination of Corus Staal BV's cost of production response. Therefore, the Department is fully extending the time limit for completion of the preliminary results of this review by 120 days, or until November 30, 2006, in accordance with section 751(a)(3)(A) of the Act. The deadline for the final results of this administrative review continues to be 120 days after publication of the preliminary results of review.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: June 30, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–10874 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–557–809)

Stainless Steel Butt–Weld Pipe Fittings From Malaysia: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 12, 2006.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Mark Manning, AD/CVD Operations, Office 4, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4114 or (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2006, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity To Request Administrative Review'' of the antidumping duty order on stainless steel butt–weld pipe fittings from Malaysia for the period February 1, 2005, through January 31, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 71 FR 5239 (February 1, 2006). On February 28, 2006, Sapura–Schulz Hydroforming Sdn. Bhd. (Sapura–Schulz), requested an administrative review of its sales for the above–mentioned period. In addition, on February 28, 2006, the petitioners[1] requested an administrative review of the sales for the above–mentioned period made by Kanzen Tetsu Sdn. Bhd. (Kanzen) and Sapura–Schulz. On April 5, 2006, the Department published a notice of initiation of an administrative review of the antidumping duty order on stainless steel butt–weld pipe fittings from Malaysia with respect to Sapura–Schulz and Kanzen. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Reviews*, 71 FR 25145 (April 5, 2006).

Partial Rescission of Review

On June 19, 2006, Sapura–Schulz and the petitioners simultaneously withdrew their requests for an administrative review of the sales made by Sapura–Schulz during the above–referenced period. Section 351.213(d)(1) of the Department's regulations requires that the Secretary rescind an administrative review if a party requesting a review withdraws the request within 90 days of the date of publication of the notice of initiation. In this case, Sapura–Schulz and the petitioners have withdrawn their requests for review within the 90–day period. We have received no other submissions regarding the withdrawals of the requests for review. Therefore, we are rescinding in part this review of the antidumping duty order on stainless steel butt–weld pipe fittings from Malaysia with respect to Sapura–Schulz. This review will continue with respect to Kanzen.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 6, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–10951 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–DS–S

[1] The petitioners in this segment of the proceeding are: Flowline Division of Markovitz Enterprises, Inc.; Gerlin, Inc.; Shaw Alloy Piping products, Inc.; and Taylor Forge Stainless, Inc. (collectively, the petitioners).

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an export trade certificate of review.

SUMMARY: Export Trading Company Affairs (''ETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a non-confidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be non-confidential. An original and five (5) copies, plus two (2) copies of the non-confidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–B H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, non-confidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 84–17A12.''

A summary of the application for an amendment follows.

Summary of the Application:

Applicant: Northwest Fruit Exporters (''NFE''), 105 South 18th Street, Suite 227, Yakima, Washington 98901.

Contact: James R. Archer, Manager, Telephone: (509) 576–8004.

Application No.: 84–17A12.

Date Deemed Submitted: June 30, 2006.

The original NFE Certificate was issued on June 11, 1984 (49 FR 24581, June 14, 1984) and last amended on December 2, 2005 (70 FR 73731, December 13, 2005).

Proposed Amendment: NFE seeks to amend its Certificate to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Fox Orchards, Mattawa, Washington; Prentice Packing & Storage, Inc., Yakima, Washington; and Yakima Fresh, Yakima, Washington;

2. Delete the following companies as ''Members'' of the Certificate: Bardin Farms Corp., Monitor, Washington; Bertha's Marketing Inc., Wenatchee, Washington; Bolinger & Sons, Wenatchee, Washington; Cervantes Packing and Storage, L.L.C., Sunnyside, Washington; SST Growers and Packers L.L.C., Granger, Washington; and Yakima-Roche Fruit Sales L.L.C., Yakima, Washington; and

3. Change the listing of the following ''Member'': Sage Marketing L.L.C., Yakima, Washington to the new listing Sage Fruit Company, L.L.C., Yakima, Washington.

Dated: July 6, 2006.

Vanessa M. Bachman,

Acting Director, Export Trading Company Affairs.

[FR Doc. E6–10929 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Recreation/ Tourism Study, Socioeconomic Monitoring Program for the Florida Keys National Marine Sanctuary

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

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 September 11, 2006.

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 Dr. Vernon Leeworthy, 301–713–3000, extension 138, or *Bob.Leeworthy@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this information collection is to obtain socioeconomic monitoring information in the Florida Keys National Marine Sanctuary (FKNMS). This is an approximately 10-year replication of a study done in 1995–96 entitled ''Linking the Economy and Environment of the Florida Keys/ Florida Bay'' that provided baseline measures for recreation/tourism in the Florida Keys. The study also replicates measures on recreation/tourist uses of the reefs that were estimated for the baseline in 2000–2001 in a study entitled ''Socioeconomic Study of Reefs in Southeast Florida''.

The study involves surveys on both visitors and residents of the Florida Keys/Monroe County. The visitors are different by season (summer versus winter) so separate estimates are made by season, while for residents annual estimates are made.

Information is collected on socioeconomic profiles, detailed recreation activity profiles, expenditures, non market economic use values, importance/satisfaction ratings on 25 natural resources attributes, facilities and services, and knowledge attitudes and perceptions of Sanctuary management strategies and regulations.

In addition, surveys of several businesses are to be conducted. A survey of for-hire recreational fishing guides is planned to gather information on knowledge, attitudes and perceptions of Sanctuary management strategies and regulations, especially the various zoning strategies. Short post card surveys are planned for Dive Shop Owners/Operators and Cruise Ship Operations to assess whether these businesses market customers based on the protected status of waters surrounding the Florida Keys.

II. Method of Collection

Interviews will generally be used. Visitors will be surveyed face-to-face while in the Florida Keys and will also be given mail-back questionnaires. Residents will be surveyed using mail-back questionnaires. For-hire recreational fishing guides will be surveyed at their homes or businesses by an interview team. Dive Shop Owners/Operators and Cruise Ship Operations will be sent post card mail surveys.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 16,020.

Estimated Time Per Response: Visitors: auto, air and cruise ship on-site surveys, 4 minutes; customer on-site surveys, 15 minutes; mail-back questionnaires, 20 minutes; resident surveys, 1 hour; business interviews; 2 hours; and business post card surveys, 5 minutes.

Estimated Total Annual Burden Hours: 10,469.

Estimated Total Annual Cost to Public: $0.

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: July 6, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6–10896 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted 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: United States Patent and Trademark Office (USPTO).

Title: Patent Processing (Updating).

Form Number(s): PTO/SB/08/08a/08b, PTO/SB/17i, PTO/SB/17P, PTO/SB/21–27, PTO/SB/24B, PTO/SB/30–32, PTO/SB/35–39, PTO/SB/42–43, PTO/SB/61–64, PTO/SB/64a, PTO/SB/67–68, PTO/SB/91–92, PTO/SB/96–97, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B, PTOL/413A.

Agency Approval Number: 0651–0031.

Type of Request: Revision of a currently approved collection.

Burden: 3,527,991 hours.

Number of Respondents: 2,508,239 responses.

Avg. Hours Per Response: 1 minute 48 seconds to 12 hours. The USPTO estimates that it will take 2 hours to complete the information disclosure statements (IDS) that do not require any additional disclosure requirement, 4 hours to complete the IDS submitted

during the first time period that require the explanation, 5 hours to complete the IDS submitted during the second time period that require the explanation and non-cumulative description, 6 hours to complete the IDS submitted during the third time period that require the first patentability justification, and 7 hours to complete the IDS submitted during the third or fourth time period that require the second patentability justification. The response time is expected to be the same for both the paper and eIDS filings, but given the current limitations on IDS submissions via eIDS, it is anticipated that only IDSs that do not require additional disclosure statements will be filed via eIDS. This includes time to gather the necessary information, prepare the appropriate form, and submit the information in this collection.

Needs and Uses: The proposed changes to information disclosure submission (IDS) requirements will benefit applicants by improving the quality and efficiency of the examination process. The USPTO is submitting this collection in support of a notice of proposed rulemaking entitled ''Changes to Information Disclosure Requirements and Other Related Matters'' (RIN 0651–AB95). There are two existing paper forms and one EFS-Web form associated with this proposed rulemaking; however, the changes in this proposed rulemaking do not necessitate any changes to the existing forms.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms, the Federal Government, and State, Local or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

E-mail: Susan.Brown@uspto.gov. Include ''0651–0031 copy request'' in the subject line of the message.

Fax: 571–273–0112, marked to the attention of Susan Brown.

Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before August 11, 2006 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: July 3, 2006.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. E6–10916 Filed 7–11–06; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the African Growth and Opportunity Act (AGOA)

July 10, 2006.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for public comments concerning a request for a determination that a certain cotton/cashmere blended yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA.

SUMMARY: On July 5, 2006 the Chairman of CITA received a petition from Shibani Inwear alleging that a certain combed and ring spun yarn, of a 92 percent cotton/ 8 percent cashmere blend, comprised of 2/32 Nm resulting in a 16 Nm yarn count, classified in subheading 5205.42.00.20 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that men's knit sweaters made of such yarn be eligible for preferential treatment under the AGOA. This is the second submission of a petition regarding the subject yarn, previously denied by CITA. **See Denial of a Commercial Availability Request under the African Growth and Opportunity Act (AGOA)** (71 FR 27467, published on May 11, 2006). CITA hereby solicits public comments on this request, in particular with regard to whether such yarn can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by July 27, 2006 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, NW. Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Presidential Proclamation 7350 of October 2, 2000; Section 1 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The AGOA provides for quota-and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The AGOA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On July 5, 2006 the Chairman of CITA received a petition from Shibani Inwear alleging that a certain combed and ring spun yarn, of a 92 percent cotton/ 8 percent cashmere blend, comprised of 2/32 Nm resulting in a 16 Nm yarn count, classified in subheading 5205.42.00.20 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in men's knit sweaters, cannot be supplied by the domestic industry in commercial quantities in a timely manner. This petition is requesting quota-and duty-free treatment under the AGOA for apparel articles that are both cut and sewn or knit-to-shape in one or more AGOA beneficiary countries from such yarns.

CITA is soliciting public comments regarding this request, particularly with respect to whether this yarn can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other yarns that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for this yarn for purposes of the intended use. Comments must be received no later than July 27, 2006. Interested persons are invited to submit six copies of such

comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that this yarn can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA generally considers specific details, such as quantities and lead times for providing the subject product as business confidential. However, information such as the names of domestic manufacturers who were contacted, questions concerning the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. If this is not possible, an explanation of the necessity for treating such information as business confidential must be provided. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 06–6195 Filed 7–10–06; 2:54 pm]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of Draft Environmental Impact Statement for the Floyd County, KY (Levisa Fork Basin), Section 202 Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice; extension of comment period.

SUMMARY: The comment period for the Draft Environmental Impact Statement for the Floyd County, KY (Levisa Fork Basin), Section 202 Project published in the **Federal Register** on Friday, May 5, 2006 (71 FR 26478), required comments be submitted 45 days (June 19, 2006) following publication in the **Federal Register**. The comment period was extended to 60 days (July 5, 2006) in the **Federal Register** on Tuesday, June 13, 2006 (71 FR 34077). The comment period has now been extended to 100 days (August 14, 2006).

FOR FURTHER INFORMATION CONTACT: Stephen O'Leary, Telephone (304) 399–5841.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–6138 Filed 7–11–06; 8:45 am]

BILLING CODE 3710–GM–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for a Proposed First Broad First Reservoir in Cleveland County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Cleveland County Sanitary District (CCSD) is applying for a Department of the Army permit under Section 404 of the Clean Water Act (33 U.S.C. 134) to impact approximately 24 miles of river and stream habitat and approximately 1 acre of wetlands with the construction of a dam and water supply reservoir on the First Broad River. The proposed dam site is one mile north of the Town of Lawndale in Cleveland County, NC. The CCSD is proposing this action for the purpose of increasing the water supply for its service area and the region. Based on current rates of growth, CCSD has projected that water needs for its customers will double by the year 2050. Projected regional water demand indicate that existing water supplies are inadequate for future needs. The proposed reservoir would also lessen the occurrence of water shortages during drought conditions. In accordance with the National Environmental Policy Act (NEPA), a Draft Environmental Impact Statement (DEIS) will be prepared to evaluate and compare alternatives for increasing water supply and to assess associated impacts.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. David Baker, U.S. Army Corps of Engineers, 151 Patton Avenue, Room 208, Asheville, NC 28801–5006; telephone: (828) 271–7980 x225.

SUPPLEMENTARY INFORMATION: Construction of a dam to create the First Broad River Reservoir will also require certification from the North Carolina Division of Water Quality (NCDWQ) pursuant to Section 401 of the Clean Water Act, as amended, that the project can be undertaken without violating the state water quality standards.

The following description of the proposed dam and reservoir is subject to change as analysis and additional designs are completed. Initial feasibility estimates indicate that an earth-filled dam across the First Broad River may be approximately 83 feet high and 1,245 feet wide at the base. The associated emergency spillway, located south of the dam, would be approximately 1,000 feet wide. The dam would create a reservoir with a surface area of approximately 2,245 acres, impounding those areas below 860-feet msl. A 100-foot buffer would likely surround the reservoir. Flooding impacts would potentially include the loss of approximately 24 miles of river and stream habitat and roughly 1,400 acres of forested and agricultural land. The project would likely inundate less than one acre of wetland, subject to field verification.

Alternatives

Through the NEPA process, a number of potentially alternatives to meeting future water supply demands will be considered. It is anticipated that those potential solutions could include, but are not limited to, the following:

Conserve Water—Per capita water usage could be decreased through the implementation of a water conservation program. The CSSD has a voluntary water conservation program and enforces a mandatory program of water conservation during periods of drought. According to the CCSD, an aggressive water conservation plan will not negate the demand for an additional water supply in the future.

Utilize Groundwater—Smaller communities and residences could be served by individual groundwater wells. However, there are no aquifers of large enough capacity to serve large municipal systems in the Cleveland County area.

Purchase Water from other Sources—Under this alternative, water would be

purchased from an existing municipal source, such as the City of Shelby, the Town of Kings Mountain, the Broad River Water Authority (BRWA), the Town of Forest City, or the City of Hickory.

Shelby—The City of Shelby utilizes the First Broad River as its water source. The CCSD has an emergency use agreement and pipeline connection in place with the City of Shelby. The volume of water available to the CCSD is limited.

Kings Mountain—Moss Lake provides potable water to the Town of Kings Mountain. There is currently no direct connection between the town and CCSD. In 2002, an emergency pipeline connection with the City of Shelby was constructed to supplement the city's water supply during the drought.

Broad River Water Authority (BRWA)—The BRWA utilizes the Broad River as its water source with an intake near the Town of Rutherfordton and a 12.0 MGD water treatment plant. The CCSD has an emergency use agreement and pipeline connection in place with the BRWA.

Town of Forest City—The Town of Forest City utilizes the Second Broad River as its water source with an intake located north of the town and a 12.0 MGD water treatment plant. The CCSD does not currently have a connection in place with the Town of Forest City.

Hickory—The City of Hickory uses the Catawba River (Lake Hickory) as a raw water supply. The city currently has available excess capacity to meet the projected future CCSD demands. This alternative would require permission from the North Carolina Environmental Management Commission to transfer the required amount of flow from the Catawba River basin to the Broad River basin.

Other Regional Sources—Other feasible regional sources of water to meet future demands, including during emergency situations, would be explored.

Increase Withdrawal at Existing Intake Site—Withdrawals at the existing intake site are constrained by normal flows of the First Broad River and the required instream flow requirements established by the North Carolina Division of Water Resources. The projected safe yield of the First Broad River at the existing CCSD intake is 10.0 MGD. However during the 2002 drought the available supply dropped to less than 4.0 MGD.

Construct a Reservoir (no pumped storage).

First Broad River—A reservoir on the First Broad River would consist of an impoundment of the river to meet the needs of the CCSD to provide a reliable water source. Preliminary studies on several sites were performed to consider the volume; surface area; shoreline; safe yield; and number of roads, bridges, cemeteries and schools that would potentially be affected (McGill, 1997, Feasibility Study, First Broad River Reservoir).

Other Rivers in the Region—Other rivers may not be feasible due to size constraints, cost estimates, existing water demands on the system (such as the Broad River), distance to the CCSD water treatment facility, or location within other regional utility service areas.

Construct Several Reservoirs—This alternative would construct several reservoirs in the First Broad River watershed instead of one main impoundment.

Intake System on the Broad River (no storage reservoir)—This alternative would consist of construction of a new run of the river type intake on the Broad River and the utilization of the river for a raw water supply in addition to the First Broad River. This alternative would require the classification of the river and a portion of the watershed for use as a water supply. Several other municipalities have expressed interest in future utilization of the Broad River for water supply and have commenced the reclassification process for a portion of the river. Other demands for water from the river will impact the amount of water available for the CCSD.

Construct an Intake System on the First Broad River with one Storage Reservoir—This alternative would consist of the construction of an ''off-stream reservoir.'' The reservoir would be maintained at full pool elevation during periods of normal to high flows by pumping water from the First Broad River to the reservoir. During periods of low flow in the First Broad River, raw water would flow from the ''off-stream reservoir'' through a water line to the water treatment plant.

No Action—Under the no-action alternative, the CCSD would continue to take water from the current intake on the First Broad River.

After an evaluation of such potential alternatives, a determination will be made as to the Reasonable Alternatives to be fully evaluated in the DEIS.

Proposed Scoping Process. This Notice of Intent initiates the scoping process whereby the U.S. Army Corps of Engineers (USACE) will refine the scope of issues to be addressed in the DEIS and identify potential significant environmental issues related to the proposed action.

The primary issues to be addressed in the DEIS are the impacts of the project related to hydrology (including floodplains, floodways, and geomorphology), water quality, aquatic habitat and wildlife, jurisdictional waters, terrestrial habitat and wildlife (including migratory birds), protected species, soils, topography, geology, hazardous materials, underground storage tanks, transportation network, recreational opportunities, air quality, noise, cultural resources, aesthetics, socioeconomics, and land use. In addition, the DEIS will address indirect and cumulative effects. This list of issues may be modified and/or expanded through the scoping process.

The USACE will, through the scoping process, invite the participation of all local, state, and federal agencies which have jurisdiction by law or special expertise with the affected resources, as well as other interested parties. These include, but are not limited to, the U.S. Fish and Wildlife Service, under the Endangered Species Act and the Fish and Wildlife Coordination Act; U.S. Environmental Protection Agency, the State Historic Preservation Officer and the Tribal Historic Preservation Office under the National Historic Preservation Act, North Carolina Department of Environment and Natural Resources, North Carolina Wildlife Resources Commission, and the North Carolina Department of Transportation.

An initial scoping meeting will be held in the community to describe the proposed project and solicit suggestions, recommendations, and comments to help refine the issues, measures, and alternatives to be addressed in the DEIS. The specific location, date, and time of the meeting will be published in local newspaper(s) or other media, and provided to those persons receiving this notice and those who call or write after seeing a published version of this notice.

All private interests and Federal, State, and local agencies and officials, Indian Tribes, and others having an interest in the project are hereby notified that their participation is invited.

Availability. It is anticipated that the DEIS would be distributed to the public in late 2008.

Dated: June 8, 2006.

John E. Pulliam, Jr.,

Colonel, U.S. Army, District Commander.

[FR Doc. 06–6139 Filed 7–11–06; 8:45 am]

BILLING CODE 3710–CE–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Saturday, July 29, 2006, 8:30 a.m.–12 p.m.

ADDRESSES: Crosby Township Senior Center, 8910 Willey Road, Harrison, Ohio 45030.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail: *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

8:30 a.m. Call to Order.
8:35 a.m. Chair's Remarks and Liaison Announcements.
8:45 a.m. Closure Status Update.
9:15 a.m. Finalize Fernald Citizens' Advisory Board (FCAB) History.
10:15 a.m. Break.
10:30 a.m. Plan/Input to Fernald Community Alliance Forum.
11:15 a.m. Identify items to include in a final FCAB recommendation for closure and transition.
11:40 a.m. Identify timing for final FCAB meeting.
11:50 a.m. Public Comment.
12 p.m. Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on July 6, 2006.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E6–10938 Filed 7–11–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pacific Northwest-Pacific Southwest Intertie Project—Rate Order No. WAPA–130

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Transmission Service Rates.

SUMMARY: The Western Area Power Administration (Western) is proposing adjustments to the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) rates for firm transmission service on the 230/345-kilovolt (kV) transmission system, firm transmission service on the 500-kV transmission system, and nonfirm transmission service on the 230/345/500-kV transmission system. The existing rates, under Rate Schedules INT–FT2, INT–FT3, and INT–NFT2, expire December 31, 2006. The proposed rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay required investment within the allowable period. Western will prepare a brochure that provides detailed information on the rates to all interested parties. Western expects the proposed rates to go into effect on January 1, 2007, and remain in effect through December 31, 2011. Publication of this **Federal Register** notice begins the formal process for the proposed rates.

DATES: The consultation and comment period begins today and will end October 10, 2006. Western will present a detailed explanation of the proposed rates at a public information forum on August 17, 2006, at 10 a.m. MST in Phoenix, AZ. Western will accept oral and written comments at a public comment forum on August 24, 2006, at 10 a.m. MST in Phoenix, AZ. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: The public information forum and public comment forum will be held at the Desert Southwest Region Customer Service Office, 615 South 43rd Avenue, Phoenix, AZ, on the dates cited above. Send written comments to Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, e-mail *carlson@wapa.gov*. Written comments may also be faxed to (602) 605–2490, attention: Jack Murray. Western will post information about the rate process on its Web site at *http://www.wapa.gov/dsw/pwrmkt/Intertie/RateAdjust.htm*. Western will post official comments received via letter, fax, and e-mail to its Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

As access to Western facilities is controlled, any U.S. citizen wishing to attend any meeting held at Western must present an official form of picture identification, such as a U.S. driver's license, U.S. passport, U.S. Government ID, or U.S. Military ID, at the time of the meeting. Foreign nationals should contact Western at least 45 days in advance of the meeting to obtain the necessary form for admittance to Western.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Team Lead, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457; (602) 605–2442, e-mail *jmurray@wapa.gov*.

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved Rate Schedules INT–FT2 and INT–NFT2 on January 31, 1996 (Rate Order No. WAPA–71, 61 FR 4651, February 7, 1996), and the Federal Energy Regulatory Commission (Commission) confirmed and approved the rate schedules on February 12, 1996, under FERC Docket No. EF96–5191–000. Rate Schedules INT–FT2 and INT–NFT2 became effective on February 1, 1996, for a 53-month period ending September 30, 2000. These rate schedules were extended through December 31, 2003, with approval of Rate Order No. WAPA–91 by the Deputy Secretary of

Energy on August 15, 2000. These rate schedules were extended again through December 31, 2006, with approval of Rate Order No. WAPA–108 by the Deputy Secretary of Energy on October 27, 2003.

The Deputy Secretary of Energy approved Rate Schedule INT–FT3 on January 28, 1999 (Rate Order No. WAPA–76, 64 FR 6344, February 9, 1999), and the Commission confirmed and approved the rate schedule on June 22, 1999, under FERC Docket No. EF99–5191–000. Rate Schedule INT–FT3 became effective on January 1, 1999, for a 5-year period ending December 31, 2003. This rate schedule was extended through December 31, 2006, with approval of Rate Order No. WAPA–108 by the Deputy Secretary of Energy on October 27, 2003.

Under Rate Schedule INT–FT2, the existing rate for Long-Term Firm and Short-Term Firm Point-to-Point 500-kV Transmission Service is $17.23 per kilowattyear (kWyear). The proposed rate for Long-Term Firm and Short-Term Firm Point-to-Point 500-kV Transmission Service is $21.96 per kWyear. Under Rate Schedule INT–FT3, the existing rate for Long-Term Firm and Short-Term Firm Point-to-Point 230/345-kV Transmission Service is $12.00 per kWyear. The proposed rate for Long-Term Firm and Short-Term Firm Point-to-Point 230/345-kV Transmission Service is $15.36 per kWyear. Under Rate Schedule INT–NFT3, the existing rate for Nonfirm Point-to-Point 230/345/500-kV Transmission Service is 2.00 mills per kilowatthour (kWh). The proposed rate for Nonfirm Point-to-Point 230/345/500-kV Transmission Service is 2.50 mills per kWh. The following table compares the existing and proposed rates for Intertie transmission service.

COMPARISON OF EXISTING AND PROPOSED TRANSMISSION SERVICE RATES

Transmission service	Existing rates	Proposed rates	Percent change
230/345-kV Firm	$12.00 kWyear	$15.36 kWyear	28.0
500-kV Firm	$17.23 kWyear	$21.96 kWyear	27.5
230/345/500-kV Nonfirm	2.00 mills/kWh	2.50 mills/kWh	25.0

The proposed rates are expected to become effective January 1, 2007, and remain in effect through December 31, 2011. The proposed rates are designed to recover an annual revenue requirement that includes operation and maintenance, purchase of transmission capacity, interest, other expenses, and investment repayment. The rate increase results primarily from increased operation and maintenance costs, interest expense, and repayment of capitalized expenses.

Legal Authority

Since the proposed rates constitute a major adjustment as defined by 10 CFR part 903, Western will hold both a public information forum and a public comment forum. After review of public comments and possible amendments or adjustments, Western will recommend that the Deputy Secretary of Energy approve the proposed rates on an interim basis.

Western is establishing transmission service rates for the Intertie under the Department of Energy Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Commission. Existing Department of Energy (DOE) procedures for public participation in power and transmission rate adjustments (10 CFR part 903) were published on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Desert Southwest Customer Service Regional Office, Western Area Power Administration, located at 615 South 43rd Avenue, Phoenix, AZ. Many of these documents and supporting information are also available on Western's Web site at: *http://www.wapa.gov/dsw/pwrmkt/Intertie/RateAdjust.htm*.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: June 28, 2006.

Michael S. Hacskaylo,

Administrator.

[FR Doc. E6–10939 Filed 7–11–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0084; FRL–8064–9]

Dimethoate Interim Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Interim Reregistration Eligibility Decision (IRED) for the organophosphate pesticide dimethoate, and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the dimethoate Docket. Dimethoate is a systemic organophosphate insecticide used for control of a wide variety of insect pests on a number of fruit, vegetable, grain, and field crops, as well as ornamentals and non-cropland adjacent to agricultural fields. EPA has reviewed dimethoate through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before September 11, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0084, 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 Building), 2777 S. Crystal Drive, 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 telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0084. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Stephanie Plummer, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0076; fax number: (703) 308-8041; e-mail address: *plummer.stephanie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA completed an IRED for the organophosphate pesticide dimethoate on June 12, 2006, and is now issuing this document for public comment. Dimethoate is a systemic organophosphate insecticide used for control of a wide variety of insect pests on a number of fruit, vegetable, grain, and field crops, as well as ornamentals and non-cropland adjacent to agricultural fields. The dimethoate IRED presents the Agency's conclusions on the risks posed by exposure to dimethoate alone; however, section 408(b)(2)(D)(v) of the Federal Food, Drug and Cosmetic Act (FFDCA) directs the Agency also to consider available information on the cumulative risk from substances sharing a common mechanism of toxicity. Because the organophosphate pesticides share a common mechanism of toxicity, cholinesterase inhibition, the Agency will evaluate the cumulative risk posed by this group before making final reregistration eligibility decisions on individual organophosphates.

During the pendency of the organophosphate cumulative assessment, the Agency is proceeding with risk assessments and interim risk management for individual organophosphate pesticides. EPA has determined that, but for the cumulative risk assessment, the data base to support dimethoate reregistration is substantially complete and that products containing dimethoate will be eligible for reregistration, provided the risks are mitigated either in the manner described in the IRED or by another means that achieves equivalent risk reduction. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the IRED or as a result of product specific data), and after assessing organophosphate cumulative risks, EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing dimethoate. When the Agency finalizes decisions for dimethoate and other organophosphate pesticides, further risk mitigation may be required for dimethoate.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, dimethoate was reviewed through the full 6 phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for dimethoate.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely reregistration decisions and to involve the public. The Agency is issuing the dimethoate IRED for public comment. This comment period is intended to provide an additional opportunity for public input and a mechanism for initiating any necessary amendments to the IRED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for dimethoate. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the IRED in the **Federal Register**. In the absence of substantive comments requiring changes, the risk management decisions reflected in the dimethoate IRED will be implemented as presented. These decisions may be supplemented by further risk mitigation measures when EPA considers its cumulative assessment of the organophosphate pesticides.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient,'' the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 5, 2006.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E6–10857 Filed 7–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0520; FRL–8074–9]

Prothioconazole; Notice of Filing of a Pesticide Petition for Establishment to Regulations for Residues in or on Soybean Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for the combined residues of prothioconazole and its desthio metabolite in or on soybean commodities.

DATES: Comments must be received on or before August 11, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0520 and pesticide petition number PP 6F7073, 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 Building), 2777 S.

Crystal Drive, 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 telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0520. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Lana Coppolino, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0086; e-mail address: *coppolino.lana@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov.* To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

PP 6F7073. Bayer CropScience, 2 T.W.Alexander Drive; Research Triangle

Park, NC 27709, proposes to establish a tolerance for the combined residues of the fungicide prothioconazole and its desthio metabolite in or on food commodities soybean, seed at 0.15 parts per million (ppm), soybean, forage at 5 ppm; soybean, hay at 22 ppm. Bayer CropScience has submitted an analytical method for determining residues of concern in plants extracts residues of prothioconazole and JAU6476-desthio and converts the prothioconazole to JAU6476-desthio and JAU6476-sulfonic acid. Following addition of internal standards the sample extracts are analyzed by Liquid Chromatography/ Mass Spectrometry/Mass Spectrometry (LC/MS/MS). Radiovalidation and independent laboratory validation have shown that the method adequately quantifies prothioconazole residues in treated commodities. The analytical method for analysis of large animal tissues includes extraction of the residues of concern, followed by addition of an internal standard to the extract. The extract is then hydrolyzed to release conjugates, partitioned and analyzed by LC/MS/MS as prothioconazole, JAU6476-desthio and JAU6476-4-hydroxy. The method for analysis of milk eliminated the initial extraction step in the tissue method.] This method is use to measure and evaluate the chemical residue(s).

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 28, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–10862 Filed 7–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0512; FRL–8075–1]

Notice of Filing of Pesticide Petitions for Establishment of Regulations for Residues of Pirimicarb in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of pirimicarb in or on asparagus, hops, and leafy petioles subgroup.

DATES: Comments must be received on or before August 11, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0512 and pesticide petition numbers (PP) 2E6388, 2E6509 and 0E6102, 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 Building), 2777 S. Crystal Drive, 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 telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0512. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment of regulations in 40 CFR part 180 for residues of pirimicarb in or on asparagus, hops, and leafy petioles subgroup. EPA has determined that these pesticide petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerances

PP 2E6388, 2E6509 and 0E6102. Interregional Research Project Number 4 (IR-4), 681 Highway 1 South, North Brunswick, NJ 08902-3390, proposes to establish tolerances for residues of the insecticide 2-(dimethylamino)-5,6-dimethyl-4-pyrimidinyl dimethylcarbamate (9Cl) and its two carbamate metabolites: desmethyl pirimicarb and desmethylformamido pirimicarb, expressed as desmethyl pirimicarb in or on the following food commodities:

PP 2E6388 proposes to establish a tolerance for asparagus at 0.01 parts per million (ppm).

PP 2E6509 proposes to establish a tolerance for leafy petioles subgroup at 1.0 ppm.

PP 0E6102 proposes to establish a tolerance for hops at 4.0 ppm.

The analytical enforcement method uses Gas Chromatography equipped with a thermionic nitrogen specific detector. Crop samples are macerated with methanol and then filtered. After filtration, the methanol is evaporated and the samples resuspended and partitioned with hexane and hydrochloric acid. The samples are left overnight to allow conversion of the desmethylforamido pirimicarb metabolite to the desmethyl pirimicarb metabolite. The hexane layer is discarded and the acidic aqueous layer is further partitioned with ethyl acetate. Sodium hydroxide is added to the aqueous layer and pirimicarb and its carbamate metabolites are extracted with dichloromethane. This method has been validated by an independent laboratory, with a limit of detection of 0.01 ppm.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 28, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–10846 Filed 7–11–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0523; FRL–8074–3]

Notice of Filing of Pesticide Petitions for Establishment and Amendment to Regulations for Residues of Thiamethoxam in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or amendment of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before August 11, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0523 and pesticide petition number (PP) 6E7060, 0F6142, and 9F5051, 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 Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0523. EPA's policy is that all comments received will be included in the docket

without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: *For Pesticide Petition Information*: Registration Division (7505 P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

For PP 6E7060: Barbara Madden; telephone number: (703) 305-6463; e-mail address: *madden.barbara@epa.gov*.

For PP 0F6142 and 9F5051: Dani Daniel; telephone number: (703) 305-5409; e-mail address: *daniel.dani@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of each pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

1. *PP 6E7060*. Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902-3390, proposes to establish a tolerance for residues of the insecticide, thiamethoxam [3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-N-nitro-4H-1,3,5-oxadiazin-4-imine] (CAS

Reg. No. 153719–23–4) and its metabolite [N-(2-chloro-thiazol-5-ylmethyl)-N'-methyl -N'-nitro-guanidine] in or on food commodities caneberry subgroup 13A at 0.30 parts per million (ppm); hops at 0.1 ppm; Globe artichoke at 0.4 ppm and increase tolerance levels for exisiting tolerances for barley, grain at 0.3 ppm; barley, hay at 0.4 ppm; and barley, straw at 0.4.

2. *PP 0F6142*. Syngenta Crop Protection Inc., P.O. Box 18300, Greensboro, NC 27419-8300, to establish a tolerance for residues of the insecticide, thiamethoxam [3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-N-nitro-4H-1,3,5-oxadiazin-4-imine] (CAS Reg. No. 153719–23–4) and its metabolite [N-(2-chloro-thiazol-5-ylmethyl)-N'-methyl -N'-nitro-guanidine] in or on food commodities grapes at 0.15 ppm; grape, juice at 0.20 ppm; and raisins at 0.30 ppm.

3. *PP 9F5051*. Syngenta Crop Protection Inc., P.O. Box 18300, Greensboro, NC 27419-8300, proposes to establish a tolerance for residues of the insecticide, thiamethoxam [3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-N-nitro-4H-1,3,5-oxadiazin-4-imine] (CAS Reg. No. 153719–23–4) and its metabolite [N-(2-chloro-thiazol-5-ylmethyl)-N'-methyl -N'-nitro-guanidine] in or on food commodities vegetable, leafy, except brassica, group 4 at 2.0 ppm; brassica, leafy greens, subgroup 5B at 2.0 ppm ; brassica, head and stem, subgroup 5A at 1.0 ppm.

For all three petitions (PP 6E7060, 0F6142 and 9F5051) the analytical method used to measure and evaluate the chemical residue is based on crop specific cleanup procedures and determination by liquid chromatography with either ultraviolet (UV) or mass spectrometry (MS) detection. The limit of detection (LOD) for each analyte of this method is 1.25 ng injected for samples analyzed by UV and 0.25 ng injected for samples analyzed by MS, and the limit of quantitation (LOQ) is 0.005 ppm for milk and juices and 0.01 ppm for all other substrates.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 28, 2006.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E6–10859 Filed 7–11–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Public Hearing and Meeting Schedule for 2007

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will hold a public hearing in conjunction with its September 26, 2006 Board meeting. The public hearing will begin at 9 a.m. and will address the exposure draft (ED) entitled *Definition and Recognition of Elements of Accrual-Basis Financial Statements.* Those interested in testifying should contact Ms. Terri Pinkney, Administrative Assistant, no later than one week prior to the hearing. Ms. Pinkney can be reached at 202–512–7350 or via e-mail at *pinkneyt@fasab.gov.* Also, they should at the same time provide a short biography and written copies of their testimony. The ED is available on the FASAB Web site *http://www. fasab.gov* under Exposure Drafts.

Notice is also hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on the following dates in room 7C13 of the U.S. Government Accountability Office (GAO) Building (441 G Street, NW.) unless otherwise noted:

—Wednesday and Thursday, January 17 and 18, 2007.
—Wednesday and Thursday, March 21 and 22, 2007.
—Wednesday and Thursday, May 23 and 24, 2007.
—Wednesday and Thursday, July 18 and 19, 2007.
—Wednesday and Thursday, September 19 and 20, 2007.
—Wednesday and Thursday, November 14 and 15, 2007.

The purpose of the meetings are to discuss issues related to:

—FASB's conceptual framework,
—Social Insurance,
—Application of the Liability Definition,
—The Federal Entity,
—Natural Resources,
—Inter-entity Costs,
—Technical Agenda, and
—Any other topics as needed.

A more detailed agenda can be obtain from the FASAB Web site (*http://www.fasab.gov.*) one week prior to each meeting.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building security requires advance notice of your attendance. Please notify FASAB of your planned attendance by calling 202–512–7350 at least one day prior to the respective meeting.

For Further Information Contact: Wendy M. Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512-7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: July 7, 2006.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 06–6146 Filed 7–11–06; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

June 9, 2006.

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 (PRA) 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 August 11, 2006. 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 contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0824.

Title: Service Provider Identification Number (SPIN) and Contact Form.

Form No.: FCC Form 498.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time Per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 7,500 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission is submitting this information collection to OMB as a revision in order to obtain the full three-year clearance from them.

The Commission has revised the first page of FCC Form 498, at the suggestion of the Department of Justice, to notify respondents that willfully make false statements can result in a fine or forfeiture. In the instructions, the following sentences will be added ''Generic e-mail addresses are not accepted in this block. USAC will reject all forms with a generic e-mail address.'' This will be added to pages 5 (block 2) and 16 (block 14). Finally, the response time has been reduced from 2 hours to 1.5 hours, to more accurately reflect the experience of respondents from the last OMB submission.

The information collected by FCC Form 498 is used by the Administrator (USAC) to disburse Federal universal service support consistent with the specifications of eligible participants in the universal service program. FCC Form 498 submissions also provide the Administrator with updated contact information so that the Administrator can contact universal service fund participants when necessary.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–10936 Filed 7–11–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 06–1272]

Licensees of Broadband Radio Service Channels 1 and/or 2/2A Must File Supplemental Data by July 14, 2006

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: Licensees of Broadband Radio Service (BRS) Channels 1 and/or 2/2A (Licensees) that filed site and technical data for their stations in December 2005 must file supplemental site and technical data for their stations on or before July 14, 2006. If applicable, these Licensees must also update the data they filed in December 2005 to report any changes since that time. The data will assist in determining future AWS licensees' relocation obligations.

DATES: Filing deadline is July 14, 2006 (to report stations constructed and in use as of June 23, 2006).

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mary Shultz, WTB, at (717) 338–2656 (for questions about the data collection) or Jamison Prime, OET, at (202) 418–7474 (for questions about the underlying Commission *Orders*. For additional ULS information or assistance, go to *http://esupport.fcc.gov*. You may also call the FCC Support Center at (877) 480–3201 (TTY 202–414–1255) and select Option #2, Forms or Licensing Assistance.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, released June 14, 2006. The full text of this Public Notice is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A–257, 445 12th Street, SW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCP), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC. The complete item is also available on the Commission's Web site at *http://www.fcc.gov/wtb*.

I. Background

The 2150–2160/62 MHz band is allocated for fixed and mobile services and designated for Advanced Wireless Services (AWS).[1] AWS licensees will be obligated to relocate incumbent primary BRS[2] operations in the 2150–2160/62 MHz band to comparable facilities, most likely within the newly restructured 2495–2690 MHz band, as set forth under the rules and policies adopted by the Commission in the Ninth Report and Order in ET Docket No. 00–258.[3]

2005 Commission Order. In September 2005, the Commission concluded that reliable, public data on each incumbent BRS system that will be subject to relocation is essential in advance of the planned auction of the 2150–2155 MHz band.[4] The Commission also concluded that, because the BRS service is currently licensed on the basis of geographic licensing areas, neither the Commission nor the public has reliable, up-to-date information on the construction status and/or operational parameters of each BRS system in the 2150–2160/62 MHz band that will be subject to relocation.[5] Accordingly, the Commission ordered BRS licensees to submit information on the locations and operating characteristics of their BRS systems in the 2150–2160/62 MHz band, as well as for any constructed and operational stations of their lessees, and noted that the information required would ultimately be necessary in the context of relocation negotiations.[6] The

[1] *See* Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00–258, *Second Report and Order,* 17 FCC Rcd 23193 (2002), *Eighth Report and Order, Fifth Notice of Proposed Rulemaking and Order,* 20 FCC Rcd 15866 (2005) (*2005 Commission Order*). *See also* Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02–353, *Report and Order,* 18 FCC Rcd 25162 (2003) *modified by Order on Reconsideration,* 20 FCC Rcd 14058 (2005).

[2] The Multipoint Distribution Service (MDS) was renamed the Broadband Radio Service (BRS) in 2004 and all former MDS licensees are now referred to as BRS licensees. Herein, references to BRS Channels 1 and/or 2/2A refer to channel numbers under the pre-transition frequency assignments. *See* 47 CFR 27.5(i)(1).

[3] *See* Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00–258, *Ninth Report and Order,* FCC 06–45 at paragraph 13 (rel. April 21, 2006) (*Ninth R&O* or *2006 Commission Order*).

[4] *2005 Commission Order,* 20 FCC Rcd at 15890–91 paragraph 53 (citing 47 U.S.C. 154(i)).

[5] *Id., 2005 Commission Order. See also* 70 FR 61747 (October 26, 2005).

[6] *Id.* The Commission also noted that the information submitted need not be signed under oath; however, willful false statements made therein are punishable by fine and imprisonment, and by appropriate administrative sanctions,

Continued

Commission directed and authorized the Office of Engineering and Technology (OET) and the Wireless Telecommunications Bureau (WTB) to issue public notices with the specific data that BRS licensees in the 2150–2160/62 MHz band must file along with the deadline dates and procedures for filing this data electronically in the Commission's Universal Licensing System (ULS), where it will be available to the public.

On November 30, 2005, OET and WTB released a *Public Notice (First BRS Data Collection PN)* setting forth two data collections concerning BRS licensees in the 2150—2160/62 MHz band.[7] The deadline for filing the first set of information (''First Data Collection'') was December 27, 2005. The deadline for filing the second set of information (''Second Data Collection'') could not be set until the Office of Management and Budget (OMB) approved the new or revised information collections pursuant to the Paperwork Reduction Act of 1995, Public Law No. 104–13.[8] On April 26, 2006, OMB approved the new or revised information collections contained in the Second Data Collection.[9]

2006 Commission Order. On April 21, 2006, the Commission released the *Ninth R&O* in ET Docket No. 00–258. Among other things, the Commission decided that BRS licensees with primary status in the 2150–2160/62 MHz band as of June 23, 2006, will be eligible for relocation insofar as they have facilities that are constructed and in use as of that date. After June 23, 2006, all major modifications to existing BRS systems in use in the 2150–2160/62 MHz band will be authorized on a secondary basis to AWS systems, unless the incumbent affirmatively justifies primary status and the incumbent BRS licensee establishes that the modification would not add to the relocation costs of AWS licensees. Do not confuse ''major modifications'' after June 23, 2006, under the eligibility rule[10] with ''major'' and ''minor'' classifications under the application rules.[11]

The Commission noted that, in response to the request for information in the 2005 Commission Order (implemented in the First BRS Data Collection PN), sixty-nine BRS licensees provided information on 127 stations.[12] Based on the information collected, the text of the First BRS Data Collection PN, and other record data, the Commission concluded that BRS licensees who did not file under the mandatory data collection requirements contained in the First BRS Data Collection PN, and who subsequently claim that they are entitled to relocation or reimbursement, have the burden to demonstrate to an AWS entrant that they meet the relocation eligibility requirements provided in the 2006 Commission Order.[13]

II. Required Actions

On or before July 14, 2006, BRS Channels 1 and/or 2/2A Licensees (''you'') must do the following:

- Amend each of your pending applications electronically on ULS to submit (upload) an attachment with the data required for the Second Data Collection.
- Review all information contained in each of your applications (filed in December 2005 for the First Data Collection), including all information that may have been automatically entered, to confirm that each application is complete and accurate as of June 23, 2006.
  - If necessary, update the data that you reported in December 2005, for the First Data Collection, so that each of your amended applications is accurate and complete as of June 23, 2006.[14] You do not have to provide the coordinates for any subscriber/customer premises equipment.
  - If you determine that no changes are needed for each of your applications to be complete and accurate as of June 23, 2006, then just submit an attachment to each application with the data required for the Second Data Collection. Keep in mind that you must electronically re-sign and certify the accuracy of your complete application, as amended, as of June 23, 2006.
- These amendments will be treated as minor amendments that do not require payment of a fee if the requested information is submitted without making additional changes to the license.

A. Initiate Amendment

Take the following steps to initiate the electronic filing of an amended application on ULS:

(1) Access the ULS homepage at *http://wireless.fcc.gov/uls* and click on Online Filing.

(2) Enter the FRN and CORES password of the licensee and click Submit.

(3) If you have saved applications, you will be taken to a page titled ''My Applications.'' From this page you should click on My Applications and then Pending Applications.

(4) Select the file number of the application to be amended.

(5) Select Update from the right side of the ''Application at a Glance'' screen.

At this point, begin entering information onto the amended application. ULS will take you through a series of screens that collect FCC Form 601 information and you will need to continue through many of the screens to get to a point where you may submit your amended application. The application information is carried over to the amended application and you do not have to reenter information, unless

including revocation of a station's license. *See id.* at n.139 (citing 47 CFR 1.917(c)).

[7] Licensees of Broadband Radio Service Channels 1 and/or 2/2A Must File Site and Technical Data by December 27, 2005, *Public Notice,* DA 05–3126, 20 FCC Rcd 19273 (OET&WTB 2005) (*First BRS Data Collection PN*).

[8] *See 2005 Commission Order,* 20 FCC Rcd at 15890–91, 15893 paragraphs 53, 66.

[9] The new or revised information collections contained in the Second Data Collection were approved by OMB on April 26, 2006, *see* OMB Control No. 3060–1090, and the Commission published a document in the **Federal Register** announcing this approval at 71 FR 27498 (May 11, 2006).

[10] *See* 47 CFR 27.1254 (Eligibility). For purposes of this eligibility rule, major modifications include the following: (1) Additions of new transmit sites or base stations made after June 23, 2006; (2) changes to existing facilities made after June 23, 2006, that would increase the size or coverage of the service area, or interference potential, and that would also increase the throughput of an existing system (*e.g.*, sector splits in the antenna system). Modifications to fully utilize the existing throughput of existing facilities (*e.g.*, to add customers) will not be considered major modifications even if such changes increase the size or coverage of the service area, or interference potential. *Id.*

[11] Under 47 CFR 1.901–1.959 (Wireless Telecommunications Services Applications and Procedures), licensees may make minor modifications to station authorizations, as defined in § 1.929 (other than *pro forma* transfers and assignments), as a matter of right without prior Commission approval. Where other rule parts permit licensees to make permissive changes to technical parameters without notifying the Commission (*e.g.*, adding, modifying, or deleting internal sites), no notification is required. For all other types of minor modifications (*e.g.*, name, address, point of contact changes), licensees must notify the Commission by filing FCC Form 601 within thirty (30) days of implementing any such changes. *See* 47 CFR 1.947 (Modification of licenses).

[12] *See Ninth R&O* at paragraph 13. Although the licensing records indicate there are approximately 565 active BRS licenses in the 2150–2160/62 MHz band, the Commission noted that licensees that did not have constructed and/or operational facilities were not required to file system information in response to the *2005 Commission Order. See 2006 Commission Order* at n.40.

[13] *See Ninth R&O* at n.40. The Commission added that an AWS entrant that does not engage in relocation negotiations with such BRS licensees, absent this showing, is not subject to a claim that it is failing to act in good faith. *Id.*

[14] Applicants must ensure the continuing accuracy and completeness of information furnished in a pending application. *See* 47 CFR 1.65. During the First Data Collection, licensees reported certain site and technical data by filing applications to modify their geographic-area licenses. These applications, which had to be filed by December 27, 2005, remain pending.

the information is changing. Certain fields and questions collected on the FCC Form 601 Main Form, Schedule D, and Schedule E must be completed or ULS edits will not allow you to continue to the next screen. ULS will display a message if a required field is left blank and you will be given the opportunity to go back to the screen and complete the required fields.

B. Second Data Collection

In order to determine the extent and scope of operations in the 2150–2160/2162 MHz band, additional information beyond that collected on the FCC Form 601 for these services is required. Because this information is not normally collected on ULS, you will need to submit the information as an attachment to each pending application.

To ensure that ULS correctly identifies and processes your amended application(s), select Attachment Type: ''BRS Channel 1, 2, 2A Notification.''

On the Application Information screen, select ''Yes'' in response to the question ''Is an attachment being filed with this application?'' Upload the attachment at any time during the filing process following these steps:

- Click on the Attachment link, which is listed at the top of every online filing page. Select the newly created Attachment Type called ''BRS Channel 1, 2, 2A Notification''—and upload your attachment using this Attachment Type.
- Be sure to select Attachment Type ''BRS Channel 1, 2, 2A Notification'' when attaching your file. Failure to use this Attachment Type may result in the automated rejection of the application or a charge of an application fee.

You must include the following information on the attachment (for each operational station in the 2150–2160/62 MHz band as of June 23, 2006).

(1) The ULS location number of the station transmitting on frequencies in the 2150–2160/62 MHz band. The location number can be found on the ''Site Specific Technical Summary'' screen.

(2) Category of service (*e.g.*, one-way or two-way; fixed point-to-point, fixed point-to-multipoint, base-to-mobile).

(3) For each station reported, the following receiver information.

(a) For a fixed point-to-point transmitter: The receiver coordinates, elevation and the receive antenna's make, model, beamwidth, gain, azimuth, and height to center above ground level. (**Note:** You do not have to provide the receiver coordinates for any subscriber/customer premises equipment.)

(b) For a mobile or portable transmitter: The receiver elevation, covered service area, and each receive antenna's make, model, beamwidth, gain, and height to center above ground.

(c) For a fixed point-to-multipoint or base-to-mobile transmitter: The approximate coverage area and type of receiving equipment. If separate receive antennas are used, include the receive antenna's make, model, beamwidth, and gain.

(4) Operational status of the station, including whether the station is providing service to customers or students.

(5) Type of equipment used by subscribers associated with this station (*e.g.* handheld device, fixed customer premises equipment).

(6) Number of subscribers associated with the station as of June 23, 2006.

(7) The type of application being provided (*e.g.*, video, broadband data, backhaul).

(8) For fixed point-to-multipoint systems: the number of links associated with the station.

- Licensees should also note in their attachment if both BRS Channels 1 and 2/2A are used as part of the same service (*e.g.*, as a link to a two-way data service).

C. Make Any Necessary Updates to the Data Reported in December 2005

If applicable, you must update the data filed in December 2005 to report any technical changes since that time so that the data is accurate and complete as of June 23, 2006. In order to update technical information, you should update and continue through the application screens until you get to a screen titled ''Site Specific Technical Data Summary.'' From this screen, you have the option to either add technical information for a new station by selecting Add Location or modify the technical information for any existing stations by selecting the location to be modified. If all information on the locations is accurate, there is no need to update the individual stations. You may click Continue and proceed with submittal of the application with the supplemental data.

Facilities that require individual licenses. Licensees are cautioned that adding or changing a facility that requires an individual license or changing the technical parameters of a facility that is already individually licensed [15] may cause the filing to be treated as a ''major'' modification under the application processing rules, as discussed in the box at the top of page three, and require payment of a fee.[16]

D. Submit Amended Application

When the Second Data Collection is attached and all information for the individual locations (as of June 23, 2006) is entered, click Continue to proceed through the screens to the ''Summary'' screen. If the system detects any errors, a message will be displayed on this screen that directs the licensee to go back to the relevant section of the application and correct the errors. When all errors are corrected, click Continue to Certify from the ''Summary'' screen. You must sign the amended application and click Submit Application to complete filing. Upon successful submittal, the licensee will receive a confirmation.

III. Further Information

For additional ULS information or assistance, go to *http://esupport.fcc.gov.* You may also call the FCC Support Center at (877) 480–3201 (TTY 202–414–1255) and select Option #2, Forms or Licensing Assistance. Hours are from 8 a.m. to 7 p.m. Eastern Time, Monday through Friday (except Federal holidays). To provide quality service and ensure security, all Telephone calls are recorded. For questions about the collection of information, contact Mary Shultz, WTB, at (717) 338–2656. For questions about the underlying Commission *Orders*, contact Jamison Prime, OET, at (202) 418–7474.

IV. FCC Notice Required by the Paperwork Reduction Act of 1995

The total annual reporting burden for this information collection including the time for gathering and maintaining the collection of information, is estimated to be 0.5 hours to 1.25 hours. If you have any comments on these burden estimates, or how we can improve the collection and reduce any burdens it causes you, please send an email to the Federal Communications Commission, *PRA@fcc.gov.* Please include the appropriate OMB Control Number (see below) in your correspondence.

Under 5 CFR part 1320, you are not required to respond to a collection of information by the Federal government, and the government may not conduct or sponsor a collection of information unless it displays a current 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 or if we fail to provide you with this notice.

[15] *See* 47 CFR 27.1207(b), 27.1209(b).

[16] Physical modifications made after June 23, 2006 to existing BAS facilities may also affect a licensee's eligibility for relocation. *See 2006 Commission Order.*

○ The First Data Collection discussed in the instant *Public Notice* has been assigned OMB control number 3060–0798.

○ The Second Data Collection discussed in the instant *Public Notice* has been assigned OMB control number 3060–1090.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

Alan Stillwell,

Senior Associate Chief, Office of Engineering and Technology.

Cathleen Massey,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. E6–10795 Filed 7–11–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council; Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the second meeting of the Technological Advisory Council (''Council'') under its charter renewed as of November 19, 2004.

DATES: July 20, 2006 at 10 a.m. to 3 p.m.

ADDRESS: Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room (TW–C305), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, (202) 418–1096 (voice), (202) 418–2989 (TTY), or e-mail: *Jeffery.Goldthorp@fcc.gov*.

SUPPLEMENTARY INFORMATION: Increasing innovation and rapid advances in technology have accelerated changes in the ways that telecommunications services are provided to, and accessed by, users of communications services. The Federal Communications Commission must remain abreast of new developments in technologies and related communications to fulfill its responsibilities under the Communications Act. At this fourth meeting under the Council's new charter, the agenda topic will be: Technological Developments for Broadband Access.

Inadvertent administrative delay prevented publication of this in the **Federal Register** fifteen days before the meeting, and given the large number of people arriving from different parts of the country, it would have been infeasible to reschedule the meeting.

The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is *Jeffery.Goldthorp@fcc.gov*. Mail delivery address is: Federal Communications Commission, 445 12th Street, SW., Room 7–A325, Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–11052 Filed 7–11–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011117–040.

Title: United States/Australasia Discussion Agreement.

Parties: A.P. Moller-Maersk A/S and Safmarine Container Lines NV; ANL Singapore Pte Ltd.; Australia-New Zealand Direct Line; CMA–CGM, S.A.; Compagnie Maritime Marfret S.A.; CP Ships USA, LLC; Hamburg-Süd; and Wallenius Wilhelmsen Logistics AS.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes FESCO Ocean Management Limited as a party to the agreement.

Agreement No.: 011268–021.

Title: New Zealand/United States Discussion Agreement.

Parties: New Zealand/United States Container Lines Association; Hamburg-Süd; Australia-New Zealand Direct Line; A.P. Moller-Maersk A/S; and CP Ships USA, LLC.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes FESCO Ocean Management Limited as a party to the agreement.

Agreement No.: 011275–020.

Title: Australia/United States Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; Australia-New Zealand Direct Line; Hamburg-Süd; CP Ships USA, LLC; P&O Nedlloyd Limited; and Safmarine Container Lines NV.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes FESCO Ocean Management Limited, NYKLauritzenCool AB and Seatrade Group N.V. as parties to the agreement.

Agreement No.: 011435–012.

Title: APL/HLCL Space Charter Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; and Hapag-Lloyd Container Linie GmbH.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment would delete CP Ships as a party to the agreement, add Hapag-Lloyd Container Linie GmbH, and restate the agreement.

Agreement No.: 011574–015.

Title: Pacific Islands Discussion Agreement.

Parties: Hamburg-Süd; Hapag-Lloyd Container Linie GmbH; Polynesia Line Ltd.; Australia-New Zealand Direct Line, a division of CP Ships (UK) Ltd.; CMA CGM SA; and Compagnie Maritime Marfret, SA.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes FESCO Ocean Management Limited as a party to the agreement.

Agreement No.: 011648–011.

Title: APL/HLCL Space Charter and Sailing Agreement.

Parties: American President Lines, Ltd./APL Co. Pte Ltd. (''APL''); and Hapag-Lloyd Container Linie GmbH.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, D.C. 20036.

Synopsis: The amendment would delete CP Ships as a party to the agreement, add Hapag-Lloyd Container Linie GmbH, and restate the agreement.

Agreement No.: 011666–002.

Title: West Coast North America/Pacific Islands Vessel Sharing Agreement.

Parties: Hamburg-Süd and Polynesia Line Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes FESCO Ocean Management Limited as a party to the agreement.

Agreement No.: 011965.

Title: Matson/Sinolines Space Charter Agreement.

Parties: Matson Navigation Company, Inc.; and Sinotrans Container Lines Co., Ltd.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 2040 Main Street; Suite 850; Irvine, CA 92614.

Synopsis: The agreement authorizes Matson to charter to Sinolines, and Sinolines is authorized to purchase from Matson, space for the movement of loaded containers in the trade between ports in China and ports in the State of California on an ''as needed, as available'' basis.

Agreement No.: 201171.

Title: Marine Terminal Lease between Broward County and Sherwood Lumber Corp.

Parties: Broward County and Sherwood Lumber Corp.

Filing Party: Candace J. McCann; Broward County Board of County Commissioners; Office of the County Attorney; 1850 Eller Drive; Suite 502; Fort Lauderdale, FL 33316.

Synopsis: The agreement is a marine terminal lease agreement assigning space formerly held by Gulf Atlantic Lumber Sales, Inc. to Sherwood Lumber Corp. The term of the agreement runs through June 30, 2007.

By Order of the Federal Maritime Commission.

Dated: July 7, 2006.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–10930 Filed 7–11–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 018946N.
Name: AMF Global Transportation, Inc.
Address: 2681 Coyle Ave., Elk Grove Village, IL 60007.
Date Revoked: May 31, 2006.
Reason: Failed to maintain a valid bond.

License Number: 019248N.
Name: Allcargo Net, Inc.
Address: 1900 NW. 97th Ave., Miami, FL 33172.
Date Revoked: June 11, 2006.
Reason: Failed to maintain a valid bond.

License Number: 018140NF.
Name: Commonwealth Custom Broker, Inc. dba C.C.B. Logistics dba C.C.B. Terminal.
Address: 8100 NW. 29th Street, Miami, FL 33122.
Date Revoked: June 12, 2006.
Reason: Failed to maintain valid bonds.

License Number: 006062N.
Name: Container Innovations Inc.
Address: 123 Pennsylvania Ave., Kearny, NJ 07032.
Date Revoked: June 14, 2006.
Reason: Failed to maintain a valid bond.

License Number: 001417F.
Name: Interconex Transport International, Inc.
Address: 8401 Westland West Blvd., Houston, TX 77041–1208.
Date Revoked: June 26, 2006.
Reason: Surrendered license voluntarily.

License Number: 015316N.
Name: JCL Consolidators, Inc.
Address: 8705 NW. 100 Street, Medley, FL 33178.
Date Revoked: June 21, 2006.
Reason: Failed to maintain a valid bond.

License Number: 003537F.
Name: Jet-Mar, Corp.
Address: 10871 NW. 33rd Street, Miami, FL 33172.
Date Revoked: June 14, 2006.
Reason: Failed to maintain a valid bond.

License Number: 016671F.
Name: Lee Ann Tyus dba Lee Ann Tyus Maritime Services.
Address: 9648 Bailey Road, Cornelius, NC 28031.
Date Revoked: June 14, 2006.
Reason: Failed to maintain a valid bond.

License Number: 004257N.
Name: Road Runner International, Inc. dba International Delivery Systems.
Address: 1021 Stuyvesant Ave., Union, NJ 07083.
Date Revoked: June 11, 2006.
Reason: Failed to maintain a valid bond.

License Number: 008404NF.
Name: Ultimate Media Express Inc.
Address: 182–08 149th Ave., Springfield Gardens, NY 11413.
Date Revoked: June 29, 2006.
Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E6–10931 Filed 7–11–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
002364F	Reiko Gibbs Soejima and James Thomas, dba Excel International Forwarders, 800 E. Wardlow Road, Long Beach, CA 90807.	May 27, 2006.
017129N	Hercules Packing Shipping & Moving Co., Inc., 23–98 48th Street, Astoria, NY 11103	November 6, 2005.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E6–10932 Filed 7–11–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

WTG Logistics, Inc., 140 Epping Road, Exeter, NH 03833. *Officers:* Kevin O'Donnell, Vice President (Qualifying Individual). William M. Walsh, President.

Form Logistics Corp., 2752 Lincoln Boulevard, Merrick, NY 11566. *Officer:* Cary Weinberg, President (Qualifying Individual).

World Shipping, Inc. dba United World Line, 2700 Crescentville Road, Ste. 200, Cincinnati, OH 45069. *Officers:* Michael W. McCann, Vice President (Qualifying Individual). Frederick M. Hunger, President.

AJ Cargo Express, 3340 Fort Independence Street, Bronx, NY 10463. *Officers:* Alejandro A. Julian, President (Qualifying Individual). Arlenne C. Perez-Julian, Vice President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Ocean Freight Wholesalers Incorporated, 3401 NW. 82nd Avenue, Miami, FL 33122. *Officers:* Nelson Cabrera, President (Qualifying Individual). Lilly Cabrera, Secretary.

Sea and Sky Shipping, Inc., 13605 Wild Iris Ct., Pineview, NC 28134. *Officers:* Omar Kazzaz, Vice President (Qualifying Individual). Leslie Wendt, President.

Krystal Logistics USA, Inc., 703 Waterford Way, Suite 650, Miami, FL 33126. *Officers:* Carlos X. Valdano, President (Qualifying Individual). Juan C. Valdano, Secretary.

Saia Motor Freight Line, Inc., 11465 Johns Creek Parkway, Suite 400, Duluth, GA 30097. *Officer:* Tony Albanese, Sen. Vice President of Oper. (Qualifying Individual).

Intercontinental Cargo Enterprises, Inc., 10205 NW. 19th Street, Suite 106, Miami, FL 33172. *Officers:* Guillermo Hernandez, Vice President (Qualifying Individual). Gustavo Merck, President.

Global Logistics Inc., 1425 Louis Ave., Suite 102, Elk Grove Village, IL 60007. *Officers:* Michael H. Stewart, Vice President (Qualifying Individual). Kenneth J. Tednes, President.

Miami International Freight, Inc., 6989 NW. 84th Ave., Miami, FL 33166. *Officers:* Hugo Carmona, Secretary (Qualifying Individual). Antonio R. Mosquiera, President.

Dated: July 7, 2006.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E6–10933 Filed 7–11–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Submission for OMB Review: Comment Request

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of Forms SF424, SF270 (LM–6), (LM–8), SF269a (LM–7), (LM–9), and (LM–3) submitted for extension and review to the Office of Management and Budget.

SUMMARY: This notice announces that six information collection requests contained in the Federal Mediation and Conciliation Service (FMCS) agency forms are coming up for renewal. FMCS submitted to the Office of Management and Budget (OMB) a request for review of six FMCS forms: SF424 Application for Federal Assistance, SF270 (LM–6)—Request for Advance or Reimbursement, (LM–8)—Project Performance, SF269a (LM–7)—Financial Status Report, (LM–9)—FMCS Grants Program Grantee Evaluation Questionnaire, and (LM–3)—Accounting System and Financial Capability Questionnaire. The request seeks OMB approval for a three-year expiration date of Forms SF424, SF270 (LM–6), (LM–8), SF269a (LM–7), (LM–9) and (LM–3) until March 2009. FMCS is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted within *30* days from the date of this publication in the **Federal Register**.

ADDRESSES: Submit written comments identified by the appropriate agency form number by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Mediation and Conciliation Service, Room 10235, Washington, DC 20503. Copies of the complete agency forms may be obtained from the Labor Management Grants Program at Federal Mediation and Conciliation Service, the Labor Management Grants Program, 2100 K Street, NW., Washington, DC 20427 or by contacting the person whose name appears under the section headed, **FOR FURTHER INFORMATION CONTACT.**

Comments and data may also be submitted by fax at (202) 606–3434 or electronically by sending electronic (e-mail) to Maria Fried, Federal Register Liaison at *mfried@fmcs.gov* or Linda Stubbs, Grants Management Specialist at *lstubbs@fmcs.gov.* All comments and data in electronic form must be identified by the appropriate agency form number. No confidential business information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of the information as ''CBI''. Information so marked will be disclosed but a copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by FMCS without prior notice. All written comments will be available for inspection in Room 10235 at the Washington, DC address above from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Linda Stubbs, Grants Management Specialist, FMCS 2100 K Street, NW., Washington, DC 20427. Telephone number (202) 606–8181, e-mail to *lstubbs@fmcs.gov* or fax at (202) 606–3434.

I. Information Collection Requests

FMCS is seeking comments on the following information collection requests contained in FMCS agency forms.

Agency: Federal Mediation and Conciliation Service.

Form Number: OMB No. 3076–0006.

Type of Request: Reinstatement without change of a currently approved

collection without any change in the substance or method of collection.

Affected Entities: Potential applicants/grantees who received our grant application kit. Also, applicants/grantees who have received a grant from FMCS.

Frequency: a. Three of the forms, the SF424, LM–6, and LM–9 are submitted at the applicant/grantee's discretion.

b. To conduct the quarterly submissions, LM–7/LM–8 forms are used. Less than quarterly reports would deprive FMCS of the opportunity to provide prompt technical assistance to deal with those problems identified in the report.

c. Once per application. The LM–3 is the only form to which a ''similar information'' requirement could apply. That form takes the requirement into consideration by accepting recent audit reports in lieu of applicant completion of items C2 through 9 and items D1 through 3.

Burden: SF424 Application for Federal Assistance, SF270 (LM–6) Request for Advance or Reimbursement-30 minutes, (LM–8) Project Performance-60 minutes, SF269a (LM–7) Financial Status Report-30 minutes, (LM–9) FMCS Grants Program Evaluation Questionnaire-60 minutes, and (LM–3) Accounting System and Financial Capability Questionnaire 60 minutes.

Abstract: Except for the FMCS Forms LM–3 and LM–9, the forms under consideration herein are either required or recommended in OMB Circulars. The two exceptions are non-recurring forms, the former a questionnaire sent only to non-governmental potential grantees and the latter a questionnaire sent only to former grantees for voluntary completion and submission.

The collected information is used by FMCS to determine annual applicant suitability, to monitor quarterly grant project status, and for on-going program evaluation. If the information were not collected, there could be no accounting for the activities of the program. Actual use has been the same as intended use.

II. Request for Comments

The OMB is particularly interested in comments which:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic collection technologies or other forms of information technology, *e.g.* permitting electronic and fax submission of responses.

List of Subjects

Labor-Management Cooperation Program and Information collection requests.

Dated: July 6, 2006.

Fran Leonard,

Acting Chief of Staff, Federal Mediation and Conciliation Service.

[FR Doc. E6–10945 Filed 7–11–06; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 7, 2006.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Richey Bancorporation Inc., Glendive, Montana; to become a bank holding company by acquiring 33.3 percent of the voting shares of Community First Bancorp, and thereby acquire shares of Community First Bank of Glendive, both of Glendive, Montana.

Board of Governors of the Federal Reserve System, July 7, 2006

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–10959 Filed 7–11–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 7, 2006.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs

Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Republic Bancorp, Inc., Louisville, Kentucky; to acquire 100 percent of the voting shares of GulfStream Community Bank, Port Richey, Florida, and thereby engage in operating a savings association, pursuant to section 223.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, July 7, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–10958 Filed 7–11–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (EDT), July 17, 2006.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the June 20, 2006 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Quarterly Investment Policy and Vendor Financial Reports.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: July 10, 2006.

Thomas K. Emswiler,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 06–6186 Filed 7–10–06; 11:16 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—06/06/2006			
20061120	Pardus European Special Opportunities master Fund L.P.	Visteon Corp	Visteon Corp.
20061139	Ray Investment S.a.r.l	Morris B. Cartin	Capitol Light and Supply Company
20061150	American Financial Group, Inc	Ceres Group, Inc	Ceres Group, Inc.
20061155	Lindsay Goldberg & Bessemer L.P	FSB Holdings, Inc	FSB Hildings, Inc.
20061162	Golden Oval Eggs, LLC	Land O'Lakes, Inc	Culter at Abbeville, LLC, Hi Point Industries, LLC, L&W Egg Products, Inc., MoArk Egg Corporation, MoArk, LLC, Norco Ranch, Inc.
20061166	ST Holdings, Inc	Nautic Partners V, L.P	Contec, LLC
20061175	Liberty Media Corporation	Howard Jonas	IDT Media, LLC, c/o IDT Corporation
20061181	MPM Equity LLC	KKR European Fund, Limited Partnership.	MPM Luxembourg 2 (c) S.a.r.l.
Transactions Granted Early Termination—06/07/2006			
20060469	General Dynamics Corporation	Anteon International Corporation	Anteon International Corporation
20061063	Alcatel	Lucent Technologies Inc	Lucent Technologies Inc.
20061086	The Day & Zimmerman Group, Inc	Dennis McLaughlin	Atlantic Enterprises I, LLC, Atlantic Government Services, LLC, Atlantic Services, Inc., Chesapeake Civil Services, Inc.
20061136	TPG Partners V, L.P	Smurfit-Stone Container Corporation	Smurfit-Stone Container Corporation
20061173	Shidax Corporation	Fortunato N. Valenti	Resturant Hospitality, LLC
20061184	Plains Exploration & Production Company.	Stone Energy Corporation	Stone Energy Corporation
20061189	J. Joe Ricketts	TD Ameritrade Holding Corporation	TD Ameritrade Holding Corporation
Transactions Granted Early Termination—06/08/2006			
20061073	America Telecom, S.A. de C.V	Verizon Communications Inc	Telecommunicaciones de Puerto Rico, Inc.
20061147	Caterpillar Inc	JPMorgan Chase & Co	Progress Rail Services, Inc.
20061167	MxEnergy Holdings Inc	Royal Dutch Shell plc	Shell Energy Services Company, L.L.C.
20061177	OCM Opportunities Fund V, L.P	Richard S. Wiley	Pegasus Aviation Finance Company
20061182	Federal Services Acquisition Corporation.	Delmar J. Lewis	Advanced Technology Systems, Inc.
20061185	Mr. Sidney Kitson	Babcock Florida Company	Babcock Florida Company

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—06/09/2006			
20061174	First Avenue Networks, Inc	FiberTower Corporation	FiberTower Corporation
20061178	OCM Principal Opportunities Fund III, L.P.	Richard S. Wiley	Pegasus Aviation Finance Company
20061199	Francois Pinault	The Sportsman's Guide, Inc	The Sportsman's Guide, Inc.
20061207	Harron Sharing Partners, L.P	Eastern Connecticut Cable Television, Inc.	Eastern Connecticut Cable Television, Inc.
20061211	Bradford L. Honigfeld	Main Street Restaurant Group, Inc	Main Street Restaurant Group, Inc.
Transactions Granted Early Termination—06/12/2006			
20061102	Aveta Inc	BER Health Partners Group, Inc	BER Health Partners Group, Inc.
20061127	D. Stephen Sorensen and Shannon P. Sorensen.	RemedyTemp, Inc	RemedyTemp, Inc.
20061135	Wienerberger AG	F. George Robinson, Jr	Robinson Brick Company
20061168	Interline Brands, Inc	Golder, Thoma, Cressey, Rauner Fund V, L.P.	AmSan, LLC
20061205	FR X Onshore, L.P	Noble Energy, Inc	Noble Energy, Inc.
20061208	The Guardian Life Insurance Company of America.	RS Investment Management Co. LLC.	RS Investment Management Co. LLC
Transactions Granted Early Termination—06/13/2006			
20061151	Petroleo Brasileiro S.A.—Petrobras	Albert Frere	Pasadena Refining System, Inc.
20061176	Philadelphia Media Holdings, LLC	The McClatchy Company	Circom Corporation, Consumer and Community Publishing, Inc., Job Fair Ventures, Inc., KR Video, Inc., Marketplace Advertising, Inc., Philadelphia Newspapers, Inc., Philadelphia Online, Inc., Phillytech, Inc., ProMedia Publishing Company
20061219	Charys Holding Company, Inc	Troy Crochet	Crochet & Borel Services, Inc., d/b/a/ C & B Services, Inc.
Transactions Granted Early Termination—06/14/2006			
20061126	Teck Cominco Limited	Inco Limited	Inco Limited
20061194	Deseret Management Corporation	Jeffrey H. Smulyan	Emmis Radio License, LLC, Emmis Radio, LLC
20061214	NextWave Wireless LLC	WCS Wireless, Inc	WCS Wireless, Inc.
20061220	GGC Investments II (BVI), L.P	SSA Global Technologies, Inc	SSA Global Technologies, Inc.
20061224	Wilton Re Holdings Limited	The Charles A. Sammons 1987 Charitable Remainder Trust #2.	North American Company for Life and Health Insurance of NY
Transactions Granted Early Termination—06/15/2006			
20060792	Dr. August Oetker KG	Mr. Sergey Generalov	FESCO Agencies N.A., Inc., FESCO Lines Australia Pty Limited, FESCO Lines Hong Kong Limited, FESCO Lines New Zealand Limited, FESCO Ocean Management Limited, Pacific Conlease Company Limited, Premiere Cliff Shipping Company
20061164	U.S. Concrete, Inc	Atlas Concrete, Inc	Alberta Investments, Inc., Alliance Haulers, Inc.
Transactions Granted Early Termination—06/16/2006			
20061158	Omron Corporation	Anthony R. Lazzara	Scientific Technologies Incorporated, Scientific Technology Incorporated
20061170	Schmolz + Bickenbach KG	Arcelor SA	Ugitech SA
20061190	AmSafe Partners, Inc	Goodrich Corporation	AMI Industries, Inc., Walbar Inc.
20061191	Kelso Investment Associates VII, L.P	Electrical Wholesalers, Inc	Electrical Wholesalers, Inc.
20061193	ITOCHU Corporation	Komatsu Ltd.	FMC Rents, Inc., Furnival Machinery Company
20061200	Apollo Investment Fund VI, L.P	Carlyle Partners III, L.P	RBS Global Inc.
20061202	Johannes Karcher	Heritage Fund II, L.P	Castle Rock Industries, Inc.
20061203	Suzanne Zimmermann von Siefart	Heritage Fund II, L.P	Castle Rock Industries, Inc.
20061227	Thoma Cressey Fund VIII, L.P	Prospect Partners, L.P	Remuda Ranch Holding Company
20061230	Odyssey Investment Partners Fund III, LP.	Eventide Risk Management LLC	Eventide Risk Management LLC

Trans No.	Acquiring	Acquired	Entities
20061231	Walgreen Co	Alan B. Levin	Happy Harry's Discount Drug Stores, Inc.
20061233	Century Park Capital Partners II, L.P	John Ellison, Jr	Specialty Manufacturing Company
20061234	WLR Recovery Fund III, L.P	Montpelier Re Holdings Ltd	Montpelier Re Holdings Ltd.
20061236	SkyTerra Communications, Inc	Mobile Satellite Ventures, L.P	Mobile Satellite Ventures, L.P.
20061240	Welsh, Carson, Anderson & Stowe X, L.P.	Mobile Services Group, Inc	Mobile Services Group, Inc.
20061242	Carl C. Icahn	Vector Group Ltd	Vector Group Ltd.
20061244	Leeds Equity Partners IV, L.P	Education Management Corporation	Education Management Corporation
20061257	SPI Petroleum LLC	Pecos, Inc	Pecos, Inc.
20061258	Genstar Capital Partners IV, LP	Fort Dearborn Company	Fort Dearborn Company
20061259	Tom T. Gores	Almendral S.A	Americatel Corporation
Transactions Granted Early Termination—06/19/2006			
20061238	McCormick & Company, Incorporated.	Seth Jacobson	Epicurean International, Inc., Simply Asia, LLC
Transactions Granted Early Termination—06/21/2006			
20061159	Kelso Investments Associates VII, L.P.	Bradley J. Hausfeld	Auto Disposal Systems Inc.
20061160	Kelso Investments Associates VII, L.P.	Thomas L. Hausfeld	Auto Disposal Systems Inc.
20061179	ASSA ABLOY AB	Fargo Electronics, Inc	Fargo Electronics, Inc.
20061201	Romesh Wadhwani	Hummingbird Ltd	Hummingbird Ltd.
20061213	Dr. med.Lutz Helmig	Heitkamp-Deilmann-Haniel GmbH	Frontier-Kemper Constructors Inc.
20061216	Enterprise Products Partners L.P	Rodney Lewis	Cerrito Gas Marketing Ltd., Cerrito Gathering Company, Ltd., Encinal Gathering, Ltd.
20061218	Clear Channel Communications, Inc	Deborah and Mark Lieberman	In-ter-space Services, Inc.
20061243	Castle Harlan Partners IV, L.P	Bravo Development, Inc	Bravo Development, Inc.
20061245	Bruckmann, Rosser, Sherrill & Co. II, L.P.	Bravo Development, Inc	Bravo Development, Inc.
20061250	The Nutting Company, Inc	Seven Springs Farm, Inc	Seven Springs Farm, Inc.
20061253	Transfield Services Limited	Sterling Investment Partners, L.P	USM Holdings Corp.
20061255	KKR Millennium Fund (Overseas), Limited Partnership.	Flextronics International Ltd	Avnisoft Corporation, c/o Flextronics International Ltd. Emuzed, Inc., Flextronics Software Systems Limited, frog design, Inc., One Marina Boulevard, Saras Software Systems Ltd.
Transactions Granted Early Termination—06/22/2006			
20061210	Harbinger Capital Partners Offshore Fund I, Ltd.	Haynes International, Inc	Haynes International, Inc.
20061235	Flakeboard Company Limited	Weyerhaeuser Company	Weyerhaeuser Company
20061248	William J. Yung III	Casino Queen, Inc	Casino Queen, Inc.
20061251	Herbst Gaming, Inc	The Sands Regent	The Sands Regent
Transactions Granted Early Termination—06/23/2006			
20061225	Psychiatric Solutions, Inc	Ronald I. Dozoretz, MD	Alternative Behavioral Services, Inc.
20061246	New York Life Insurance Company	Robert H. Lyon	Institutional Capital Corporation
20061260	Nutting 1997 Trust	The McClatchy Company	Fort Wayne Newspapers, Inc., New Publishing & Journal Gazette Co., News Publishing Company
20061261	Sun Capital Partners IV, LP	Marsh Supermarkets, Inc	Marsh Supermarkets, Inc.
20061263	Gannett Co., Inc	Tribune Company	WATL, LLC
20061266	Nancy Jane Black Marcil	The McClatchy Company	Duluth/Superior Newspapers, LLC
20061267	Nancy Jane Black Marcil	The McClatchy Company	Grand Forks Herald, Incorporated
20061268	Richard L. Scott	ThyssenKrupp AG	ThyssenKrupp Budd Company
20061271	SLM Corporation	Upromise, Inc	Upromise, Inc.
20061273	NBD Holding Corp	BondDesk Group LLC	BondDesk Group LLC
20061275	Fuji Photo Film Co., Ltd	Markem Corporation	Dimatix, Inc.
20061278	Francisco Partners, L.P	Mr. Erez Goren	BlueCube Software, Inc.
20061279	Welsh, Carson, Anderson & Stowe X, L.P.	Turbo Logistics, Inc	Turbo Logistics, Inc.
20061292	Bank of America Corporation	H.I.G. Recycling, Inc	TFI Holdings, Inc.
20061293	Battery Ventures VI L.P	Onyx Software Corporation	Onyx Software Corporation
20061310	JLL Partners Fund V, L.P	Ace Cash Express, Inc.	Ace Cash Express, Inc.

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—06/26/2006			
20061196	University of Maryland Medical System Corporation.	Shore Health System, Inc	Shore Health System, Inc.
20061206	RIC Coinvestment Fund LP	Brookdale Senior Living Inc	Brookdale Senior Living Inc.
Transactions Granted Early Termination—06/27/2006			
20060863	The McClatchy Company	Knight-Ridder, Inc	Knight-Ridder, Inc.
20061217	Cedar Fair, L.P	Mr. Sumner M. Redstone	Paramount Parks Inc.
Transactions Granted Early Termination—06/28/2006			
20061277	Koninklijke Philips Electronics N.V	Avent Holdings Limited	Avent Holdings Limited
20061294	Macquarie Capital Alliance Trust ARSN 112 638 212.	Wind Point Partners V, L.P	ASI Holding Corp.
20061298	Alion Science and Technology Corporation.	General Dynamics Corporation	Anteon Corporation
20061300	Ares Corporate Opportunities Fund, II L.P.	White Energy Partners, LLC	White Energy Partners, LLC
Transactions Granted Early Termination—06/29/2006			
20061212	Blue Cross and Blue Shield of Florida Inc.	Health Care Service Corporation	THIN, Inc.
20061239	ADVA AG Optical Networking	Movaz Networks, Inc	Movaz Networks, Inc.
Transactions Granted Early Termination—06/26/2006			
20061308	Taiyo Nippon Sanso Corporation	John Breslow	Linweld, Inc., Linweld Manufacturing, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 06–6135 Filed 7–11–06; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice of a decision to designate a class of employees at the Nevada Test Site (NTS), Mercury, Nevada, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On June 26, 2006, the Secretary of HHS designated the following class of employees as an addition to the SEC:

Department of Energy (DOE) employees or DOE contractor or subcontractor employees who worked at the Nevada Test Site from January 27, 1951 through December 31, 1962 for a number of work days aggregating at least 250 work days, either solely under this employment or in combination with work days within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC, and who were monitored or should have been monitored.

This designation will become effective on July 26, 2006, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: July 5, 2006.

John Howard

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. E6–10961 Filed 7–11–06; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016. (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783. (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200/800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare, Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823. (Formerly: Laboratory Specialists, Inc.).

Kroll Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130. (Formerly: Scientific Testing Laboratories, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986. (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984. (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272. (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122, 206–923–7020/800–898–0180. (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339. (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.

MAXXAM Analytics Inc.*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700. (Formerly: NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774. (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, 123 International Way, Springfield, OR 97477, 541–341–8092.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7897x7.

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.

Quest Diagnostics Incorporated 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432 (Formerly: SmithKline Beecham

Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152. (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750. (Formerly: Associated Pathologists Laboratories, Inc.).
Quest Diagnostics Incorporated, 10101 Renner Blvd. Lenexa, KS 66219, 913–888–3927/800–873–8845. (Formerly: LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).
Quest Diagnostics Incorporated, 400 Egypt Road Norristown, PA 19403, 610–631–4600/877–642–2216. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010. (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories.
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521. (Formerly: SmithKline Beecham Clinical Laboratories).
Quest Diagnostics Incorporated, 2282 South Presidents Drive, Suite C, West Valley City, UT 84120, 801–606–6301/800–322–3361. (Formerly: Northwest Toxicology, a LabOne Company; LabOne, Inc., dba Northwest Toxicology; NWT Drug Testing, NorthWest Toxicology, Inc.; Northwest Drug Testing, a division of NWT Inc.).
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.
Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400. (Formerly: St. Lawrence Hospital & Healthcare System).
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anna Marsh,

Director, Office Program Services, SAMHSA.

[FR Doc. E6–11017 Filed 7–11–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–44]

Notice of Submission of Proposed Information Collection to OMB; Collection: Comment Request; Standardized Form for Collecting Information Regarding Race and Ethnic Data

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 11, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number (2535–0113) and should be sent to: 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) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*

FOR FURTHER INFORMATION CONTACT: Eric Gauff, AJT, Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410; e-mail Eric Gauff at *Eric_C._Gauff@HUD.gov* or telephone (202) 708–0667 (this is not a toll-free number).

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: Standardized Form for Collecting Information Regarding Collection of Race and Ethnic Data.

OMB Control Number, if applicable: 2535–0113.

Description of the need for the information and proposed use: HUD's

standardized form for the Collection of Race and Ethnic Data complies with OMB's revised standards for Federal agencies issued, October 30, 1997. These standards apply to HUD program office and partners that collect, maintain, and report Federal Data on race and ethnicity for program administrative reporting.

Agency form numbers, if applicable: HUD–27061.

Members of Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit institutions, State, local or tribal government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: This proposal will result in no significant increase in the current information collection burden. An estimation of the total number of hours needed to provide the information for each grant application is 0.01 hours (approximately one minute), however, the burden will be assessed against each individual grant program submission under the Paperwork Reduction Act; number of respondents is an estimated 11,000; 60% of responses will be quarterly and 40% annually.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 6, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–10946 Filed 7–11–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–43]

Previous Participation Certification

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The collection of this information aids in protecting HUD's Multifamily Housing Programs by ensuring participation from responsible individuals and organizations. HUD will use this form to evaluate the feasibility of applicants with respect to their previous track records.

Respondents such as owners, managers, consultants, general contractors, and nursing home operators and administrators will be subject to review.

DATES: *Comments Due Date:* August 11, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0118) 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) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Previous Participation Certification.

OMB Approval Number: 2502–0118.

Form Numbers: HUD–2530.

Description of the Need for the Information and its Proposed Use: The collection of this information aids in protecting HUD's Multifamily Housing Programs by ensuring participation from responsible individuals and organizations. HUD will use this form to evaluate the feasibility of applicants with respect to their previous track records. Respondents such as owners, managers, consultants, general contractors, and nursing home operators and administrators will be subject to review.

Frequency of Submission: On occasion.

	Number of respondents	Annual respondents	X	Hours per response	=	Burden hours
Reporting burden	32,952	1.3	....	0.50	....	22,352

Total Estimated Burden Hours: 22,352.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 6, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–10947 Filed 7–11–06; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4723–FA–29]

Announcement of Funding Award—FY 2002 Lead-Based Paint Hazard Control Grant Program

AGENCY: Office of Healthy Homes and Lead Hazard Control, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department in a competition for funding under the Office of Healthy Homes and Lead Based Paint Hazard Control Grant Program Notice of Funding Availability (NOFA). This announcement contains the name and address of the award recipients and the amounts of award.

FOR FURTHER INFORMATION CONTACT: Jonnette Hawkins, Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control, 451 Seventh Street, SW., Room 8236, Washington, DC 20410, telephone (202) 755–1785, ext. 7593. Hearing- and speech-impaired persons may access the number above via TTY by calling the toll free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The 2002 awards were announced in the HUD News Release on October 28, 2002. These awards were the result of a competition announced in a **Federal Register** notice published on March 26, 2002 (67 FR 14065) for the Lead Based Paint Hazard Control Grant Program. The purpose of the competition was to award grant funding for grants and cooperative agreements under this program. Applications were scored and selected on the basis of selection criteria contained in that notice.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of these awards as follows:

A total of $86,103,942 was awarded to 37 new and eight renewal grantees for the Lead Based Paint Hazard Control Grant Program: City of Springfield, 800 West Monroe Street, Room 300, Springfield, IL 62701, $2,160,000; St. Clair County, 19 Public Square, Suite 200, Belleville, IL 62220, $2,158,687; City of Indianapolis, 200 East Washington Street, Suite 1841, Indianapolis, IN 46204, $1,754,527; City of Louisville/Jefferson County, 745 West Main Street, Louisville, KY 40402, $1,944,513; City of Phoenix, 200 West Washington, 4th Floor, Phoenix, AZ 85003, $2,160,000; Alameda County, 2000 Embarcadero, Suite 300, Oakland, CA 94606, $2,160,000; County of Riverside, 4065 County Circle Drive, P.O. Box 7600, Riverside, CA 92513, $2,160,000; San Diego Housing Commission, 1625 Newton Avenue, San Diego, CA 00921, $1,889,755; City and County of Denver, 216 Sixteenth Street, Suite 1400, Denver, CO 80202, $1,237,725; City of Marshalltown, 24 North Center Street, Marshalltown, IA 50158, $1,999,388; City of Malden, 200 Pleasant Street, Government Center, Room 621, Malden, MA 02148, $2,160,000; Commonwealth of Massachusetts, One Congress Street, Boston, MA 02114, $2,160,000; State of Maine, 353 Water Street, Augusta, ME 04330–4633, $2,160,000; City of Detroit, 1301 East Jefferson Avenue, Detroit, MI 48207, $2,160,000; City of Kansas City, 2400 Troost Avenue, Suite 4000, Kansas City, MO 64108, $1,680,744; St. Louis County, 121 South Meremec, Suite 444, Clayton, MO 63105, $2,159,981; City of Durham, 101 City Hall Plaza, Durham, NC 27701, $2,018,016; City of Rocky Mountain, P.O. Box 1180, Rocky Mountain, NC 27802, $2,121,431; City of Houston, 8000 North Stadium Drive, Houston, TX 77054, $2,160,000; City of Manchester, One City Hall Plaza, Manchester, NH 03101, $895,724; City of Vineland, City Hall, 640 East Wood Street, P.O. Box 1508, Vineland, NJ 08362, $1,423,995; Chautaqua County, NY, 7 North Erie, Mayville, NY 14692, $1,747,143; Monroe County, 111 Westfall Road, P.O. Box 92823, Rochester, NY 14692, $2,082,240; City of Akron, 177 South Broadway Street, Akron, OH 44308, $2,160,000; City of Cincinnati, City Hall, 801 Plum Street, Cincinnati, OH 45202, $2,150,658; City of Columbus, 50 West Gay Street, Columbus, OH 43215, $2,157,343; City of Newark, 40 West Main Street, Newark, OH 43055, $1,210,080; Montgomery County, 451 West 3rd Street, 10th Floor, Dayton, OH 45402, $1,296,000; Grand Gateway Economic Development Association, P.O. Box 311, Miami, OK 74355, $1,774,691; Allegheny County, 425 6th Avenue, Suite 800, Pittsburgh, PA 15219, $2,160,000; City of East Providence, 145 Taunton Avenue, East Providence, RI 02903, $1,530,922; City of Providence, 400 Westminister Street, Providence, RI 02903, $2,160,000; City of Austin, 505 Barton Springs Road, Suite 600, Austin, TX 78704, $1,851,741; Salt Lake County, 2001 South State Street, Room S–2100, Salt Lake City, UT 14190, $1,296,000; City of Lynchburg, 900 Church Street, Lynchburg, VA 24504, $2,139,781; Commonwealth of Virginia, The Jackson Center, 501 North Second Street, Richmond, VA 23219, $2,160,000; Kenosha County Division of Health, 714 52nd Street, Kenosha, WI 53140, $1,503,808; Town of Manchester, 41 Center Street, P.O. Box 191, Manchester, CT 06045, $2,000,000; State of Illinois, 525 W. Jefferson Street, Springfield, IL 62761, $2,000,000; City of Cambridge, 795 Massachusetts Avenue, Cambridge, MA 02139, $1,999,049; City of Lowell, Middlesex County, Lowell, MA 01852, $2,000,000; City of Syracuse, 233 East Washington Street, Syracuse, NY 13202, $2,000,000; Mahoning County, 121 West Boardman Street, Youngstown, OH 44503, $2,000,000; City of Milwaukee, 1230 West Grant Street, Milwaukee, WI 53215, $2,000,000; State of Wisconsin, 101 East Wilson Street, 6th Floor, P.O. Box 7868, Madison, WI 53708, $2,000,000.

Dated: July 3, 2006.

Jon L. Gant,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. E6–10948 Filed 7–11–06; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4665–N–31]

Conference Call Meeting of the Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of upcoming meeting via conference call.

SUMMARY: This notice sets forth the schedule and proposed agenda of the

upcoming meetings of the Manufactured Housing Consensus Committee (the Committee) to be held via telephone conference. The meetings are open to the general public, which may participate by following the instructions below.

DATES: The conference call meetings will be held on Monday, July 24, 2006, from 11 a.m. to 2 p.m. eastern daylight time, and Friday, July 28, 2006, from 11 a.m. to 2 p.m. eastern daylight time.

ADDRESSES: Information concerning the conference call can be obtained from the Department's Consensus Committee Administering Organization, the National Fire Protection Association (NFPA). Interested parties can link onto the NFPA's Web site for instructions concerning how to participate, and for contact information for the conference call from a HUD Web site, in the section marked ''Business'' ''Manufactured Housing Consensus Committee Information''. The link can be found at: *http://www.hud.gov/offices/hsg/sfh/mhs/mhshome.cfm*. Alternately, interested parties may contact Elsie Draughn of the Office of Manufactured Housing Programs at (202) 708–6423 (this is not a toll-free number) for conference call information.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary, Office of Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with sections 10(a) and (b) of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 41 CFR 102–3.150. The Manufactured Housing Consensus Committee was established under section 604(a)(3) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5403(a)(3). The Committee is charged with providing recommendations to the Secretary to adopt, revise, and interpret manufactured home construction and safety standards and procedural and enforcement regulations, and with developing and recommending proposed model installation standards to the Secretary.

The purpose of the conference call meeting is to permit the Committee, at its request, to discuss and take action on the submission of its comments to HUD on the Manufactured Home Installation Program proposed rule published in the **Federal Register** on June 14, 2006 (71 FR 34476). It is necessary to have these meetings on these dates, to permit the Committee to take action on this matter in a timely manner.

Tentative Agenda

A. Roll Call.

B. Welcome and Opening remarks.

C. Full Committee meeting to discuss and take actions to provide comments in response to the **Federal Register** Notice on 24 CFR part 3282–Manufactured Home Installation Program; Proposed Rule.

D. Adjournment.

Dated: July 5, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E6–10949 Filed 7–11–06; 8:45 am

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Issuance of permits for take of endangered species.

SUMMARY: Notice is hereby given that the U.S. Fish and Wildlife Service (Service) has taken the following action(s) with regard to incidental take and recovery permit applications received under the authority of section 10 of the Endangered Species Act (16 U.S.C. 1539, *et seq.*), as amended.

Applicant name	Permit No.	Date issued
Recovery Permits		
U.S. Fish & Wildlife Service, Region 3	697830	12/19/2005
Organization for Bat Conservation	117493	12/19/2005
Mandernack, Brett	097358	12/19/2005
Environmental Solutions and Innovations, Inc	023664	1/11/2006
Natural Resources Research Institute	118421	1/11/2006
Carter, Timothy C	040881	2/13/2006
U.S. National Park Service	120260	2/13/2006
The Nature Conservancy	094221	3/13/2006
Ahlstedt, Steven A	113009	4/4/2006
Helms, Don R	839777	4/5/2006
U.S. Fish and Wildlife Service	023308	4/5/2006
Northern Illinois University	069293	4/5/2006
U.S. Geological Survey	118449	4/7/2006
Evans, David L	124702	4/7/2006
Davey Resource Group	085017	4/26/2006
Applied Science & Technology, Inc	125648	4/27/2006
Tragus Environmental Consulting, Inc	105320	4/28/2006
Wisconsin Department of Natural Resources	111360	5/3/2006
Yanek, Melissa L	100141	5/3/2006
Ewert, David N	120256	5/5/2006
Michigan Department of Natural Resources	111357	5/8/2006
Bat Conservation and Management, Inc	126861	5/15/2006
Civil and Environmental Consultants, Inc	118259	5/15/2006
Ohio Department of Natural Resources	101451	5/22/2006
Macalester College	089872	5/22/2006
USDA Forest Service	127643	5/23/2006
The Nature Conservancy	127441	5/23/2006
Krynak, Timothy J	004812	5/25/2006
BHE Environmental, Inc	809227	5/26/2006

Applicant name	Permit No.	Date issued
Whitaker, John O	839763	5/26/2006
Eric R. Britzke	023666	5/26/2006
WDH Ecological Services	128263	5/30/2006
Cuthbert, Francesca J	125333	5/31/2006
Timpone, John Charles	120231	5/31/2006
Yates, Mark D	057462	6/9/2006
R.D. Zande & Associates	128304	6/9/2006
Scott, Debra Ann	108952	6/13/2006
Barton, Barbara Jean	104664	6/14/2006
Robbins, Lynn W	840524	6/14/2006
Minnesota Department of Natural Resources	129763	6/15/2006
Ecological Specialists, Inc	838055	6/26/2006
Incidental Take Permits		
Indiana-American Water Company, Inc	106231	3/6/2006
Northern Indiana Public Service Company	106233	3/6/2006
Predevelopment Ltd	117661	12/21/2005

Each permit listed above was issued only after it was determined that it was applied for in good faith; that by granting the permit would not be to the disadvantage of the listed species; and that terms and conditions of the permit were consistent with purposes and policy set forth in the Endangered Species Act of 1973, as amended.

ADDRESSES: Mr. Peter Fasbender, Regional Permits Coordinator, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Additional information on the permits may be requested by contacting Mr. Peter Fasbender, at (612) 713–5343, or *peter_fasbender@fws.gov.*

Dated: June 29, 2006.

Sean Marsan,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 06–6153 Filed 7–11–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Determination That Designation of Critical Habitat Is Not Prudent for the Jaguar

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of finding.

SUMMARY: We, the U. S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act), have determined that it is not prudent to designate critical habitat for the jaguar (*Panthera onca*). This determination is based on a thorough review of the best available data, which indicate that there are no areas in the United States that meet the definition of critical habitat as defined in the Act. As such, designation of critical habitat would not be beneficial to the species and therefore is not prudent.

DATES: This finding is effective July 12, 2006.

ADDRESSES: The supporting materials used as the basis for this finding are available for inspection, by appointment, during normal business hours at the Arizona Ecological Services Office of the U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Arizona Ecological Services Office (see **ADDRESSES** section) (telephone (602) 242–0210; facsimile (602) 242–2513).

SUPPLEMENTARY INFORMATION:

Background

Since the July 22, 1997, publication of the final listing rule that extended endangered status for the jaguar into the United States (62 FR 39147), new information has been documented for the jaguar in the United States and Mexico. Below we present a summary of relevant information used in making our determination that designating critical habitat in the United States for the jaguar is not prudent. For more information regarding all aspects of the jaguar, refer to the July 22, 1997, listing rule (62 FR 39147), Jaguar Conservation Team documents and notes (*http://www.azgfd.gov/w_c/es/jaguar_management.shtml*), and the literature they cite.

The jaguar, a large member of the cat family (Felidae), is an endangered species that currently occurs from southern Arizona and New Mexico to southern South America. Jaguars in the United States are part of a population, or populations, that occur largely in Mexico. As the July 22, 1997, listing rule (62 FR 39147) discusses, jaguars in the United States historically occurred in California, Arizona, New Mexico, Texas, and possibly Louisiana. The last jaguar sightings in California, Texas, and Louisiana were documented in the late 1800s or early 1900s. While jaguars have been documented as far north as the Grand Canyon, sightings in the late 20th century to the present have occurred mainly along the international boundary of the United States and Mexico. Further, only three records of a female with kittens have been documented in the United States, the last in 1910 (Lange 1960; Nowak 1975; Brown 1989), and no females have been confirmed in the United States since 1963 (Brown and Lopez-Gonzalez 2000). Based on documented sightings in the late 20th century, occurrences in the United States at the time of the July 22, 1997, listing (62 FR 39147) were limited to southeastern Arizona and southwestern New Mexico. Recently (1996 through 2006), possibly five transient male jaguars have been documented in the United States. Of those five, in 1996, two male jaguars were photographed in the United States: one on March 7, 1996, in the Peloncillo Mountains, located along the Arizona—New Mexico border (Glenn 1996; Brown and Lopez Gonzalez 2001), and another on August 31, 1996, in the Baboquivari Mountains in southern Arizona (Childs 1998; Brown and Lopez Gonzalez 2001). In February 2006, a jaguar was observed and photographed in Hidalgo County, New Mexico. Using remote cameras, jaguars were photographed in the United States near the Arizona—Mexico border beginning in 2001, and as recently as April 2006. Sightings over the past decade indicate that some male jaguars may occasionally range into the United States. However, regular or

intermittent use of the borderlands area by wide-ranging males, and no indication of the presence of females or cubs, indicates that physical and biological features in the United States may allow individual transients to survive, at least temporarily, but do not support a breeding population. As such, we do not believe that these features in the United States are essential to the conservation of the species.

Swank and Teer (1989) described the distribution of the jaguar in Mexico as a broad belt from central Mexico to Central America. However, Brown (1991) suggested that there may be more jaguars in northern Mexico than are officially reported. He mentioned reports of two jaguars, which were killed in central Sonora around 1970. He also discussed assertions by the local Indians that both male and female jaguars still occurred in the Sierra Bacatete about 200 miles (323 kilometers) south of Arizona. Brown speculated that if a reproducing population of jaguars is still present in these mountains, it may be the source of individuals that travel northward through the Sierra Libre and Sierra de Madera and the possible source of the transient males that have been documented in the United States.

Brown and Lopez-Gonzalez (2001) summarize reports of jaguars killed or captured in the Mexican states of Sonora and Chihuahua from 1900 to 2000. These authors also discuss an extant population of jaguars in the State of Sonora. They describe an extant population in the rugged barrancas connecting northern Sinaloa and Sonora and another population in the Sierra Bacatete area in southern Sonora. However, the most northern population of jaguars reported by Brown and Lopez-Gonzalez (2001) is in the area of the towns of Huasabas and Sahuaripa, approximately 130 miles (210 kilometers) south of the United States—Mexico border.

Rabinowitz (1997, 1999) suggested that there is a lack of evidence to support the presence of a significant United States population and stated that the southwestern United States has been ''never more than marginal habitat at the extreme northern limit of the jaguar's range.'' He stated that several points stand out: (1) The low number of confirmed or credible sightings in the last century imply that there was no more than small, short-lived populations in the United States over the last century; (2) 74 percent of the sightings being male may be indicative of dispersal movements from south of the border; (3) the likelihood of jaguars coming across the border from Mexico points to a strong possibility for jaguar populations in northern Mexico; (4) only three sightings of females with young in the early 1900s is not indicative of a long-term breeding population; and (5) the lack of references by Native Americans and early Europeans suggests a lack of permanent presence within the last several hundred years. He further concluded that there is no area in the United States that is critical for the survival of any northern jaguar population that may occur in Mexico, or for the species as a whole.

Previous Federal Actions

For information on previous Federal actions concerning the jaguar, refer to the July 22, 1997, final listing rule (62 FR 39147).

Prudency Determination

After a review of all available information, we have determined that designating critical habitat for the jaguar is not prudent. Section 4(a)(3) of the Act 16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for designating critical habitat for a species. Under 50 CFR 424.12, we are required to designate critical habitat, to the maximum extent prudent and determinable, at the time a species is listed as endangered or threatened. Designation is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In the July 22, 1997, listing rule (62 FR 39147) we noted that the greatest threat to the jaguar was from direct taking of individuals through shooting or other means, and we determined that designating critical habitat for the jaguar was ''not prudent'' because ''publication of detailed critical habitat maps and descriptions in the **Federal Register** would likely make the species more vulnerable to activities prohibited under section 9 of the Act.'' This reason is no longer valid. The Jaguar Conservation Team, Arizona Game and Fish Department, publications, and other sources routinely give specific and general locations of jaguars that have been sighted and currently are being documented in the United States through Web sites, public notifications, reports, books, and meeting notes. Publishing critical habitat maps and descriptions, as part of designating critical habitat, would not result in the species being more vulnerable in the United States than it is currently.

In determining whether designation of critical habitat would be beneficial to the jaguar, we analyzed whether there are any physical and biological features in the United States that are essential to the conservation of the species and might, therefore, meet the definition of critical habitat. We did not consider designation of lands outside of the United States in this analysis because critical habitat cannot be designated in foreign countries (50 CFR 424.12(h)). ''Critical habitat'' is defined in section 3 of the Act as (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

The specific geographical areas of the United States occupied by the species at the time of the July 22, 1997, listing (62 FR 39147) includes southeastern Arizona and extreme southwestern New Mexico. Within these geographical areas, critical habitat would be only those areas that have the physical and biological features essential to the conservation of the species and which may require special management considerations or protection. These features include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for germination or seed dispersal; and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species (50 CFR 424.12b).

As noted above, since the time of the July 22, 1997, listing (62 FR 39147), only five transient males have been documented in the United States. These males are likely using areas within the United States sporadically for foraging. No breeding has been confirmed in the United States since 1910, and only three females with young have ever been documented. The areas where jaguars are occasionally seen are at the extreme

northern limit of the range of the species, and the best available scientific information suggests that no area within the United States is critical for the survival of the species (Rabinowitz 1997, 1999). Loss of or threats to features in the United States that may support these sporadic foraging events is not limiting the recovery of the species. Therefore, these features are not essential to the conservation of the species. Further, we are unaware that any physical and biological features within the United States are in need of special management considerations or protection for the purpose of jaguar conservation as jaguar conservation does not require habitat within the United States. Based on this information, we determine that the physical and biological features occasionally used by the jaguar within the geographical range occupied by the jaguar in the United States are not essential to the conservation of the species and, therefore, do not meet the definition of critical habitat.

We are not allowed to designate habitat outside of the United States as critical habitat (50 CFR 424.12(h)). Further, section 3(5)(C) of the Act, indicates that except in circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the species. In other words, not all areas which can be occupied by individuals of a species are necessarily essential to the conservation of the species as a whole.

The specific areas outside of the geographical area occupied in the United States by the species at the time of the July 22, 1997, listing (62 FR 39147), that is, the historical range, included portions of New Mexico, Arizona, California, Texas, and possibly Louisiana. For areas outside the geographical area occupied by the species at the time of listing, critical habitat is defined as the areas that are essential for the conservation of the species. The area in the United States that is sporadically used by jaguars is only a small part of the range of the northernmost population(s), which are based in Mexico, and appears to be less than one percent of the current range of the species (Wildlife Conservation Society 2006). Because the area used by jaguars in the United States is such a small part of the overall range of the species and because of nomadic use by jaguars, the range of the jaguar in the United States is not enough area to provide for the conservation (i.e., recovery) of the jaguar or even make a significant contribution to the conservation of the jaguar, and cannot be defined as essential to the conservation of the species. Any conservation actions for the jaguar that may bring the species to the point that the measures of the Act are no longer necessary will need to be implemented in Mexico and Central and South America. Thus, recovery of the species as a whole depends on conservation efforts in Mexico and Central and South America.

In summary, we do not find any habitats within the jurisdiction of the United States that meet the definition of critical habitat, i.e., habitats within the United States that contain the features essential for the conservation of the species and which may require special management considerations and protection, or areas outside of the geographical area occupied by the species that are considered essential to its conservation. Because there are no areas or features essential to the conservation of the jaguar in the United States that meet the definition of critical habitat, designation of critical habitat for the jaguar is not beneficial. We, therefore, determine that critical habitat for the jaguar is not prudent.

Although we have determined that it is not prudent to designate critical habitat for the jaguar, areas occupied by jaguars in the United States will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act, as well as consultation pursuant to section 7(a)(2) of the Act for Federal activities that may affect jaguars, as determined on the basis of the best available information at the time of the action. In addition, the prohibition of taking jaguars under section 9 of the Act (e.g., prohibitions against killing, harming, harassing, and capturing jaguars) continues to apply, which addresses the single greatest threat to the species in the United States, as discussed in the final listing rule.

We will also use our authorities to work with agencies and other partners in Mexico and Central and South America to conserve and recover jaguars outside of the United States. We are currently working with the Jaguar Conservation Team and other partners in developing a framework for the conservation of the northern jaguar populations, including providing recommendations on research needs and procedures in the United States, continuing education efforts, and providing recommendations regarding predator control in areas where jaguars may occur. We are coordinating with Mexico and other partners on jaguar conservation in Mexico through the Trilateral Commission and other processes. Mexico and countries in Central and South America, along with their non-governmental partners, are continuing conservation efforts, including implementing research programs and developing conservation plans. Specifically, Federal and State agencies in Mexico are developing jaguar conservation plans; we intend to coordinate with Mexico in their development to maintain travel corridors for jaguars to the United States.

References Cited

A complete list of all references cited in this finding is available upon request from the Arizona Ecological Services Office (see **ADDRESSES**).

Author(s)

The primary author of this notice is the staff of the U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: June 30, 2006.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E6–10644 Filed 7–11–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Shawangunk Grasslands National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Final comprehensive conservation plan and finding of no significant impact.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability of the final Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact for the Shawangunk Grasslands National Wildlife Refuge (NWR). Prepared in conformance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969, the plan describes how we intend to manage that refuge over the next 15 years.

ADDRESSES: You may obtain copies of this CCP on compact disk or in print by writing to Wallkill River NWR, 1547 County Route 565, Sussex, New Jersey, 07461, or by calling 973–702–7266. You

can also access and download a copy from the Web site *http://library.fws.gov/ccps.htm*.

FOR FURTHER INFORMATION CONTACT: Edward Henry, Refuge Manager, Wallkill River NWR, at 973–702–7266, or by e-mail at *Edward_Henry@fws.gov*.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Improvement Act of 1997 requires CCPs for all refuges to provide refuge managers with 15-year strategies for achieving refuge purposes and furthering the mission of the National Wildlife Refuge System. Developing CCPs is done according to the sound principles of fish and wildlife science and laws, while adhering to Service planning and related policies. In addition to outlining broad management direction on conserving refuge wildlife and habitat, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update this CCP at least once every 15 years.

The 566-acre refuge lies in the Town of Shawangunk, Ulster County, New York. Its purpose is ''carrying out the national migratory bird management program'' (16 U.S.C. 667b). State and regional conservation plans identify its regional importance for breeding and migrating grassland birds and wintering raptors. In 1999, we accepted a transfer of land from the United States Military Academy at West Point through the General Services Administration. That transfer occurred under the legislative authority of the Transfer of Certain Real Property for Wildlife Conservation Purposes Act (16 U.S.C. 667b) and the Federal Property and Administrative Services Act (40 U.S.C. 471 et seq.; repealed by Public Law 107–217, August 21, 2002). Since then, we have not added any land to the refuge.

In December 2005, we distributed a draft CCP/EA for public review and comment for 57 days between December 5, 2005, and January 31, 2006. Its distribution was announced in the **Federal Register** on December 5, 2005 (70 FR 72463). That draft analyzed three alternatives for managing the refuge. We also held one public meeting on January 17, 2006, to obtain public comments. We received 590 responses. Appendix I of the final CCP includes a summary of those comments and our responses to them.

We selected Alternative B (the Service-preferred alternative) from the draft CCP/EA as the alternative for implementation. Our final CCP fully describes its details. Staff from the Wallkill River NWR headquarters office in Sussex, New Jersey, will continue to administer the Shawangunk Grasslands NWR. A small, seasonally staffed visitor contact facility and an improved parking area and kiosk will increase opportunities for visitor outreach and improve the visibility of the Service. Other highlights of the final CCP include:

(1) Managing 430 acres of grassland habitat using a diversity of tools and techniques with the objective to sustain high quality habitat for wintering raptors and nesting, foraging, and migrating grassland-dependent birds;

(2) Opening the refuge to fishing in the small pond;

(3) Initiating an archery hunt for white-tailed deer in the fall;

(4) Constructing an interpretive trail with observation platforms and photography blinds;

(5) Reducing the scope of the original proposed restoration of the former military airport runways and taxiways to grassland to account for areas being used effectively by nesting grassland birds, and look for opportunities to recycle waste materials onsite or nearby;

(6) Restoring the natural hydrology of the area, to the extent it does not impede grasslands management, and

(7) Identifying a 3,486-acre Shawangunk Grasslands Focus Area, where the Service will participate in cooperative conservation activities.

Dated: June 14, 2006.

Richard O. Bennett,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. E6–10915 Filed 7–11–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Public Workshop on Future Land Imaging for the United States

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of public workshop.

SUMMARY: The first public workshop on future land Imaging for the United States will be held in the main auditorium in the Main Interior Building, 1849 C Street, NW., Washington, DC. The workshop, directed by the Office of Science and Technology Polict of the Executive Branch, is designed to inform the satellite user community of plans for moderate resolution, Landsat-type multispectral imaging. The workshop will include presentations by the Future of Land Imaging Interagency Working Group, industry, the user community and government representatives. Attendees will be given an opportunity to express views and perspectives on future land imaging needs and capabilities.

DATES: July 26, 2006, 1 p.m.–5 p.m.

FOR FURTHER INFORMATION CONTACT: Barron Bradford, U.S. Geological Survey, 517 National Center, Reston, Virginia 20192 (703) 648–5774 or *brbradford@usgs.gov.*

Dated: July 7, 2006.

Barbara J. Ryan,

Associate Director for Geography.

[FR Doc. 06–6167 Filed 7–11–06; 8:45am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Request to Office of Management and Budget for Extension of Self-Governance Information Collection

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) is submitting a request to the Office of Management and Budget (OMB) to extend an information collection from potential and existing Self-Governance Tribes, as required by the Paperwork Reduction Act. The information collected under OMB Clearance Number 1076–0143 will be used to establish requirements for entry into the pool of qualified applicants for self-governance, to provide information for awarding planning and negotiation grants, and to meet reporting requirements of the Self-Governance Act.

DATES: Submit comments on or before August 11, 2006.

ADDRESSES: Written comments can be sent to: The Desk Officer for the Department of the Interior via telefacsimile at (202) 395–6566 or by e-mail to *OIRA_DOCKET@omb.eop.gov.* A copy should be sent to Ken Reinfeld, Office of Self-Governance, 1849 C Street, NW., Mail Stop 4622 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the information collection request submission and the **Federal Register** notice by contacting Ken Reinfeld, (202) 208–5734.

SUPPLEMENTARY INFORMATION: The **Federal Register** notice seeking comments from the public on a request to OMB to extend information collection activities was published in the **Federal Register** on January 9, 2006 (71 FR 1452). Only one comment was received that was not directly related to the notice and was addressed by making the requested change on a referenced list of contact persons. You are advised that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that does not display a valid OMB clearance number. For the Self-Governance collection of information, the response is voluntary, to obtain or retain a benefit, depending upon the parts of the program being addressed.

The Self-Governance program was authorized by the Tribal Self-Governance Act of 1994, Public Law 103–413, as amended. Tribes interested in entering into Self-Governance must submit certain information as required by Public Law 103–413, as amended, to support their admission into Self-Governance. In addition, those tribes and tribal consortia who have entered into self-governance funding agreements will be requested to submit certain information as described in the negotiated rules published in final form on December 15, 2000 (65 FR 78688). This information will be used to justify a budget request submission on their behalf and to comport with section 405 of the Act that calls for the Secretary to submit an annual report to the Congress.

You may submit comments about the collection to evaluate the following:

(a) The accuracy of the burden hours, including the validity of the methodology used and assumptions made;

(b) The necessity of the information for proper performance of the bureau functions, including its practical utility;

(c) The quality, utility, and clarity of the information to be collected; and,

(d) Suggestions to reduce the burden including use of automated, electronic, mechanical, or other forms of information technology.

Please submit your comments to the persons listed in the **ADDRESSES** section. Please note that comments, names and addresses of commentators, will be available for public review during regular business hours. If you wish your name and address withheld from the public, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowable by law.

OMB is required to make a decision concerning this information collection request between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment will receive the best consideration by OMB if it is submitted early during this comment period.

In this notice, BIA is soliciting comments concerning the following information collection:

OMB control number: 1076–0143.

Type of review: Renewal.

Title: Tribal Self-Governance Program, 25 CFR part 1000.

Brief description of collection: The information collected is used to establish requirements for entry into the pool of qualified applicants for self-governance, to provide information for awarding planning and negotiation grants, and to meet reporting requirements of the Self-Governance Act.

Affected Entities: Tribes and tribal consortia participating in or wishing to enter into Self-Governance.

Size of Respondent Pool: 101.

Number of Annual Responses: 219.

Hours per response: 50 hours.

Yearly hour burden: 10,882.

Dated: April 3, 2006.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–10888 Filed 7–11–06; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010–0139).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR parts 210 and 216. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The new title for this ICR is ''30 CFR Part 210—Forms and Reports and Part 216—Production Accounting.'' This ICR uses Forms MMS–4054, Oil and Gas Operations Report, and MMS–4058, Production Allocation Schedule Report.

DATES: Submit written comments on or before August 11, 2006.

ADDRESSES: Submit written comments by either FAX (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0139).

Please also send a copy of your comments to MMS via e-mail at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number 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. Gebhardt at (303) 231–3211.

You may also mail a copy of your comments to Sharron L. Gebhardt, Lead 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-deliver your comments, our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, e-mail *Sharron.Gebhardt@mms.gov.* You may also contact Sharron Gebhardt to obtain, at no cost, a copy of the ICR and associated forms sent to OMB, or regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 210—Forms and Reports and Part 216—Production Accounting.

OMB Control Number: 1010–0139.

Bureau Form Number: Forms MMS–4054 and MMS–4058.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws.

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from

Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production from the leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are accurately valued and appropriately paid.

The MMS financial accounting system is an integrated computer system that includes production reports submitted by lease/agreement operators and is designed to track minerals produced from Federal and Indian lands from the point of production to the point of disposition, or royalty determination, and/or point of sale. The financial accounting system also includes payment and sales volumes and values, as reported by payors. The production and royalty volumes are compared to verify that proper royalties are received for the minerals produced.

The production reports provide MMS with ongoing information on lease, unit, or communitization agreement (lease/agreement) and facility production, sales volumes, and inventories. The reports summarize all operations on a lease/agreement or facility during a reporting period. They identify production by the American Petroleum Institute well number and sales by product. Data collected are used as a method of cross-checking reported production with reported sales. Failure to collect this information will prevent MMS from ensuring that all royalties owed on lease production are accurately valued and appropriately paid. Additionally, the data is shared electronically with the Bureau of Land Management, MMS's Offshore Minerals Management, Bureau of Indian Affairs, and tribal and state governments so they can perform their lease management responsibilities. The requirement to report accurately and timely is mandatory.

Form MMS–4054, Oil and Gas Operations Report (OGOR)

This three-part form, submitted monthly, identifies all oil and gas lease production and dispositions. The form is used for all production reporting for Outer Continental Shelf, Federal, and Indian lands. Monthly production information is compared with monthly sales and royalty data submitted on Form MMS–2014, Report of Sales and Royalty Remittance (OMB Control Number 1010–0140, expires October 31, 2006), to ensure proper royalties are paid on the oil and gas production reported to MMS. To modify previously submitted reports, the operator has the option of modifying the reporting line (delete/add by detail line) or replacing (overlaying) the previous report. The MMS uses the information from Parts A, B, and C of the OGOR to track all oil and gas from the point of production to the point of first sale or other disposition.

OGOR Part A—Well Production. All operators submit Part A for each lease or agreement with active wells until such wells are abandoned and inventories are disposed. Each line identifies a well/producing interval combination showing well status; days on production; volumes of oil, gas, and water produced; and any volumes injected during the report month.

OGOR Part B—Product Disposition. For any month with production volumes, operators submit Part B to identify the sales, transfers, and lease use of production reported on Part A. A separate line for each disposition shows: (1) The volume of oil, gas, or water; (2) the sales meter or other meter identifier; (3) the gas plant for instances where gas was processed prior to royalty determination; and (4) the quality of production sold.

OGOR Part C—Product Inventory. The lease operators who store their production before selling it must submit Part C. Separate lines for each product identify the storage facility; sales meter if applicable; quality of production sold; beginning and ending storage inventory; volume of sales; and volumes of other gains and losses to inventory.

Form MMS–4058, Production Allocation Schedule Report (PASR)

This form is submitted monthly by operators of the facilities and measurement points where production from an offshore lease or metering point is commingled with production from other sources before it is measured for royalty determination.

Each line identifies a lease or metering point and allocated sales or transferred volumes. Space is provided on each detail line for the operator's property name (area/block), and a column is provided to identify the product that was injected into the pipeline system. To modify previously submitted reports, the operator has the option of modifying (delete/add by detail line) or replacing (overlaying) the previous report. The MMS uses the data to determine whether sales reported by the lessee are reasonable.

Applicable Citations

Applicable citations of the laws pertaining to mineral leases on Federal and Indian lands include:

1. 25 U.S.C. 396d (Chapter 12—Lease, Sale or Surrender of Allotted or Unallotted Lands);

2. 25 U.S.C. 2103 (Indian Mineral Development Act of 1982);

3. Public Law 97–451—Jan. 12, 1983 (Federal Oil and Gas Royalty Management Act of 1982 [FOGRMA]);

4. Public Law 104–185—Aug. 13, 1996 (Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 [RSFA]), as corrected by Public Law 104—200-Sept. 22, 1996);

5. The Mineral Leasing Act (30 U.S.C. 1923); and

6. The Outer Continental Shelf Lands Act (43 U.S.C. 1353).

Public laws pertaining to mineral royalties are located on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.*

The Code of Federal Regulations (CFR) citations we are covering in this ICR are 30 CFR parts 210 and 216.

OMB Approval

The MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: Monthly and on occasion.

Estimated Number and Description of Respondents: 2,500 oil and gas operators.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 76,631 hours.

We are revising this ICR to include reporting requirements that were overlooked in the previous renewal (§§ 216.2 and 216.30), and we have adjusted the burden hours accordingly. These reporting requirements are considered rare and/or unusual circumstances.

The following chart details the estimated burden hours by CFR section and paragraph. In calculating the burden, we assume that respondents perform certain requirements in the normal course of their business activities. Therefore, we consider these usual and customary, and took that into account in estimating the burden.

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

30 CFR parts 210 and 216	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
	30 CFR—210—Forms and Reports Subpart A—General Provisions			
210.20(a)	**§ 210.20 When is electronic reporting required?** (a) You must submit Forms * * * and MMS–4054 to MMS electronically. You must begin reporting electronically according to the following timetable * * *.	.25 hour (Electronic) .25 hour (Manual)	294,000 6,000	73,500 1,500
210.21(c)(1)	**§ 210.21 How do you report electronically?** ... (c) Before you may begin reporting electronically: (1) You must submit an electronic sample of your report for MMS approval * * *.	Burden covered under § 210.20(a).		
	30 CFR 210—Forms and Reports Subpart B—Oil, Gas, and OCS Sulfur—General			
210.50	**§ 210.50 Required recordkeeping** ... Information required by the MMS shall be filed using the forms prescribed in this subpart * * * Records may be maintained in * * * or other recorded media that is easily reproducible and readable.	Burden covered under § 210.20(a).		
	30 CFR 216—Production Accounting Subpart A—General Provisions			
216.2	**§ 216.2 Scope** ... * * * Reporters are required to submit certain production reports to MMS as set forth in this part.	Burden covered under §§ 210.20(a); 216.56(a), (b), and (c); and 216.57.		
216.11	**§ 216.11 Electronic reporting** ... You must submit your Oil and Gas Operations Report, Form MMS–4054, in accordance with electronic reporting requirements in 30 CFR part 210.	Burden covered under § 210.20(a).		
216.16(a)	**§ 216.16 Where to report** (a) All reporting forms * * * should be mailed to the Minerals Management Service, Minerals Revenue Management * * *.			
216.21	**§ 216.21 General obligations of the reporter** The reporter shall submit accurately, completely, and timely * * * all information forms and other information required by MMS * * *.			
216.40(d)	**§ 216.40 Assessments for incorrect or late reports and failure to report** (d) * * * The reporter shall have the burden of proving that a reporting problem was unavoidable.			
216.30	**§ 216.30 Special forms and reports** ... When special forms and reports * * * are necessary * * * Such requests will be made in conformity with the requirements of the Paperwork Reduction Act of 1995, and are expected to involve less than 10 respondents annually.	1	1	1

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

30 CFR parts 210 and 216	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
	30 CFR 216—Production Accounting Subpart B—Oil and Gas, General			
216.53(a), (b), and (c)	**§ 216.53 Oil and Gas Operations Report** (a) You must file an Oil and Gas Operations Report, Form MMS–4054 * * *. (b) You must submit a Form MMS–4054 for each well for each calendar month * * *. (c) MMS must receive your completed Form MMS–4054 * * *. (1) Electronically * * *. (2) Other than electronically * * *.	Burden covered under § 210.20(a).		
216.56(a), (b), and (c)	**§ 216.56 Production Allocation Schedule Report**. (a) Any operator of an offshore Facility Measurement Point * * * must file a Production Allocation Schedule Report (Form MMS–4058)* * *. (b) You must submit a Production Allocation Schedule Report, Form MMS–4058, for each calendar month * * *. (c) MMS must receive your Form MMS–4058 * * *. (1) Electronically * * *. (2) Other than electronically * * *.	.1167 hour (Electronic) ..... .25 hour (Manual)	7,280 3,120	850 780
216.57	**216.57 Stripper royalty rate reduction notification**. * * *Operators who have been granted a reduced royalty rate(s) * * * must submit a Stripper Royalty Rate Reduction Notification (Form MMS–4377) to MMS * * *.	Burden covered under OMB Control Number 1010–0090 (expires October 31, 2007).		
Total	.....	.....	310,401	76,631

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: Reporters require access to the Internet through a subscription to an Internet provider service. The annual subscription is estimated at $240 per reporter. For 2,500 reporters, the annual aggregate total is $600,000 (2,500 × $240).

Public Disclosure Statement: The PRA (44 U.S.C. 3501 et seq.) provides that 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.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on September 14, 2005 (70 FR 54403), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 11, 2006.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: March 15, 2006.

Richard Adamski,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. E6–10883 Filed 7–11–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010–0087).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR parts 227—Delegation to States; 228—Cooperative Activities with States and Indian Tribes; and 229—Delegation to States. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. This ICR is titled ''30 CFR Part 227—Delegation to States; 30 CFR Part 228—Cooperative Activities with States and Indian Tribes; and 30 CFR Part 229—Delegation to States.'' We changed the title of this ICR to clarify the regulatory language we are covering under 30 CFR parts 227, 228, and 229 and to reflect OMB approval of consolidation of two ICRs, titled:

• ICR 1010–0087: 30 CFR Part 228—Cooperative Activities with States and Indian Tribes; and

• ICR 1010–0088: 30 CFR Part 227—Delegation to States.

In the two ICRs, much of the general information was repeated and cross-referenced. This consolidated ICR 1010–0087 eliminates that duplication of effort and redundancy of data and also includes 30 CFR part 229 information collection burden hours, which were not included in the previous information collections (ICRs 1010–0087 and 1010–0088).

DATES: Submit written comments on or before August 11, 2006.

ADDRESSES: Submit written comments by either FAX (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0087).

Please also send a copy of your comments to MMS via e-mail at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number 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. Gebhardt at (303) 231–3211.

You may also mail a copy of your comments to Sharron L. Gebhardt, Lead 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-deliver your comments, our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, e-mail *Sharron.Gebhardt@mms.gov*. You may also contact Sharron Gebhardt to obtain, at no cost, copies of (1) the ICR, (2) any associated forms, and (3) regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 227—Delegation to States; 30 CFR Part 228—Cooperative Activities with States and Indian Tribes; and 30 CFR Part 229—Delegation to States.

OMB Control Number: 1010–0087.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws.

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the minerals revenue management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share (royalty) of the value received from production on leased lands. The lease creates a business relationship between the lessor and the lessee. The lessee is required to report various kinds of information to the lessor, relative to the disposition of the leased minerals. Such information is similar to data reported to private and public mineral interest owners and is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling of such minerals. The information collected includes data necessary to ensure that the royalties are accurately valued and appropriately paid.

Sections 202 and 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), as amended, authorized the Secretary to develop delegated and cooperative agreements with states and Indian tribes to carry out certain inspection, auditing, investigation, or limited enforcement activities for leases in their jurisdiction. The states and Indian tribes are working partners and are an integral part of the overall onshore and offshore compliance effort.

Applicable Citations

Applicable citations of the laws pertaining to this ICR include:

(1) Public Law 97–451—Jan. 12, 1983, FOGRMA, Sections 202 and 205; and

(2) Public Law 104–185—Aug. 13, 1996, as corrected by Public Law 104–200—Sept. 22, 1996, the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Sections 3, 4, and 8.

Public laws pertaining to mineral royalties are located on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm*.

Relevant parts of the Code of Federal Regulations (CFR) include 30 CFR parts 227, 228, and 229, as described below:

Title 30 CFR part 227, Delegation to States, provides procedures to delegate certain Federal minerals revenue management functions to states for Federal oil and gas, geothermal, and solid mineral leases and leases subject to 8(g) of the Outer Continental Shelf Lands Act, within their state boundaries.

Title 30 CFR part 228, Cooperative Activities with States and Tribes, provides procedures to utilize the capabilities of the Indian tribes to carry out audits and related investigations of their respective leased lands.

Title 30 CFR part 229, Delegation to States, provides procedures to utilize the capabilities of the states to carry out audits and related investigations of leased Indian lands within their respective state boundaries, by permission of the respective Indian

tribal councils or individual Indian mineral owners.

Effective September 11, 1997, parts 228 and 229 do not apply to Federal lands, due to implementation of RSFA amendments.

Delegation to States, 30 CFR Part 227

The states audit Federal lands under provisions of 30 CFR part 227. The Secretary is authorized under Section 205 of FOGRMA, as amended by RSFA Section 3, to delegate to states, all or part of authorities and responsibilities of the Secretary, to conduct inspections, audits, investigations, and limited enforcement activities for leases in their jurisdiction. Specifically, RSFA Section 3 amended FOGRMA Section 205 to add items e through g below for minerals revenue management functions on Federal lands:

a. Conducting audits and investigations;

b. Issuing demands and subpoenas (except for solid mineral and geothermal leases);

c. Issuing orders to perform restructured accounting;

d. Issuing related tolling agreements and notices to lessees or their designees;

e. Receiving and processing production and royalty reports;

f. Correcting erroneous report data; and

g. Performing automated verification.

Under FOGRMA

Eleven states currently have MMS-approved delegation agreements to perform audits and investigations, which are the functions previously authorized under FOGRMA (items a through d above). The most recent delegated agreement was established in 2004 between MMS and the state of Alaska.

The states perform nearly all audits on Federal leases within their boundaries and typically receive 50 percent of any additional collections; however, Alaska typically receives 90 percent of onshore royalties. Many states gain efficiencies by performing audits on state severance taxes and concurrently on properties that have both Federal and state interests. Federal royalties are a significant portion of many states' annual budgets.

Under RFSA

Currently, there are no states with MMS-approved delegation agreements. To be considered for delegation under 30 CFR part 227, states must submit a written delegation proposal to, and receive approval from, the MMS Associate Director for MRM. Delegation agreements benefit both MMS and states by helping to ensure accurate and timely production reporting, royalty payment, and proper product valuation through the application of an aggressive and comprehensive audit program.

When a state performs any of the delegated functions under 30 CFR part 227, the state also assumes the burden of providing various types of information to MMS. Under RSFA, and to properly administer the delegation of the functions to the requesting states, MRM must collect pertinent information from industry and states to ensure that this program continues to operate efficiently and effectively.

Currently, companies send all royalty reports and payments (ICR 1010–0140, expires October 31, 2006) and production reports (ICR 1010–0139, expires August 31, 2006) to MRM. The MRM verifies the accuracy of the reports and payments prior to disbursing the funds to states, Indian tribes, individual Indian mineral owners, the U.S. Treasury, and other Federal agencies. If states choose to participate in the delegable function of receiving and processing financial and production reports, payors/reporters must send these reports to each participating state for the Federal leases within that state and to MRM for the remaining Federal leases. The states must verify the accuracy of these reports. The MRM currently handles production and royalty reporting, error correction, end-to-end compliance review process, issuing demand letters, and billing actions.

The MRM is held accountable to certain measurements and standards and must file reports to outside entities. States choosing to participate in any delegable function will be held to these same measurements and standards and, therefore, will have to provide data to document the work they are performing. This information, provided to MMS in the course of performing delegated agreements, is the focus of this information collection. States must comply with Generally Accepted Accounting Principles (GAAP) and MMS standards, as required under 30 CFR 227.200, and with the *MRM Audit Manual, MRM Compliance Review Manual*, and Generally Accepted Government Auditing Standards (GAGAS), as required under 30 CFR 227.301.

Cooperative Activities With States and Indian Tribes, 30 CFR Part 228

The final rulemaking of Delegation of Royalty Management Functions to States was published on August 12, 1997 (62 FR 43076), effective September 11, 1997, and stated that part 228 does not apply to Federal lands because delegation for Federal lands is now covered under part 227.

The Secretary is authorized under FOGRMA Section 202, Cooperative Agreements, as amended by RSFA Section 8, to enter into cooperative agreements with any state or Indian tribe upon their written request; to share oil or gas revenue management information; and to use the capabilities of states and Indian tribes to carry out inspection, royalty audit, and related investigation and enforcement activities.

States

There are no states with cooperative agreements, as no state has proposed to enter into a cooperative agreement or to undertake activities on Indian lands within its boundaries.

Indian Tribes

Currently, seven Indian tribes have cooperative agreements to perform audits and investigations. When an Indian tribe performs any of the cooperative activities under 30 CFR part 228, the Indian tribe also assumes the burden of providing various types of information to MMS. This information, provided to MMS in the course of performing cooperative activities, is the focus of this information collection. After the request is accepted and a cooperative agreement is in effect, Indian tribes must submit an annual workplan and budget, as well as quarterly reimbursement vouchers. They must follow GAAP and MMS standards as required under 30 CFR 228.102. The cooperative agreements also require them to comply with the *MRM Audit Manual, MRM Compliance Review Manual*, and GAGAS.

Cooperative activities benefit both MMS and Indian tribes by helping to ensure accurate and timely production reporting, proper product valuation, and accurate and timely royalty payment through the application of an aggressive and comprehensive audit program.

Indian tribes currently manage audits for 89 percent of all tribal mineral royalties. Major focus in FY 2007 provide for additional full-time MMS employees to provide increased oversight of Indian tribal audits due to a recent court decision.

To be considered for a cooperative audit agreement, Indian tribes must comply with the regulations at 30 CFR part 228. Indian tribes who want to perform royalty audits in cooperation with MMS must submit a written proposal to enter into a cooperative agreement, signed by the tribal chairman or other appropriate official, to the MMS Director. The request

should outline the activities to be undertaken and present evidence that the Indian tribe(s) can meet the standards established by the Secretary for the activities to be conducted. Prior to beginning work, approval must be obtained from the MMS Director.

Delegation to States, 30 CFR Part 229

The final rulemaking of Delegation of Royalty Management Functions to States was published on August 12, 1997 (62 FR 43076), effective September 11, 1997, and stated that part 229 does not apply to Federal lands because delegation for Federal lands is now covered under part 227.

At this time, no state has proposed to undertake delegated functions on Indian lands within its boundaries.

Under the Secretary's delegation of authority at this part, a state may conduct audits and related investigations of oil and gas payments made to MMS regarding leased Indian lands within the state's boundaries. A state must receive written permission from the respective Indian tribe(s) or individual Indian mineral owner(s).

After receiving written permission, the governor or other authorized official of a state may petition the Secretary to assume responsibilities of conducting audits and related investigation of Indian oil and gas leases. A state petitioning for a delegation of authority will have the opportunity to present testimony at a public hearing within the state.

After the state receives approval of the Secretary's delegation of authority, it must submit annual audit workplans detailing its audits and related investigations, annual budgets, and quarterly reimbursement vouchers. The state shall maintain books and records and provide a quarterly summary of costs following Department standards, as required under 30 CFR 229.109.

In addition, 30 CFR 229.101(b), covering the Federal Government's administration of delegations, states:

(b) A State may enter into a delegation of authority under this part [229] without affecting a State's ability to enter into a cooperative agreement under part 228 of this chapter.

Summary

Proprietary information submitted to MMS under this collection is protected. No items of a sensitive nature are collected. The opportunity to engage in these programs is voluntary; however, if the respondents want to receive benefits, the requirement for response is mandatory.

Frequency of Response: Varies based on the function performed.

Estimated Number and Description of Respondents: 11 states and 7 Indian tribes.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 6,194 hours.

We are revising this ICR to include reporting requirements from part 229 citations that were overlooked in the previous renewal, and we have adjusted the burden hours accordingly.

The MMS estimates 774 responses each year from the 11 states and 7 Indian tribes. We estimate the total annual burden is 6,194 (4,389 for states and 1,805 for Indian tribes) reporting and recordkeeping hours. Due to the complexity of the chart below, we are detailing the number of burden hours for the states and Indian tribes.

- *States:* We estimate 711 responses (695 from 30 CFR part 227 and 16 from part 229) from 11 states. We estimate the total annual burden for these responses is 4,389 (4,373 from 30 CFR part 227 and 16 from 30 CFR part 229) reporting and recordkeeping hours due to historical information.
- *Indian tribes:* We estimate 63 responses (from 30 CFR part 228) from 7 Indian tribes. We estimate the total annual burden for these responses is 1,805 reporting and recordkeeping hours due to historical information.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIAMTED ANNUAL BURDEN HOURS

30 CFR section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	Part 227—Delegation to States			
	Delegation Proposals			
227.103	What must a State's delegation proposal contain? If you want MMS to delegate royalty management functions to you, then you must submit a delegation proposal to the MMS Associate Diector for Minerals Revenue Management. MMS will provide you with technical assistance and information to help you prepare your delegation proposal. * * *	200	1	200
	Delegation Process			
227.107	When will the MMS Director decide whether to approve a State's delegation proposal? The MMS Director will decide whether to approve your delegation proposal within 90 days after your delegation proposal is considered complete under § 227.104. MMS may extend the 90-day period with your written consent.	Hour burden covered under § 227.103		
227.109	What if the MMS Director denies a State's delegation proposal? If the MMS Director denies your delegation proposal, MMS will state the reasons for denial. MMS also will inform you in writing of the conditions you must meet to receive approval. You may submit a new delegation proposal at any time following a denial.	Hour burden covered under § 227.103.		

RESPONDENTS' ESTIAMTED ANNUAL BURDEN HOURS—Continued

30 CFR section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
227.110(a)	When and for how long are delegation agreements effective? (a) Delegation agreements are effective for 3 years from the date the MMS Director signs the delegation agreement. However, during the development of the State's delegation proposal under § 227.108 of this part, MMS, the delegated State, and any other affected person will determine an appropriate transition period for lessees and their designees to modify their systems to comply with any new requirements under a delegation agreement * * *.	Hour burden covered under § 227.103.		
227.110(b) and (b)(1).	(b) You may ask MMS to renew the delegation for an additional 3 years no less than 6 months before your 3-year delegation agreement expires. You must submit your renewal request to the MMS Associate Director for Minerals Revenue Management as follows: (1) If you do not want to change the terms of your delegation agreement for the renewal period, you need only ask to extend your existing agreement for the 3-year renewal period. * * *	Hour burden covered under § 227.103.		
227.110(b)(2)	(b)(2) If you want to change the terms of your delegation agreement for the renewal period, you must submit a new delegation proposal under this part.	15	11	165
227.110(c)	(c) The MMS Director may approve your renewal request only if MMS determines that you are meeting the requirements of the applicable standards and regulations. If the MMS Director denies your renewal request, MMS will state the reasons for denial. MMS also will inform you in writing of the conditions you must meet to receive approval. You may submit a new renewal request any time after denial..	Hour burden covered under § 227.103.		
227.110(d)	(d) After the 3-year renewal period for your delegation agreement ends, if you wish to continue performing one or more delegated functions, you must request a new delegation agreement from MMS under this part. MMS will schedule a hearing on your request, if MMS determines a hearing is appropriate. * * *	Hour burden covered under § 227.103.		
227.110(e)	(e) If you do not request a hearing under paragraphs (b)(1) or (d) of this section, any other affected person may submit a written request for a hearing under those paragraphs to the MMS Associate Director for Minerals Revenue Management.	Hour burden covered under § 227.103.		
	Existing Delegations			
227.111(a) and (b).	Do existing delegation agreements remain in effect? This section explains your options if you have a delegation agreement in effect on the effective date of this regulation.	Hour burden covered under § 227.103.		
	(a) * * * Before the agreement expires, if you wish to continue to perform one or more of the delegated functions you performed under the expired agreement, you must request a new delegation agreement meeting the requirements of this part and the applicable standards. (b) If you want to perform royalty management functions in addition to those authorized under your existing agreement, you must request a new delegation agreement under this part..			
	Compensation			
227.112(d)	What compensation will a State receive to perform delegated functions? You will receive compensation for your costs to perform each delegated function subject to the following conditions. * * * (d) At a minimum, you must provide vouchers detailing your expenditures quarterly during the fiscal year. However, you may agree to provide vouchers on a monthly basis in your delegation agreement. * * *	4	[1] 84	336
227.112(e)	(e) You must maintain adequate books and records to support your vouchers. * * *	Hour burden covered under § 227.200(d).		
	States' Responsibilities to Perform Delegated Functions			
227.200(a), (b), (c), and (d).	What are a State's general responsibilities if it accepts a delegation? For each delegated function you perform, you must: (a) * * * seek information or guidance from MMS regarding new, complex, or unique issues. * * * (b)(1) * * * Provide complete disclosure of financial results of activities; (2) Maintain correct and accurate records of all mineral-related transactions and accounts; (3) Maintain effective controls and accountability; (4) Maintain a system of accounts. * * *	200	11	2,200

RESPONDENTS' ESTIAMTED ANNUAL BURDEN HOURS—Continued

30 CFR section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	(5) Maintain adequate royalty and production information. * * * (c) Assist MMS in meeting the requirements of the Government Performance and Results Act (GPRA). * * * (d) Maintain all records you obtain or create under your delegated function, such as royalty reports, production reports, and other related information. * * * You must maintain such records for at least 7 years. * * *			
227.200(e)	(e) Provide reports to MMS about your activities under your delegated functions. * * * At a minimum, you must provide periodic statistical reports to MMS summarizing the activities you carried out. * * *	3	[2] 44	132
227.200(f)	(f) Assist MMS in maintaining adequate reference, royalty, and production databases. * * *	1	250	250
227.200(h)	(h) Help MMS respond to requests for information from other Federal agencies, Congress, and the public * * *	8	10	80
227.200(g) and 227.301(e).	What are a State's general responsibilities if it accepts a delegation? (g) Develop annual work plans. * * *	60	11	660
§ 227.200	§ 227.301 What are a State's responsibilities if it performs audits? If you perform audits you must * * * (e) Prepare and submit MMS Audit Work Plans. * * *			
227.400(a)(4) and (a)(6).	What functions may a State perform in processing production reports or royalty reports? Production reporters or royalty reporters provide production, sales, and royalty information on mineral production from leases that must be collected, analyzed, and corrected. (a) If you request delegation of either production report or royalty report processing functions, you must perform * * * (4) Timely transmitting production report or royalty report data to MMS and other affected Federal agencies. * * * (6) Providing production data or royalty data to MMS and other affected Federal agencies. * * *	1	250	250
227.400(c)	(c) You must provide MMS with a copy of any exceptions from reporting and payment requirements for marginal properties and any alternative royalty and payment requirements for unit agreements and communitization agreements you approve.	1	12	12
227.401(d)	What are a State's responsibilities if it processes production reports or royalty reports? In processing production reports or royalty reports you must * * * (d) Timely transmit required production or royalty data to MMS and other affected Federal agencies. * * *	Hour burden covered under § 227.400(a)(4) and (a)(6).		
227.401(e)	In processing production reports or royalty reports you must * * * (e) Access well, lease, agreement, and reporter reference data from MMS, and provide updated information to MMS. * * *	Hour burden covered under § 227.200(f).		
227.501(c)	What are a State's responsibilities to ensure that reporters correct erroneous data? (c) Submit accepted and corrected lines to MMS to allow processing in a timely manner. * * *	Hour burden covered under § 227.400(a)(4) and (a)(6).		
227.601(c)	What are a State's responsibilities if it performs automated verification? To perform automated verification of production reports or royalty reports, you must * * * (c) Maintain all documentation and logging procedures. * * *	8	11	88
227.601(d)	(d) Access well, lease, agreement, and production reporter or royalty reporter reference data from MMS and provide updated information to MMS. * * *	Hour burden covered under § 227.200(f).		
	Performance Review			
227.801(a)	What if a State does not adequately perform a delegated function? If your performance of the delegated function does not comply with your delegation agreement * * * (a) * * * You may ask MMS for an extension of time to comply with the notice. In your extension request you must explain why you need more time. * * *	Hour burden covered under § 227.200(e).		
227.804	How else may a State's delegation agreement terminate? You may request MMS to terminate your delegation at any time by submitting your written notice of intent 6 months prior to the date on which you want to terminate. * * *	Hour burden covered under § 227.200(e).		
227.805	How may a State obtain a new delegation agreement after termination? After your delegation agreement is terminated, you may apply again for delegation by beginning with the proposal process. * * *	Hour burden covered under § 227.103.		

RESPONDENTS' ESTIAMTED ANNUAL BURDEN HOURS—Continued

30 CFR section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	Subtotal Burden for 30 CFR Part 227		695	4,373
	Part 228—Cooperative Activities With States and Indian Tribes			
	Subpart C—Oil and Gas, Onshore			
228.100(a) and (b).	Entering into an agreement ..... (a) * * * Indian tribe may request the Department to enter into a cooperative agreement by sending a letter from * * * tribal chairman * * * to the Director of MMS. (b) The request for an agreement shall be in a format prescribed by MMS and should include at a minimum the following information: (1) Type of eligible activities to be undertaken. (2) Proposed term of the agreement. (3) Evidence that * * * Indian tribe meets, or can meet by the time the agreement is in effect. * * * (4) If the State is proposing to undertake activities on Indian lands located within the State, a resolution from the appropriate tribal council indicating their agreement to delegate to the State responsibilities under the terms of the cooperative agreement for activities to be conducted on tribal or allotted land.	200	1	200
228.101(a)	Terms of agreement ..... (a) Agreements entered into under this part shall be valid for a period of 3 years and shall be renewable * * * upon request of * * * Indian tribe. * * *	15	7	105
228.101(c)	(c) * * * Indian tribe may unilaterally terminate an agreement by giving a 120-day written notice of intent to terminate.	Hour burden covered under § 228.100(a).		
228.101(d)	(d) * * * Indian tribe will be given 60 days to respond to the notice of deficiencies and to provide a plan for correction of those deficiencies. * * *	80	1	80
228.103(a) and (b).	Maintenance of records ..... (a) * * * Indian tribe entering into a cooperative agreement under this part must retain all records, reports, working papers, and any backup materials. * * * (b) * * * Indian tribe shall maintain all books and records. * * *	120	7	840
228.105(a)(1) and (a)(2).	Funding of cooperative agreements ..... (a)(1) The Department may, under the terms of the cooperative agreement, reimburse * * * Indian tribe up to 100 percent of the costs of eligible activities. Eligible activities will be agreed upon annually upon the submission and approval of a work plan and funding requirement. (2) A cooperative agreement may be entered into with * * * Indian tribe, upon request, without a requirement for reimbursement of costs by the Department.	60	7	420
228.105(c)	(c) * * * Indian tribe shall submit a voucher for reimbursement of eligible costs incurred within 30 days of the end of each calendar quarter. * * * Indian tribe must provide the Department a summary of costs incurred, for which * * * Indian tribe is seeking reimbursement, with the voucher.	4	[3]40	160
228.107(b)	Eligible cost of activities ..... (b) * * * Each cooperative agreement shall contain detailed schedules identifying those activities and costs which qualify for funding and the procedures, timing, and mechanics for implementing Federal funding.	Hour burden covered under § 228.100(a) and (b).		

RESPONDENTS' ESTIAMTED ANNUAL BURDEN HOURS—Continued

30 CFR section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	Subtotal Burden for 30 CFR Part 228		63	1,805
	PART 229—Delegation to States			
	Subpart C—Oil and Gas, Onshore			
	Administration of Delegations			
229.100(a)(1) and (a)(2).	Authorities and responsibilities subject to delegation ..... (a) All or part of the following authorities and responsibilities of the Secretary under the Act may be delegated to a State authority: (1) Conduct of audits related to oil and gas royalty payments made to the MMS which are attributable to leased * * * Indian lands within the State. Delegations with respect to any Indian lands require the written permission, subject to the review of the MMS, of the affected Indian tribe or allottee. (2) Conduct of investigation related to oil and gas royalty payments made to the MMS which are attributable to * * * Indian lands within the State. Delegation with respect to any Indian lands require the written permission, subject to the review of the MMS, of the affected Indian tribe or allottee. No investigation will be initiated without the specific approval of the MMS. * * *	1	1	1
229.101(a) and (d).	Petition for delegation ..... (a) The governor or other authorized official of any State which contains * * * Indian oil and gas leases where the Indian tribe and allottees have given the State an affirmative indication of their desire for the State to undertake certain royalty management-related activities on their lands, may petition the Secretary to assume responsibilities to conduct audits and related investigations of royalty related matters affecting * * * Indian oil and gas leases within the State. (d) In the event that the Secretary denies the petition, the Secretary must provide the State with the specific reasons for denial of the petition. The State will then have 60 days to either contest or correct specific deficiencies and to reapply for a delegation of authority.	1	1	1
229.102(c)	Fact-finding and hearings ..... (c) A State petitioning for a delegation of authority shall be given the opportunity to present testimony at a public hearing.	1	1	1
229.103(c)	Duration of delegations; termination of delegations ..... (c) A State may terminate a delegation of authority by giving a 120-day written notice of intent to terminate.	1	1	1
229.105	Evidence of Indian agreement to delegation ..... In the case of a State seeking a delegation of authority for Indian lands * * * the State petition to the Secretary must be supported by an appropriate resolution or resolutions of tribal councils joining the State in petitioning for delegation and evidence of the agreement of individual Indian allottees whose lands would be involved in a delegation. Such evidence shall specifically speak to having the State assume delegated responsibility for specific functions related to royalty management activities.	1	1	1
229.106	Withdrawal of Indian lands from delegated authority ..... If at any time an Indian tribe or an individual Indian allottee determines that it wishes to withdraw from the State delegation of authority in relation to its lands, it may do so by sending a petition of withdrawal to the State. * * *	1	1	1
229.109(a)	Reimbursement for costs incurred by a State under the delegation of authority. (a) The Department of the Interior (DOI) shall reimburse the State for 100 percent of the direct cost associated with the activities undertaken under the delegation of authority. The State shall maintain books and records in accordance with the standards established by the DOI and will provide the DOI, on a quarterly basis, a summary of costs incurred. * * *	1	1	1
229.109(b)	(b) The State shall submit a voucher for reimbursement of costs incurred within 30 days of the end of each calendar quarter.	1	1	1

RESPONDENTS' ESTIAMTED ANNUAL BURDEN HOURS—Continued

30 CFR section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
	Delegation Requirements			
229.120	Obtaining regulatory and policy guidance ..... All activities performed by a State under a delegation must be in full accord with all Federal laws, rules and regulations, and Secretarial and agency determinations and orders relating to the calculation, reporting, and payment of oil and gas royalties. In those cases when guidance or interpretations are necessary, the State will direct written requests for such guidance or interpretation to the appropriate MMS officials.* * *	1	1	1
229.121(a), (b), (c), and (d).	Recordkeeping requirements ..... (a) The State shall maintain in a safe and secure manner all records, workpapers, reports, and correspondence gained or developed as a consequence of audit or investigative activities conducted under the delegation. * * * (b) The State must maintain in a confidential manner all data obtained from DOI sources or from payor or company sources under the delegation. * * * (c) All records subject to the requirements of paragraph (a) must be maintained for a 6-year period measured from the end of the calendar year in which the records were created. * * * Upon termination of a delegation, the State shall, within 90 days from the date of termination, assemble all records specified in subsection (a), complete all working paper files in accordance with 229.124, and transfer such records to the MMS. (d) The State shall maintain complete cost records for the delegation in accordance with generally accepted accounting principles.* * *	1	1	1
229.122(a), (b), and (c).	Coordination of audit activities ..... (a) Each State with a delegation of authority shall submit annually to the MMS an audit workplan specifically identifying leases, resources, companies, and payors scheduled for audit. * * * A State may request changes to its workplan * * * at the end of each quarter of each fiscal year. All requested changes are subject to approval by the MMS and must be submitted in writing. (b) When a State plans to audit leases of a lessee or royalty payor for which there is an MMS or OIG resident audit team, all audit activities must be coordinated through the MMS or OIG resident supervisor. * * * (c) The State shall consult with the MMS and/or OIG regarding resolution of any coordination problems encountered during the conduct of delegation activities.	1	1	1
229.123(b)(3)(i) ...	Standards for audit activities ..... (b)(3) Standards of reporting. (i) Written audit reports are to be submitted to the appropriate MMS officials at the end of each field examination.	1	1	1
229.124	Documentation standards ..... Every audit performed by a State under a delegation of authority must meet certain documentation standards. In particular, detailed workpapers must be developed and maintained.	1	1	1
229.125(a) and (b).	Preparation and issuance of enforcement documents. ..... (a) Determinations of additional royalties due resulting from audit activities conducted under a delegation of authority must be formally communicated by the State, to the companies or other payors by an issue letter prior to any enforcement action. * * * (b) After evaluating the company or payor's response to the issue letter, the State shall draft a demand letter which will be submitted with supporting workpaper files to the MMS for appropriate enforcement action. Any substantive revisions to the demand letter will be discussed with the State prior to issuance of the letter.* * *	1	1	1
229.126(a) and (b).	Appeals ..... (a) * * * The State regulatory authority shall, upon the request of the MMS, provide competent and knowledgeable staff for testimony, as well as any required documentation and analyses, in support of the lessor's position during the appeal process. (b) An affected State, upon the request of the MMS, shall provide expert witnesses from their audit staff for testimony as well as required documentation and analyses to support the Department's position during the litigation of court cases arising from denied appeals. * * *	1	1	1

RESPONDENTS' ESTIAMTED ANNUAL BURDEN HOURS—Continued

30 CFR section	Reporting and recordkeeping requirements	Hour burden per response	Number of annual responses	Annual burden hours
229.127	Reports from States ..... The State, acting under the authority of the Secretarial delegation, shall submit quarterly reports which will summarize activities carried out by the State during the preceding quarter of the year under the provisions of the delegation. * * *	1	1	1
Subtotal Burden for 30 CFR Part 229			16	16
Total Burden			774	6,194

[1] **Note:** 5 states × 12 monthly vouchers = 60 and 6 states x 4 quarterly vouchers = 24
[2] **Note:** 4 quarterly reports × 11 states = 44
[3] **Note:** 1 tribe × 12 monthly vouchers = 12 and 7 tribes × 4 quarterly vouchers = 28

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden:

Due to more current information, we have identified no ''non-hour cost'' burden for this information collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501 et seq.) provides that 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.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on October 25, 2005 (70 FR 61631), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 11, 2006.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: June 7, 2006.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. E6–10884 Filed 7–11–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0137).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements for the Notice to Lessees (NTL) on the Historical Well Data Cleanup (HWDC) Project. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by August 11, 2006.

ADDRESSES: You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395–6566; identify with (1010–0137).

Submit a copy of your comments to the Department of the Interior, MMS, via:

- MMS's Public Connect on-line commenting system, *https://ocsconnect.mms.gov.* Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov.* Use Information Collection Number 1010–0137 in the subject line.

• Fax: 703–787–1093. Identify with Information Collection Number 1010–0137.

• Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0137'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team, (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the ICR, the regulations, and the NTL that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: Historical Well Data Cleanup (HWDC) Project.

OMB Control Number: 1010–0137.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.'' These responsibilities are among those delegated to the Minerals Management Service (MMS).

To carry out these responsibilities, MMS issues regulations to ensure that operations in the OCS will meet statutory requirements; provide for safety and protect the environment; and result in diligent exploration, development, and production of OCS leases. In addition, we issue Notices to Lessees and Operators (NTLs) that provide clarification, explanation, and interpretation of our regulations. These NTLs are also used to convey purely informational material and to cover situations that might not be addressed in our regulations. The latter is the case for the information collection required in the attached NTL. Because of the unusual nature of this information collection, issuing an NTL is the appropriate means to collect the information.

The subject of this information collection request is the ''Historical Well Data Cleanup (HWDC) Project.'' It needs to be stressed that the information we are collecting is information that respondents are required to submit under regulations at 30 CFR part 250 subpart D. However, in the past we did not always enforce this regulatory requirement for certain wellbores for several reasons. We did not foresee the value of this information for all wellbores, nor did we anticipate that not having the information would later create problems for the agency and others. We also did not have a sophisticated electronic database that could handle the information. We have instituted procedures designed to correct this problem, and we now collect all of the required information on a current basis (under 30 CFR part 250, subpart D, OMB Control Number 1010–0141). Prior assurance to respondents that providing the information in connection with this project will not subject them to the penalties for not providing the information is still in place. We are requesting a renewal for the approval of this collection to allow operators more response time over a longer period to provide the missing or corrected data.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for this information collection is a total of 15,000 hours for the remaining 6,000 wells based on:

0.5 hours to locate/copy scout tickets for each well	0.5 hrs × 6,000 wells = 3,000
2 hours to retrieve/analyze each well file	2 hours × 6,000 wells = 12,000
Total	15,000

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no paperwork ''non-hour cost'' burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on February 10, 2006, we published a **Federal Register** notice (71 FR 7064) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR part 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received two comments in response to these efforts, but they were not relevant to the information collection request.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or

disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 11, 2006.

Public Comment Procedures: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: May 15, 2006.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E6–10885 Filed 7–11–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0128).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 250, subpart O, ''Well Control and Production Safety Training.'' This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by August 11, 2006.

ADDRESSES: You may submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395–6566; identify with (1010–0128).

Submit a copy of your comments to the Department of the Interior, MMS, via:

- MMS's Public Connect on-line commenting system, *https://ocsconnect.mms.gov*. Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov*. Use Information Collection Number 1010–0128 in the subject line.
- Fax: 703–787–1093. Identify with Information Collection Number 1010–0128.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0128'' in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team, (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the ICR and regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, subpart O, Well Control and Production Safety Training.

OMB Control Number: 1010–0128.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.'' This authority and responsibility are among those delegated to the Minerals Management Service (MMS). To carry out these responsibilities, MMS issues regulations governing oil and gas or sulphur operations in the OCS.

Regulations at 30 CFR part 250, subpart O, implement these safe operation requirements. The MMS uses the information collected under subpart O to ensure that workers in the OCS are properly trained with the necessary skills to perform their jobs in a safe and pollution-free manner. In some instances, MMS will conduct oral interviews of offshore employees to evaluate the effectiveness of a company's training program. The information collected is necessary to verify personnel training compliance with the requirements.

Frequency: Primarily on occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for this information collection is a total of 2,106 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart O	Reporting & recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
1503(b), (c)	Develop training plans. Note: Existing lessees/respondents already have training plans developed. This number reflects development of plans for any new lessees.	60	2	120
1503(c)	Maintain copies of training plan and employee training documentation/record for 5 years.	¼ hr. (plan) 1/12 hr. (record) x 20,000 employee records.	136	34 *1,667
1503(c)	Upon request, provide MMS copies of employee training documentation or provide copy of training plan.	5	31	155
1507(b)	Employee oral interview conducted by MMS	1/6 hr	600	100
1507(c), (d); 1508; 1509	Written testing conducted by MMS or authorized representative.	Exempt under 5 CFR 1320.3(h)(7)		0
1510(b)	Revise training plan and submit to MMS	6	4	24
1500–1510	General departure or alternative compliance requests not specifically covered elsewhere in subpart O.	2	3	6
Total Hour Burden			776	2,106

*Rounded.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no paperwork ''non-hour cost'' burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on January 10, 2006, we published a **Federal Register** notice (71 FR 1552) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, section 250.199 provides the OMB control number for the information collection requirements imposed by 30 CFR part 250, subpart O, regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received two comments in response to the **Federal Register** notice. One comment was not germane to regulations at 30 CFR part 250, subpart O. The other commenter felt that * * *. ''records on safety training should be kept for more than 5 years. with record storage requiring very little space these days, there is absolutely no reason why these records cannot be kept for ten years.''

MMS's response to the above commenter is the following: The 5-year retention requirement was not promulgated arbitrarily by MMS. Our rulemaking process follows the Administrative Procedure Act (APA) (5 U.S.C. 553) mandates with a comment period. Public comments are analyzed and incorporated into final rules. The oil and gas industry commented on the proposed rule after which a final rule was published. (Please refer to August 14, 2000, 65 FR 49487, final rule comment section.) Industry felt that the 5-year retention requirement was costly and unwarranted. The MMS disagreed and made the retention period 5 years (the APA says we only have to retain records for 3 years) to ensure that records will be available for the maximum time allowable under the statute of limitations for audit purposes.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 11, 2006.

Public Comment Procedures: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor the request to the extent allowable by the law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz, (202) 208–7744.

Dated: March 22, 2006.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

Editorial Note: This document was received at the Office of the Federal Register on July 6, 2006.

[FR Doc. E6–10886 Filed 7–11–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Delta-Mendota Canal/California Aqueduct Intertie, Alameda County, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) and notice of public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Bureau of Reclamation (Reclamation) intends to prepare an EIS for the Delta-Mendota Canal/California Aqueduct Intertie (Intertie). A primary purpose of the Intertie is to allow for operation and maintenance activities on the Tracy pumping plant and fish facility, the Delta-Mendota Canal, and the O'Neill pumping plant and intake canal. A Draft EIS is expected to be available in May 2007.

The Intertie consists of constructing and operating a pumping plant and pipeline connection between the Delta Mendota Canal (DMC) and the California Aqueduct. The Intertie would be used in a number of ways to achieve multiple benefits, including meeting current water supply demands, allowing for the maintenance and repair of the Central Valley Project (CVP) Delta export and conveyance facilities, and providing operational flexibility to respond to emergencies related to both the CVP and State Water Project (SWP).

Reclamation decided to withdraw the recently published Finding of No Significant Impact and Environmental Assessment (EA) for the Intertie and to initiate an EIS based on public challenge to the EA content and conclusions.

DATES: A series of public scoping meetings will be held to solicit public input on the alternatives, concerns, and issues to be addressed in the EIS. The meeting dates are as follows:

- Tuesday, August 1, 2006, 10 a.m. to 12 Noon, Sacramento, CA.
- Thursday, August 3, 2006, 6 to 8 p.m., Stockton, CA.

Written comments on the scope of the EIS should be mailed to Reclamation at the address below by September 4, 2006.

ADDRESSES: The public scoping meeting locations are:

- *Sacramento*—Federal Building, 2800 Cottage Way, Cafeteria Rooms C–1001 and C–1002, Sacramento, CA 95825.
- *Stockton*—Cesar Chavez Central Library, 605 North El Dorado Street, Steward-Hazelton Room, Stockton, CA 95202.

Written comments on the scope of the EIS should be sent to: Ms. Sammie Cervantes, Bureau of Reclamation, 2800 Cottage Way, MP–730, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon McHale, Reclamation Project Manager, at the above address, at 916–978–5086, TDD 916–978–5608, or via fax at 916–978–5094 or e-mail at *smchale@mp.usbr.gov*.

SUPPLEMENTARY INFORMATION: The project area is in an unincorporated area of the San Joaquin Valley in Alameda County, west of the city of Tracy. The site is in a rural area zoned for general agriculture and is under federal and state ownership. The Intertie would be located at milepost 7.2 of the DMC, connecting with milepost 9.1 of the California Aqueduct, where they are approximately 500 feet apart.

The Intertie would include a 450 cubic feet per second (cfs) pumping plant at the DMC that would allow up to 400 cfs to be pumped from the DMC to the California Aqueduct through an underground pipeline. Because the aqueduct is located approximately 50 feet higher in elevation than the DMC, up to 900 cfs could be conveyed from the aqueduct to the DMC using gravity flow.

The Intertie would be owned by the Federal government and operated by the San Luis and Delta Mendota Water Authority (Authority). An agreement among Reclamation, the California Department of Water Resources, and the Authority would identify the responsibilities and procedures for operating the Intertie. A permanent easement would be obtained by Reclamation where the Intertie alignment crosses state property.

If special assistance is required at the scoping meetings, please contact Ms. Sammie Cervantes at 916–978–5189, TDD 916–978–5608, or via e-mail at *scervantes@mp.usbr.gov*. Please notify Ms. Cervantes as far in advance of the meetings as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at 916–978–5608.

Written comments, including names and home addresses of respondents, will be made available for public review. Individual respondents may request that their home address be withheld from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which respondent's identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Dated: May 10, 2006.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 06–6161 Filed 7–11–06; 8:45am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

Summary of Commission Practice Relating to Administrative Protective Orders

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: Since February 1991, the U.S. International Trade Commission (''Commission'') has issued an annual report on the status of its practice with respect to violations of its administrative protective orders (''APOs'') in investigations under Title VII of the Tariff Act of 1930 in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than under Title VII and violations of the Commission's rules including the rule on bracketing business proprietary information (''BPI'') (the ''24-hour rule''), 19 CFR 207.3(c). There were no completed investigations of rule violations during calendar year 2005. This notice provides a summary of investigations completed during calendar year 2005 of breaches in proceedings under Title VII, section 421 of the Trade Act of 1974, as amended, section 337 of the Tariff Act of 1930, as amended, and one conducted under the procedures for imposing sanctions for violation of the provisions of a protective order issued during NAFTA dispute resolution panel and Extraordinary Challenge Committee proceedings. The Commission intends that this report inform representatives of

parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission and the corresponding types of actions the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission can also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: Representatives of parties to investigations or other proceedings conducted under Title VII of the Tariff Act of 1930, sections 202 and 204 of the Trade Act of 1974, section 421 of the Trade Act of 1974, section 337 of the Tariff Act of 1930, and NAFTA Article 1904.13, 19 U.S.C. 1516a (g)(7)(A) may enter into APOs that permit them, under strict conditions, to obtain access to BPI (Title VII) or confidential business information (''CBI'') (section 421, sections 201–204, and section 337) of other parties. See 19 U.S.C. 1677f; 19 CFR 207.7; 19 CFR 207.100, *et. seq.*; 19 U.S.C. 2252(i); 19 U.S.C. 2451a(b)(3); 19 CFR 206.17; 19 U.S.C. 1337(n); 19 CFR 210.5, 210.34. The discussion below describes APO breach investigations that the Commission has completed during calendar year 2005, including a description of actions taken in response to these breaches.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the 24-hour rule. See 56 *FR* 4846 (Feb. 6, 1991); 57 *FR* 12,335 (Apr. 9, 1992); 58 *FR* 21,991 (Apr. 26, 1993); 59 *FR* 16,834 (Apr. 8, 1994); 60 *FR* 24,880 (May 10, 1995); 61 *FR* 21,203 (May 9, 1996); 62 *FR* 13,164 (March 19, 1997); 63 *FR* 25064 (May 6, 1998); 64 *FR* 23355 (April 30, 1999); 65 *FR* 30434 (May 11, 2000); 66 *FR* 27685 (May 18, 2001); 67 *FR* 39425 (June 7, 2002); 68 *FR* 28256 (May 23, 2003); 69 *FR* 29972 (May 26, 2004); 70 *FR* 42382 (July 25, 2005). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in March 2005 a fourth edition of *An Introduction to Administrative Protective Order Practice in Import Injury Investigations* (Pub. No. 3755). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, tel. (202) 205–2000 and on the Commission's Web site at *http://www.usitc.gov*.

I. In General

The current APO form for antidumping and countervailing duty investigations, which was revised in March 2005, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI obtained under this APO or otherwise obtained in this investigation and not otherwise available to him or her, to any person other than—

(i) Personnel of the Commission concerned with the investigation

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who: (a) Are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decision making for an interested party which is a party to the investigation; and (d) have signed the acknowledgment for clerical personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with the APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO or otherwise obtained in this investigation without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of the APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under this APO:

(i) with a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI

(iii) if the document is to be filed by a deadline, with each page marked ''Bracketing of BPI not final for one business day after date of filing,'' and

(iv) If by mail, within two envelopes, the inner one sealed and marked ''Business Proprietary Information—To be opened only by [name of recipient]'', and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of the APO; and

(10) Acknowledge that breach of the APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate, including the administrative sanctions and actions set out in this APO.

The APO further provides that breach of an APO may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the

current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate. APOs in investigations other than those under Title VII contain similar, though not identical, provisions.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of CBI and BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI and CBI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

An important provision of the Commission's Title VII and safeguard rules relating to BPI/CBI is the ''24-hour'' rule. This rule provides that parties have one business day after the deadline for filing documents containing BPI to file a public version of the document. The rule also permits changes to the bracketing of information in the proprietary version within this one-day period. No changes—other than changes in bracketing—may be made to the proprietary version. The rule was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI. The Commission urges parties to make use of the rule. If a party wishes to make changes to a document other than bracketing, such as typographical changes or other corrections, the party must ask for an extension of time to file an amended document pursuant to section 201.14(b)(2) of the Commission's rules.

II. Investigations of Alleged APO Breaches

Upon finding evidence of an APO breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation has commenced and that an APO breach investigation file has been opened. Upon receiving notification from the Secretary, the Office of the General Counsel (OGC) prepares a letter of inquiry to be sent to the possible breacher over the Secretary's signature to ascertain the possible breacher's views on whether a breach has occurred.[1] If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission determines that although a breach has occurred, sanctions are not warranted, and therefore has found it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. A warning letter is not considered to be a sanction.

Sanctions for APO violations serve two basic interests: (a) Preserving the confidence of submitters of BPI that the Commission is a reliable protector of BPI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, ''[T]he effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI. The Commission considers whether there are prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit an economist or consultant to obtain access to BPI/CBI under the APO in a Title VII or safeguard investigation if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C); 19 CFR 206.17(a)(3)(B) and (C). Economists and consultants who obtain access to BPI/CBI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, section 135(b) of the Customs and Trade Act of 1990, 19 U.S.C. 1677f(g).

The two types of breaches most frequently investigated by the Commission involve the APO's prohibition on the dissemination of BPI or CBI to unauthorized persons and the APO's requirement that the materials received under the APO be returned or destroyed and that a certificate be filed indicating which action was taken within a specified period after the termination of the investigation or any subsequent appeals of the Commission's determination. The dissemination of BPI usually occurs as the result of failure to delete BPI from public versions of documents filed with the Commission or transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included: The failure to bracket properly BPI/CBI in proprietary documents filed with the Commission; the failure to report immediately known violations of an APO; and the failure to adequately supervise non-legal personnel in the handling of BPI/CBI.

[1] Procedures for inquiries to determine whether a prohibited act such as a breach has occurred and for imposing sanctions for violation of the provisions of a protective order issued during NAFTA panel or committee proceedings are set out in 19 CFR 207.100–207.120. Those investigations are initially conducted by the Commission's Office of Unfair Import Investigations. During 2005, one investigation regarding a possible violation of a protective order issued during a NAFTA panel or committee proceeding was completed under those procedures.

Counsel participating in Title VII investigations have reported to the Commission potential breaches involving the electronic transmission of public versions of documents. In these cases, the document transmitted appears to be a public document with BPI omitted from brackets. However, the BPI is actually retrievable by manipulating codes in software. The Commission has found that the electronic transmission of a public document containing BPI in a recoverable form was a breach of the APO.

The Commission advised in the preamble to the notice of proposed rulemaking in 1990 that it will permit authorized applicants a certain amount of discretion in choosing the most appropriate method of safeguarding the confidentiality of the BPI. However, the Commission cautioned authorized applicants that they would be held responsible for safeguarding the confidentiality of all BPI to which they are granted access and warned applicants about the potential hazards of storage on hard disk. The caution in that preamble is restated here:

> [T]he Commission suggests that certain safeguards would seem to be particularly useful. When storing business proprietary information on computer disks, for example, storage on floppy disks rather than hard disks is recommended, because deletion of information from a hard disk does not necessarily erase the information, which can often be retrieved using a utilities program. Further, use of business proprietary information on a computer with the capability to communicate with users outside the authorized applicant's office incurs the risk of unauthorized access to the information through such communication. If a computer malfunctions, all business proprietary information should be erased from the machine before it is removed from the authorized applicant's office for repair. While no safeguard program will insulate an authorized applicant from sanctions in the event of a breach of the administrative protective order, such a program may be a mitigating factor. Preamble to notice of proposed rulemaking, 55 FR 24100, 24103 (June 14, 1990).

In the past several years, the Commission completed APOB investigations which involved members of a law firm or consultants working with a firm who were granted access to APO materials by the firm although they were not APO signatories. In these cases, the firm and the person using the BPI mistakenly believed an APO application had been filed for that person. The Commission determined in all of these cases that the person who was a non-signatory, and therefore did not agree to be bound by the APO, could not be found to have breached the APO. Action could be taken against these persons, however, under Commission rule 201.15 (19 CFR 201.15) for good cause shown. In all cases in which action was taken, the Commission decided that the non-signatory was a person who appeared regularly before the Commission and was aware of the requirements and limitations related to APO access and should have verified his or her APO status before obtaining access to and using the BPI. The Commission notes that section 201.15 may also be available to issue sanctions to attorneys or agents in different factual circumstances where they did not technically breach the APO but where their actions or inactions did not demonstrate diligent care of the APO materials even though they appeared regularly before the Commission and were aware of the importance the Commission placed on the care of APO materials. In 2005 there was one investigation where the Commission considered issuing a sanction to an attorney under section 201.15, but determined that there was not good cause, and one investigation where a private letter of reprimand was issued to an attorney for good cause shown, pursuant to section 201.15.

Also in recent years the Commission has found the lead attorney to be responsible for breaches where he or she failed to provide adequate supervision over the handling of BPI. Lead attorneys should be aware that their responsibilities for overall supervision of an investigation, when a breach has been caused by the actions of someone else in the investigation, may lead to a finding that the lead attorney has also violated the APO. The Commission has found that a lead attorney did not violate the APO in cases where his delegation of authority was reasonable. A prior breach by a subordinate attorney would suggest that delegation of authority to that attorney may not be reasonable.

III. Specific Investigations in Which Breaches Were Found

The Commission presents the following case studies to educate users about the types of APO breaches found by the Commission. The studies provide the factual background, the actions taken by the Commission, and the factors considered by the Commission in determining the appropriate actions. The Commission has not included some of the specific facts in the descriptions of investigations where disclosure of such facts could reveal the identity of a particular breacher. Thus, in some cases, apparent inconsistencies in the facts set forth in this notice result from the Commission's inability to disclose particular facts more fully.

Case 1. The Commission determined that a lead attorney, a second attorney, and an economist breached the APO by failing to redact BPI from a public statement filed on behalf of their client. The BPI consisted of the position on the petition taken by a non-petitioner member of the domestic industry. Although the persons accused of breaching the APO argued that the information was public information, the Commission found that it was BPI at the time the information was left unredacted in their client's statement. The Commission found that the lead attorney committed a second breach by allowing access to the BPI by a third attorney in the firm who was not a signatory to the APO.

The Commission issued private letters of reprimand to the first two attorneys and the economist. In reaching its decision, the Commission considered the existence of mitigating factors, including the unintentional nature of the breaches, the fact that some corrective measures were taken immediately, and the absence of any prior breaches during the previous two year period usually considered by the Commission for purposes of determining sanctions. The Commission noted that the two attorneys and the economist did not provide the Commission with information indicating that non-signatories who had access to the BPI did not read the information. Based on the information available, including the amount of time the BPI was available to its client, the Commission presumed that the BPI was read by non-signatories to the APO.

The Commission also issued a private letter of reprimand by finding good cause under Commission rule 201.15(a) to sanction the third attorney, who failed to apply for APO access before handling BPI and for his role in supervising the preparation of the public statement containing BPI that was the subject of this APO breach investigation. The Commission considered the unintentional nature of the breach, the fact that some corrective measures were immediately taken, the fact that his firm had internal APO procedures in place, and the absence within the past two years of any prior breaches or other rule 201.15 allegations involving the use of BPI as a non-signatory to an APO. The Commission also gave consideration to the presumption that unauthorized persons read the BPI.

Case 2. A law firm that was representing a foreign government in a World Trade Organization (WTO)

dispute settlement proceeding provided its client with a confidential version of a Commission remand opinion on the same product in dispute. This opinion was used as one of many exhibits attached to the foreign government's first brief in the WTO dispute. Consequently, the document became available for about a month to WTO officials and their staffs, third party countries, and the government filing the document. The law firm did not discover the inclusion of the confidential opinion, but was instead informed by its client, the foreign government.

Inquiries with the law firm did not extract clear information on how the confidential opinion had ended up as an exhibit in the brief. Based on the information that was available, the Commission decided to issue a private letter of reprimand to the lead attorney for the firm in the Commission investigation that resulted in the Commission remand opinion. The Commission found that as lead attorney under the APO, the attorney had overall responsibility for the conduct of the investigation at his firm, including the safeguarding of BPI. The Commission reached its decision to issue the private letter of reprimand after giving consideration to the existence of several mitigating factors including the unintentional nature of the breach, the fact that appropriate corrective measures were taken immediately, and the absence of any prior breaches in the previous two years. The Commission also gave consideration to the aggravating factor that the BPI in question may have been viewed by unauthorized persons. The Commission found that even though the BPI constituted a very small part of a large submission, the large number of parties that had received it and the length of time they had the BPI, caused the Commission to presume that the BPI was read by non-signatories to the APO.

The Commission also determined that there was good cause under Commission rule 201.15(a) to sanction two attorneys in the firm who were not on the Commission APO but were representing the foreign government in the WTO dispute settlement proceeding for the use of the confidential Commission remand opinion as an exhibit in the foreign government's brief. These attorneys were experienced in the international trade area and should have taken greater care to check the exhibits that were provided to the foreign government for inclusion in its brief. The Commission issued private letters of reprimand to these attorneys after considering the same mitigating and aggravating factors noted with regard to the first attorney.

Case 3. The Commission issued warning letters to two attorneys for a breach of the APO when a package containing CBI on an electronic disk was misplaced, and recovered unopened after 14 days, by a courier service used by their law firm. The two attorneys, the lead attorney and a partner in the firm who was most directly involved in the day to day decisions including the handling of the APO materials, were found to have breached because the APO materials in the package were made available to unauthorized persons during the period the package was misplaced, although the package was not opened and the materials were not viewed by unauthorized persons. The Commission also found that the materials were not stored in accordance with the requirements of the APO during the period they were misplaced. There had been no previous problems with the courier service prior to this particular incident.

The Commission considered the attorneys' argument that the Commission was time-barred under its rules from finding that a breach occurred. The Commission's rules require that the APOB investigation be commenced within 60 days of the alleged breach. The attorneys mistakenly believed that the investigation began when they were notified by letter about the APOB investigation. Instead, an APOB investigation begins when the Commission Secretary opens a breach file and notifies the appropriate Commission offices that a breach file has been opened. This was done well within the 60-day requirement.

The Commission issued warning letters rather than a sanction after giving consideration to the facts that the breach was unintentional, the attorneys had no record of prior breaches, the breach was reported promptly, and there was no evidence that the APO materials were reviewed by unauthorized persons.

After the Commission issued the warning letters, the attorneys filed a request that the Commission reconsider its decision because a Commission decision not available to the attorneys at the time they filed their responses, but reached before the decision in their case, was inconsistent with the Commission's decision in their case. The Commission decided to reconsider its earlier decision regarding the attorneys because they did not have the other Commission decision available to them at the time they filed their responses. However, the Commission concluded that the decisions in question were not inconsistent and, accordingly, denied their request to reverse the decision.

Case 4. The Commission issued a private letter of reprimand to an attorney who was responsible for reviewing the public version of a document that was filed with the Commission and served on other persons with CBI obtained under the APO left in brackets in a footnote. The Commission did not accept counsel's argument that the submitter's counsel had waived confidential treatment and that the information was not CBI. The attempted waiver was obtained after the alleged breach; the attorney offered no evidence that the CBI was publicly available at the time of the alleged breach; the CBI in question was contained in the staff report and was the work product of a Commission staff member; and the information was treated as CBI throughout the Commission investigation, even after the alleged breach.

The Commission reached its decision to sanction the attorney after giving consideration to the unintentional nature of the breach, the fact that corrective measures were taken immediately, and the fact that the law firm had changed its practices since the breach to increase the level of review. The Commission found two aggravating circumstances present. First, the Commission presumed that the CBI was viewed by unauthorized persons, including the firm's clients and other persons to whom the firm sent the document, as well as by unauthorized persons who may have viewed the CBI while it was in the Commission's public file. Second, the breach was discovered by the Commission's staff.

Case 5. The Commission issued a private letter of reprimand to the lead attorney and warning letters to two attorneys and a legal assistant/non-attorney APO records coordinator for failure to destroy or return materials which contained BPI obtained under the APO in a timely manner. The Commission issued a private letter of reprimand to the lead attorney after considering as mitigating circumstances that the BPI was not disclosed to any unauthorized persons, the breach was reported promptly upon its discovery, and that the lead attorney was not aware of serious health problems affecting the attorney who held the day-to-day responsibility for APO compliance in the investigation. The aggravating circumstances considered were the fact that this was the lead attorney's third APO breach in a relatively short period of time and the fact that the firm had

retained the BPI materials for a long period of time after they should have been returned or destroyed.

The Commission issued warning letters to the two attorneys after considering that the BPI was not disclosed to any unauthorized person and the two attorneys had previously not violated an APO. The Commission found an additional mitigating factor for the first attorney, who was originally responsible for the day-to-day conduct of the case, in that he had been experiencing symptoms consistent with a potentially life-threatening medical condition. The Commission found an additional mitigating factor for the second attorney, who had taken over responsibility for the investigation after the first attorney left the firm, in that he was not responsible for the APO compliance at the time the breach commenced. The Commission issued a warning letter to the legal assistant, although he had received a warning letter within the previous two years, after considering that the legal assistant was acting under the supervision of an attorney during the period in question, that BPI was not disclosed to any unauthorized person; and that the breach was reported promptly once it was discovered by the firm. The Commission found that the duration of the breach was an aggravating factor for the two attorneys and the legal assistant.

The Commission also considered whether there was good cause under Commission rule 201.15(a) to sanction an attorney in the firm who was not on the APO but was the attorney-APO coordinator for the firm. The Commission determined that there was not good cause to sanction the attorney after reviewing the description of his duties as the attorney-APO coordinator.

Case 6. The Commission issued warning letters to two attorneys, a legal assistant, and a professional assistant for failure to remove all bracketed BPI from the public version of a brief. The confidential brief had been rebracketed as authorized by the Commission's 24-hour rule. During the efforts to remove the BPI from those brackets for the public version of the brief, the computer program redacting the BPI failed. The program had previously been accurate in its redaction of BPI from brackets. Consequently, under the constraint of limited time, the document was redacted manually. In spite of the efforts of the two attorneys and the assistants, BPI remained in the brief and was filed with the Commission. Before the brief was sent to other parties, the error was found. One attorney contacted the Commission and immediately requested that the brief not be entered into EDIS. The redaction was corrected before the brief was sent to the other parties.

A warning letter and not a sanction was issued because the breach was unintentional; the firm took immediate steps to notify the Commission and to rectify the matter and protect the BPI; the firm revamped its APO procedures to allow more time for the redacting after adding brackets under the Commission's 24-hour rule; and none of the participants in the breach had previously breached a Commission APO. In addition, there was no information suggesting that any unauthorized person had reviewed the BPI.

Case 7. The Commission issued a warning letter to one attorney who had been responsible for preparing the public version of a draft brief which contained several pages of unredacted BPI and which he sent to his clients for review. The Commission decided not to sanction the attorney because he had no prior breaches within the previous two years, the breach was unintentional, prompt action was taken to remedy the breach, and none of the non-signatories who received the draft containing BPI read the document. A second attorney who responded to the original inquiry concerning a possible breach was found not to have breached because he was only involved in drafting the original brief but not involved in preparing the public version of that document.

Case 8. The Commission considered whether a number of firm personnel had been responsible for a breach of the APO by filing with the Commission and serving on the parties listed on the public service list a public version of a brief containing BPI that was unbracketed and unredacted on one page of the brief. The Commission found that all individuals in the firm except a senior associate were not responsible for the breach.

The Commission found that the senior associate was responsible for the breach and issued a warning letter. The Commission decided not to sanction the attorney because this was the only breach in which he was involved within the period generally examined by the Commission for purposes of determining sanctions; the breach was unintentional; the breach was discovered by the firm; prompt action was taken to remedy the breach and the record in the APOB investigation suggested that the BPI likely was not revealed to unauthorized parties. Each of the attorneys who were served with the public version of the brief were signatories to the APO. In addition, each attorney served with the brief was notified very quickly about the mistake, and was provided with a replacement page and a request that they destroy the page containing the BPI. Each firm confirmed that this was done and that the brief containing the BPI was not copied or otherwise disclosed to non-signatory persons.

The lead attorney was not found to have breached even though he signed the public version of the brief containing the BPI. At the time he signed the brief, he instructed the senior associate to redact the BPI before filing, but the senior associate failed to do this. The Commission found that the lead attorney's delegation to the senior associate to make the final corrections to the brief was reasonable, especially in light of the associate's years of experience practicing before the Commission with no prior breaches.

Case 9. The Commission issued a warning letter to an attorney who was responsible for transmitting an electronic version of a document containing BPI to a client who was a non-signatory to the APO. Before transmitting the document, the attorney had converted the original Word document to a .pdf file after using a ''white-out'' program that had visibly removed the BPI from the document. The client, in an effort to type notes on the document, converted the document back to Word which caused the BPI to become visible.

In determining to issue a warning letter instead of a sanction, the Commission considered the fact that the breach was inadvertent, the attorney endeavored at all times to abide by the APO; the attorney's office and the client took immediate steps to remedy the situation; and the firm implemented new procedures regarding the creation of non-confidential versions of documents containing business proprietary information. The client only read portions he annotated and never viewed the BPI before sending the document back to the attorney.

Case 10. The Commission initiated an APOB investigation into possible breaches by three attorneys. Two attorneys in a law firm which represented respondents in the underlying Commission investigation were issued private letters of reprimand for two breaches. The first breach was the failure to comply in a timely manner with the return or destroy and certification requirements of the APO after judicial proceedings ended in connection with the petitioner's appeal of the Commission determination. The certificate of destruction was filed approximately three months after the judicial proceedings ended. The second breach was the failure to inform the

Commission that one of the two attorneys, who had been the lead attorney during the Commission investigation, had left the firm after the investigation had ended but before resulting litigation had been completed. The second of the two attorneys became the lead attorney for the duration of the appeals.

The Commission found that the first attorney, by failing to inform the Commission that he had left the law firm and should no longer be a signatory to the APO, retained an obligation to ensure that his former firm complied with the APO requirements for returning and destroying the materials. The Commission issued the private letter of reprimand to the first attorney after considering the mitigating factor that there was no disclosure of BPI to unauthorized persons. The Commission also considered two aggravating factors. First, it considered the fact that he was responsible for a second breach by not informing the Commission of his departure from the law firm. Second, he failed to expeditiously arrange for destruction or return of BPI upon learning of the breach from the Commission Secretary. In spite of his oral assurance that he would work with his former colleagues to cure the breach, he took no action until he received the Commission's letter of inquiry, over a month later.

The second attorney, who was the lead attorney during the time when the certificate of return or destruction should have been filed, failed to file it in a timely manner. He also breached the APO by not informing the Commission that the first lead attorney had left the firm. The Commission issued a private letter of reprimand to the second attorney after consideration of two mitigating factors: The lack of any disclosure of BPI to unauthorized persons and the fact that he took appropriate corrective measures immediately once he learned of the breach. The Commission also considered the fact that he was responsible for two breaches in this one investigation and the fact that when he took over as the lead attorney after the departure of the first attorney, he did not make efforts to review and comprehend the APO or the Commission's rules on handling APO materials to compensate for his inexperience with Commission investigations.

An attorney from a second law firm, which represented other respondents in the Commission investigation, certified to the destruction of all materials released under the APO thirty-two days after the firm representing the petitioner filed its certificate of destruction of the APO materials. The petitioner filed its certificate a week after the time lapsed for filing a writ of certiorari to the Supreme Court. There is no specific time limit for returning or destroying the materials after an appeal has ended but the Commission considered whether the certificate was filed within a reasonable period of time. The Commission found that this attorney filed the certificate within a reasonable period of time and, therefore, did not breach the APO.

Case 11. The Commission investigated whether an attorney, an economist, and a secretary in a law firm had breached the APO when the secretary transmitted the confidential version of a brief to a client who was not a signatory to the APO. The Commission found that the attorney had not committed a breach even though he was the lead attorney and had signed the Acknowledgment for Clerical Personnel as the individual exercising direction and control. The attorney was not personally involved in giving directions and supervision to the secretary regarding the transmittal of the brief. Instead, the attorney had delegated responsibilities for portions of the Commission investigation to the economist and it was the economist who directed the secretary to mail the document and did not check the material before it was mailed. The delegation from the attorney to the economist was reasonable in that the economist had no previous breaches and was an experienced and fairly senior member of the firm's trade practice who had previously given similar assignments to the firm's clerical personnel.

The Commission found that the economist and the secretary were responsible for the breach and issued private letters of reprimand to them. The economist failed in his supervision of the secretary and the secretary, who had worked on Commission investigations for many years, had inappropriately mailed a confidential document to a non-signatory of the APO. In determining to sanction the economist and the secretary, the Commission considered the mitigating factors that they had no prior breaches within the previous two years, the breach was unintentional, and the firm took appropriate corrective measures once it learned of the breach. The Commission also considered the aggravating factor that the BPI in question was viewed by an unauthorized person.

Case 12. The lead attorney in a law firm filed a certificate of return or destruction of APO materials 15 months after the conclusion of a Commission investigation after an associate in the firm discovered that the APO files remained in the firm's secure storage. No appeal had been taken so the deadline for the return or destruction of the materials was 60 days after the conclusion of the investigation. The lead attorney argued that the firm's policy laid the responsibility for ensuring that the return and destruction deadline was met with the most senior associate assigned to an investigation. In this case the associate in question had left the firm six months after the investigation had concluded but had sent a certification to the Commission upon leaving the firm that all APO materials in his personal possession were returned or destroyed. He argued that responsibility to return or destroy the materials held in the firm's secure storage was that of the lead attorney and the paralegal assigned to the investigation.

The Commission found that both the lead attorney and the associate were responsible for the failure to return or destroy the APO materials and to certify thereto within the deadline provided in the APO. The Commission determined to issue warning letters and not sanctions to the two attorneys after giving consideration to the nature of the violation and the facts that their failure to fully comply with the APO was unintentional, that this was the only failure to comply with an APO in which they were involved within the two year period generally examined by the Commission for purposes of determining sanctions, and that the BPI was fully protected and was not released to any third party while it remained at the firm. In addition, with regard to the lead attorney, he notified the Commission immediately upon discovering the belated destruction and he took further action by changing the firm's procedures to prevent future delays in complying with the return or destruction requirements of a Commission APO.

There were investigations in which no breach was found. For example, in one case no breach was found because the alleged BPI was otherwise publicly available at the time the public version of the pre-hearing brief containing the alleged BPI was filed; and in another case, no breach was found because the attorneys had applied to be subject to the APO on behalf of their new clients and the Secretary's office had approved the application before they filed a post hearing brief containing BPI they had acquired through their representation of another client.

By order of the Commission.

Issued: July 6, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–10914 Filed 7–11–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–578]

Certain Mobile Telephone Handsets, Wireless Communication Devices, and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 9, 2006, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of QUALCOMM Incorporated of San Diego, California. A supplement to the complaint was filed on June 27, 2006. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile telephone handsets, wireless communication devices, and components thereof by reason of infringement of claims 1, 3, and 4 of U.S. Patent No. 5,452,473; claim 1 of U.S. Patent No. 5,590,408; claims 2, 7, and 8 of U.S. Patent No. 5,655,220; claims 1, 6, 9, 18, 23, and 24 of U.S. Patent No. 5,576,767; claims 3, 4, 13, 59, and 60 of U.S. Patent No. 5,542,104; and claims 1 and 7 of U.S. Patent No. 6,453,182. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2006).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 5, 2006, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile telephone handsets, wireless communication devices, or components thereof by reason of infringement of one or more of claims 1, 3, and 4 of U.S. Patent No. 5,452,473; claim 1 of U.S. Patent No. 5,590,408; claims 2, 7, and 8 of U.S. Patent No. 5,655,220; claims 1, 6, 9, 18, 23, and 24 of U.S. Patent No. 5,576,767; claims 3, 4, 13, 59, and 60 of U.S. Patent No. 5,542,104; and claims 1 and 7 of U.S. Patent No. 6,453,182, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

QUALCOMM Incorporated, 5775 Morehouse Drive, San Diego, CA 92121.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nokia Corporation, Keilalahdentie 2–4 Espoo, P.O. Box 226, FIN–00045 Nokia Group, Finland.

Nokia Inc., 6000 Connection Drive, Irving, Texas 75039.

(c) The Commission Investigative Attorney, party to this investigation, is David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Robert L. Barton, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

Issued: July 7, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–10910 Filed 7–11–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–046]

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 20, 2006 at 11:00 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. No. 731–TA–1094 (Final) (Metal Calendar Slides from Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before August 2, 2006.)

5. 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.

Issued: July 7, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–6178 Filed 7–7–06; 4:17 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to 28 CFR 50.7, notice is hereby given that on June 29, 2006, a proposed Consent Decree in *United States* v. *Diamond State Salvage Company, Inc., Estate of Herbert Sherr, Nancy A. Sherr, Executrix of the Estate of Herbert Sherr, Barbara Sherr Kleger, and Delmarva Power & Light Company,* Civil Action No. 05–76, was lodged with the United States District Court for the District of Delaware.

In this civil action under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), the United States seeks recovery of response costs from Diamond State Salvage Company, Inc. (''Diamond State Salvage''), the Estate of Herbert Sherr, Barbara Sherr Kleger, and Delmarva Power & Light Company, in connection with the Diamond State Salvage Superfund Site in Wilmington, New Castle County, Delaware (''Diamond State Site'' or ''Site''). On June 24, 2005, the Court entered a Consent Decree resolving the liability of all defendants except for Diamond State Salvage. The Consent Decree lodged with the Court on June 29, 2006 resolves the liability of the sole remaining defendant, Diamond State Salvage under section 107(a) of CERCLA for response costs incurred and to be incurred at the Diamond State Site. The Consent Decree requires the owner of the Site, Diamond State Salvage to sell the Site property and pay the net proceeds to the United States in reimbursement of response costs incurred at the Site. The Decree also requires Diamond State Salvage to pursue insurance coverage for costs incurred by the United States at the Site and to pay a percentage of any proceeds recovered to the United States in reimbursement of response costs.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and refer to *United States* v. *Diamond State Salvage Company, Inc., et al.,* D.J. Ref. 90–11–1275.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Delaware, 1201 Market Street, Suite 1100, Wilmington, DE 19899–2046 and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. 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/open.html.* A copy of the 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 no. (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–6155 Filed 7–11–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department of Justice policy, notice is hereby given that on June 28, 2006, a proposed consent decree (''Consent Decree'') in *United States* v. *Glen Ekberg,* Civil Action No. 01 C 50457, was lodged with the United States District Court for the Northern District of Illinois, Western Division.

The Consent Decree would resolve claims for unreimbursed past response costs, and for future costs to be incurred by the United States related to response activities concerning Source Area 7 at the Southeast Rockford Groundwater Contamination Superfund Site (''Site'') in the city of Rockford, Winnebago County, Illinois. Under the Consent Decree, Defendant Glen Ekberg would pay a total of $1,231,125 toward the unreimbursed response costs. The Consent Decree would also require the Defendant to provide access to his property at the Site for the construction and implementation of the remedy, and to record an easement imposing land use and water use restrictions on portions of his property.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Glen Ekberg,* Civil Action No. 01 C 50457, D.J. Ref. 90–11–3–945/1.

The Consent Decree may be examined at the Office of the United States Attorney, 308 W. State Street, Suite 300, Rockford, Illinois, and at the office of the U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Blvd., Chicago, Illinois. 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/open.html.* A copy of the 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 no. (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 $53.50 (214 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury. For a copy of the Consent Decree alone, without appendices, please enclose a check in the amount of $8.25 (33 pages at 25 cents per page

reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–6156 Filed 7–11–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability ACT

In accordance with Department of Justice policy, notice is hereby given that on June 26, 2006, a proposed consent decree (''Consent Decree'') in *United States* v. *Glidden Company, et al.*, Civil Action No. 06–C–0718, was lodged with the United States District Court for the Eastern District of Wisconsin.

The Consent Decree would resolve claims for (i) unreimbursed past response costs incurred by the United States related to the removal action at the Marina Cliffs/Northwestern Barrel Superfund Site (''Site'') in South Milwaukee, Wisconsin; and (ii) penalties for failure to comply with Environmental Protection Agency orders related to the Site. Under the Consent Decree, the three defendants named in the United States' complaint would pay a total of $612,000 in past costs and penalties. The Glidden Company agreed to reimburse the United States $135,000 for past response costs and pay a $15,000 penalty. Chemcentral Corporation agreed to reimburse the United States $220,000 for past response costs and pay a $25,000 civil penalty. Sequa Corporation agreed to reimburse the United States $197,000 for past response costs and pay a $20,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box No. 7611 Washington, DC 20044–7611, and should refer to *United States* v. *Glidden Company, et al.*, Civil Action No. 06–C–0718, D.J. Ref. 90–11–3–1485/3.

The Consent Decree may be examined at the Office of the United States, Attorney, 530 Federal Building, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604–4590. 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/open.html.* A copy of the 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 no. (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 $30.25 (121 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury. For a copy of the Consent Decree alone, without appendices, please enclose a check in the amount of $5.25 (21 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–6157 Filed 7–11–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—AAF Association, Inc.

Notice is hereby given that, on June 21, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AAF Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ITSSP, Seoul, REPUBLIC OF KOREA; Grizzly Systems LLC, Bellevue, CO; and JW Hannay Co. Ltd., Glasgow, Scotland, UNITED KINGDOM have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AAF Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, AAF Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 27, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 17, 2006 (71 FR 19750).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–6133 Filed 7–11–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Water Heater Industry Joint Research and Development Consortium

Notice is hereby given that, on June 2, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Water Heater Industry Joint Research and Development Consortium (''the Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership, nature and objective. the notifications were filed for the purpose of extending the Act's provisions limiting the recovery antitrust plaintiffs to actual damages under specified circumstances. Specifically, A.O. Smith Corporation, Irving, TX has purchased GSW Inc. Also, the term of the Consortium has been changed from eleven years beginning February 27, 1995, to a period of twelve years beginning February 27, 1995. Thus, the Consortium will be in operation no longer than February 27, 2007.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Consortium intends to file additional written notification disclosing all changes in membership.

On February 28, 1995, the Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 27, 1995 (60 FR 15789).

The last notification was filed with the Department on February 14, 2005. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 14, 2005 (70 FR 12501).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–6134 Filed 7–11–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

John Vanags Denial of Application

On October 8, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to John Vanags (Respondent), d/b/a Distribution General. The Show Cause Order proposed to deny Respondent's application for a DEA Certificate of Registration as a distributor of List I chemicals on the grounds that Respondent's registration would be inconsistent with the public interest. See 21 U.S.C. 823(h).

The Show Cause Order specifically alleged that Respondent was proposing to sell List I chemical products containing ephedrine, pseudoephedrine, and phenylpropanolamine to gas stations and convenience stores in the Chicago, Illinois area, and that these retail outlets constitute the non-traditional or ''gray market'' for these products. See Show Cause Order at 2. The Show Cause Order further alleged that many of these retailers ''purchase inordinate amounts of these products and become conduits for the diversion of listed chemicals into illicit drug manufacturing.'' Id. The Show Cause Order also alleged that Respondent admitted that he had no prior experience in the distribution of List I chemicals, see id., that Respondent was ''unfamiliar with his customers,'' id. at 4, and that Respondent has ''little familiarity with his potential suppliers.'' Id. Finally, the Show Cause Order alleged that granting Respondent's application for registration ''would likely lead to increased diversion of List I chemicals.'' *Id.*

On October 8, 2004, DEA attempted to serve the Show Cause Order by certified mail to Respondent's business address as given in his application. The Order was, however, returned unclaimed. Thereafter, on March 24, 2005, a DEA Diversion Investigator (DI) personally served Respondent with the Show Cause Order.

Since the effectuation of service, neither Respondent, nor anyone purporting to represent him, has responded. Because (1) more than thirty days have passed since Respondent received the Show Cause Order, and (2) no request for a hearing has been received, I conclude that Respondent has waived his right to a hearing. See 21 CFR 1309.53(c). I therefore enter this final order without a hearing based on relevant material in the investigative file and make the following findings.

Findings

Ephedrine and pseudoephedrine are List I chemicals that, while having therapeutic uses, are easily extracted from lawful products and used in the illicit manufacture of methamphetamine, a schedule II controlled substance. See 21 U.S.C. § 802(34); 21 CFR 1308.12(d). Phenylpropanolamine (PPA) is also a List I chemical, which can be used to manufacture methamphetamine. In November 2000, the FDA issued a public health advisory regarding PPA based on a study that found that use of PPA increases the risk of hemorrhagic stroke.[1]

Methamphetamine is an extremely potent central nervous system stimulant. A–1 Distribution Wholesale, 70 FR 28573 (2005). Methamphetamine abuse has destroyed lives and families, ravaged communities, and created serious environmental harms.

Respondent is the owner of Distribution General, a sole proprietorship. The firm sells novelty items, sunglasses, lighters and collectibles to gas stations and convenience stores in the Chicago area.

On April 3, 2002, Respondent applied for a DEA Certificate of Registration as a distributor of the List I chemicals ephedrine, pseudoephedrine, and PPA. On May 23, 2002, two Diversion Investigators (DIs) visited Respondent at the address of his proposed registered location, which at the time was a high crime area located in Maywood, Illinois.[2] While the proposed location had a dead bolt lock, a pad lock, a magnetic contact switch on the back door, and bars on the windows, the building had been burglarized numerous times.[3]

Respondent told the DIs that he had handled over-the-counter medicine while serving in the U.S. Army Medical Corps, but that he had no experience in the distribution of List 1 chemicals. Respondent informed the DIs that he intended to sell List I chemical products to convenience stores and gas stations in the Chicago area.

Respondent told the DIs that he had four suppliers: Biotek Pharmaceuticals, McNeil Consumer & Specialty Pharmaceuticals, Bayer Consumer Care Division, and Novartis Consumer Health, Inc. He also told the DIs that he intended to sell Alka Seltzer Plus Cold & Sinus, Theraflu, Efedrin and Tylenol PM.

The DIs subsequently found various discrepancies in the information Respondent provided about his suppliers. For example, Respondent provided a phone number for McNeil, but the number was for the company's consumer hotline and not for its distribution center. Respondent provided an address for Bayer, but Bayer did not have a DEA registration at the address. Finally, the DIs noted that Respondent had only provided a phone number for Novartis and no address. The DIs thus concluded that Respondent lacked essential knowledge about his suppliers.

The DIs also conducted verification visits at three entities that Respondent claimed to have done business with. The person working at the first entity—a convenience store—had not done business with Respondent's firm. The second entity was no longer in business. Finally, persons working at the third entity—a gas station—were not familiar with Respondent's firm.

Subsequently, and without notifying DEA of this development for months, Respondent moved his business to a warehouse in a low crime area in Steger, Illinois. Respondent told the DIs that he did not have a complete security system but that he intended to add cameras, motion detectors and a surveillance system, which would allow him to monitor the warehouse from home. Respondent, however, has not submitted documentation that he ever upgraded his security system.

Discussion

Under 21 U.S.C. 823(h), an applicant to distribute List I chemicals is entitled to be registered unless I determine that

[1] More recently, on December 22, 2005, the FDA issued a notice of proposed rulemaking, which proposed to reclassify over-the-counter PPA products as ''not generally recognized as safe and effective.'' U.S. FDA, Center for Drug Evaluation and Research, Phenylpropanolamine (PPA) Information Page *http.//www.fda.gov/cder/drug/infopage/ppa/* (visited June 15, 2006).

[2] At the time of the pre-registration investigation, Respondent's business was located at 17 North 5th Ave., Maywood, Illinois. At some point thereafter, Respondent moved his business to 3129 Louis Sherman Drive, Steger, Illinois. Respondent, however, did not notify DEA of this fact until March 2005.

[3] The DIs also conducted a criminal background check on Respondent; the check revealed no adverse information.

the registration would be inconsistent with the public interest. In making that determination, Congress directed that I consider the following factors:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Id.

''[T]hese factors are considered in the disjunctive.'' Joy's Ideas, 70 FR 33195, 33197 (2005). I may rely on any one or combination of factors, and may give each factor the weight I deem appropriate in determining whether a registration should be revoked or an application for a registration be denied. See *id.* See also Energy Outlet, 64 FR 14269 (1999). Having considered all of the factors in this case, I conclude that Respondent's application should be denied.

Factor One—Maintenance of Effective Controls Against Diversion

The investigative file does not address whether Respondent will comply with DEA requirements pertaining to recordkeeping and reports. Furthermore, Respondent's initial proposed location presented a major security concern.

Respondent, however, submitted a letter changing his business address before he received the Show Cause Order. Under DEA's regulations, ''[a]n application may be amended * * * without permission of the Administration at any time before the date on which the applicant receives an order to show cause.'' 21 CFR 1309.36.

I acknowledge that Respondent's new location may well have provided adequate security had Respondent installed the alarm system he discussed with the DIs. I also acknowledge that the Government attempted to serve the Show Cause Order in October 2004, and the only reason the order was not received was because Respondent failed to notify DEA that he had changed his business address. Ultimately, I need not decide the issue of whether Respondent maintains effective controls against diversion because under agency precedent, there are numerous other grounds to deny the application.

Factors Two and Three—Compliance With Applicable Law and the Applicant's Prior Record of Relevant Criminal Convictions

The investigative file contains no evidence that Respondent would not comply with applicable Federal, State, or local laws. Moreover, the investigative file indicates that Respondent has never been convicted of a criminal offense involving controlled substances or chemicals under Federal or State law. Both factors thus weigh in favor of granting Respondent's application.

Factor Four—Past Experience in the Manufacture or Distribution of Controlled Substances

Respondent acknowledged that he has no prior experience in the manufacture or distribution of List I chemicals. Because of the potential for diversion, DEA precedent establishes that an applicant's lack of experience in distributing List I chemicals is a highly important consideration that weighs heavily against granting an application for registration. See Jay Enterprises, 70 FR 24620, 24621 (2005); ANM Wholesale, 69 FR 11652, 11653 (2004); Extreme Enterprises, 67 FR 76195, 76197 (2002). Respondent's lack of experience thus weighs against granting the application.

Factor Five—Other Factors That Are Relevant To and Consistent With Public Health and Safety

Numerous DEA cases recognize that the sale of certain List I chemical products by non-traditional or gray market retailers is an area of particular concern in preventing diversion of these products into the illicit manufacture of methamphetamine. See, e.g., Joey Enterprises, 70 FR 76866, 76867 (2005). As Joey Enterprises explains, ''[w]hile there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to [gas stations and convenience stores], DEA has nevertheless found that [these entities] constitute sources for the diversion of listed chemical products.'' Id. See also TNT Distributors, 70 FR 12729, 12730 (2005) (special agent testified that ''80 to 90 percent of ephedrine and pseudoephedrine being used [in Tennessee] to manufacture methamphetamine was being obtained from convenience stores''); OTC Distribution Co., 68 FR 70538, 70541 (2003) (noting ''over 20 different seizure of [gray market distributor's] pseudoephedrine product at clandestine sites,'' and that in eight month period distributor's product ''was seized at clandestine laboratories in eight states, with over 2 million dosage units seized in Oklahoma alone''); MDI Pharmaceuticals, 68 FR 4233, 4236 (2003) (finding that ''pseudoephedrine products distributed by [gray market supplier] have been uncovered at numerous clandestine methamphetamine settings throughout the United States and/or discovered in the possession of individuals apparently involved in the illicit manufacture of methamphetamine'').

Numerous DEA final orders recognize that there is a substantial risk of diversion of List I chemicals into the illicit manufacture of methamphetamine when these products are sold by non-traditional retailers. See, e.g., Joy's Ideas, 70 FR at 33199 (finding that the risk of diversion was ''real, substantial and compelling''); Jay Enterprises, 70 FR at 24621 (noting ''heightened risk of diversion'' should application be granted); Y & M Distributions, Inc., 67 FR 10234, 10235 (2002) (noting ''unacceptable risk of diversion'' in denying application). Under these and other cases, an applicant's proposal to sell List I chemicals into the non-traditional market weighs against the granting of a registration. So too here.

There are other factors that support a finding that granting Respondent's application would be inconsistent with public health and safety. While Respondent represented that he intended to sell both traditional-market and gray-market products, the information he provided regarding both his potential suppliers and customers raises substantial concerns. The information with respect to several suppliers was incomplete. In addition, in DEA's experience, larger drug and consumer product companies typically distribute their goods through wholesalers; it would be unusual for these companies to deal directly with an entity such as Respondent's. At a minimum, the information Respondent provided regarding his suppliers suggests a lack of knowledge of the business.

Moreover, Respondent's potential customers had either not done business with him, were not familiar with his firm, or were out of business. This information raises a substantial concern as to whether Respondent had any legitimate customers. Cf. Prachi Enterprises, Inc., 69 FR 69407, 69408 (2004).

Finally, I note that Respondent applied to distribute PPA. Most significantly, he did so more than a year after the FDA issued a public health advisory and asked drug companies to stop marketing products containing the

chemical. DEA has previously held that ''an applicant's request to distribute [PPA] constitutes a ground under factor five for denial'' of an application. ANM Wholesale, 69 FR 11652, 11653 (2004); see also Shani Distributors, 68 FR 62324 (2003). In light of the FDA's advisory, Respondent's proposal to sell PPA raises a serious concern that the purchasers of these products would ultimately use them to manufacture methamphetamine.

Having considered all of the statutory factors, I conclude that granting the application would be inconsistent with the public interest. In particular, I find that Respondent's proposal to sell into the non-traditional market, his lack of experience in distributing List I chemicals, his evident lack of business knowledge, his provision of inadequate information regarding potential customers, and his proposal to sell PPA, greatly outweigh Respondent's lack of a criminal record and the finding that there is no evidence of non-compliance with applicable laws.

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(h), and 28 CFR 0.100(b) and 0.104, I hereby order that the previously submitted application of John Vanags, d/b/a Distribution General, for a DEA Certificate of Registration as a distributor of List I chemicals be, and it hereby is, denied. This order is effective August 11, 2006.

Dated: July 5, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–10924 Filed 7–11–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

David M. Starr Denial of Application

On February 4, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to David M. Starr (Respondent), d/b/a Northern Starr Products. The Show Cause Order proposed to deny Respondent's application for a DEA Certificate of Registration as a distributor of List I chemicals on the ground that Respondent's registration would be inconsistent with the public interest. See 21 U.S.C. 823(h).

The Show Cause Order specifically alleged that Respondent was proposing to sell ephedrine and pseudoephedrine products to gas stations and convenience stores in the Milwaukee, Wisconsin area, and that these retail outlets constitute the ''gray market'' for these products. The Show Cause Order alleged that there is a ''high incidence of diversion'' of ephedrine and pseudoephedrine products from this market into the illicit manufacture of methamphetamine and that methamphetamine availability ''has been on the increase in the Western district of Wisconsin.'' See Show Cause Order at 2. Finally, the Show Cause Order alleged that Respondent had no experience in distributing List I chemicals and that granting Respondent's registration ''would likely lead to increased diversion of List I chemicals.'' Id. at 4.

The Show Cause Order was served by certified mail, return receipt requested, and on February 16, 2005, Respondent acknowledged receipt. Since that time, neither Respondent, nor anyone purporting to represent him, has responded. Because (1) more than thirty days have passed since Respondent's receipt of the Show Cause Order, and (2) no request for a hearing has been received, I conclude that Respondent has waived his right to a hearing. See 21 CFR 1309.53(c). I therefore enter this final order without a hearing based on relevant material in the investigative file and make the following findings.

Findings

Ephedrine and pseudoephedrine are List I chemicals that, while having therapeutic uses, are easily extracted from lawful products and used in the illicit manufacture of methamphetamine, a schedule II controlled substance. See 21 U.S.C. 802(34); 21 CFR 1308.12(d). As noted in numerous prior DEA orders, ''methamphetamine is an extremely potent central nervous system stimulant.'' A–1 Distribution Wholesale, 70 FR 28573 (2005). Methamphetamine abuse has destroyed lives and families, ravaged communities, and created serious environmental harms.

Respondent is the sole owner and operator of Northern Starr Products. Northern Starr distributes a variety of novelty items to gas stations and a few conveniences stores in the Milwaukee area. The business is located at Respondent's residence in West Bend, Wisconsin.

On May 30, 2002, Respondent submitted to DEA an application for a registration as a distributor of the List I chemicals ephedrine and pseudoephedrine. On November 7, 2002, two DEA Diversions Investigators (DIs) met with Respondent to conduct a pre-registration investigation. Respondent proposed to sell eleven different List I chemical products including two tablets packs of such over-the-counter products as Advil Cold and Sinus, Tylenol Allergy/Sinus, Nyquil & Dayquil. Respondent, however, also proposed to sell several products containing 25 mg of ephedrine in 60-count bottle sizes.

Respondent informed the DIs that he had no previous experience handling List I chemical products. Respondent further advised the DIs that the business was run out of the basement of his home and that he is the sole employee. The home is located in a residential development, which is surrounded by farmland and prairie land.

Respondent told the DIs that he would store List I chemical products in a closed-off area of the basement. According to the investigative file, the home has door knob locks on the front and back doors. The investigative file contains no indication that Respondent's home has an alarm system.

Respondent also discussed with the DIs the record keeping requirements for List I chemicals; Respondent appeared to understand them. Respondent also provided the DIs with the name and address of his supplier, as well as the names and addresses of the customers who he expected would purchase List I chemical products. Respondent's proposed supplier has a valid DEA registration. Moreover, the investigative file contains no adverse information with respect to any of Respondent's proposed customers. Finally, the investigative file contains no adverse information with respect to Respondent's compliance with applicable laws or criminal history.

Discussion

Under 21 U.S.C. 823(h), an applicant to distribute List I chemicals is entitled to be registered unless I determine that the registration would be inconsistent with the public interest. In making that determination, Congress directed that I consider the following factors:

(1) Maintenance by the applicant of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance by the applicant with applicable Federal, State, and local law;

(3) Any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience of the applicant in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

Id.

''[T]hese factors are considered in the disjunctive.'' Joy's Ideas, 70 FR 33195, 33197 (2005). I ''may rely on any one or combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether a registration should be revoked or an application for a registration be denied.'' Id. See also Energy Outlet, 64 FR 14,269 (1999). In this case, I conclude that factors one, four, and five establish that Respondent's application should be denied.

Factor One—Maintenance of Effective Controls Against Diversion

The investigative file does not establish that Respondent would fail to properly comply with DEA's regulations pertaining to recordkeeping and reports. But ''the adequacy [of an] applicant's systems for monitoring the receipt, distribution, and disposition of List 1 chemicals,'' 21 CFR 1309.71(b)(8), is only one part of the inquiry under factor one.

Determining whether an applicant will provide proper physical security of listed chemicals is also critical in evaluating the effectiveness of an applicant's controls against diversion. See 21 CFR 1309.71(b). Here, the investigative file contains information indicating that Respondent would not provide proper physical security for List I chemical products. The investigative file indicates that Respondent proposed to store List I chemicals in the basement of his home. The home, however, has door knob locks and apparently nothing more. See id. at 1309.71(b)(3) (requiring consideration of ''[t]he type of building construction comprising the facility and the general characteristics of the building or buildings''). Moreover, there is no evidence that Respondent has an alarm system in place at his residence. See id. at 1309.71(b)(4) (requiring consideration of ''[t]he availability of electronic detection and alarm systems''). Finally, there is nothing in the investigative file indicating that Respondent was willing to upgrade the security of his proposed location to provide adequate protection against diversion through theft. Cf. Extreme Enterprises, 67 FR 76195, 76197 (2002). This factor thus weighs heavily in favor of denying Respondent's application. See Jay Enterprises, 70 FR 24620, 24621 (2005).

Factors Two and Three—Compliance With Applicable Law and the Applicant's Prior Record of Relevant Criminal Convictions

The investigative file contains no evidence establishing that Respondent is not in compliance with applicable Federal, State, or local laws. Moreover, Respondent has never been convicted of a criminal offense involving controlled substances or chemicals under Federal or State law. Both factors thus weigh in favor of granting Respondent's application.

Factor Four—Past Experience in the Manufacture or Distribution of Controlled Substances

Respondent acknowledged that he has no prior experience in the manufacture or distribution of List I chemicals. Because of the potential for diversion, DEA precedent holds that an applicant's lack of experience in distributing List I chemicals is a factor which weighs heavily against granting an application for a registration. See Jay Enterprises, 70 FR at 24621; ANM Wholesale, 69 FR 11652, 11653 (2004); Cf. Extreme Enterprises, 67 FR at 76197. Respondent's lack of experience thus weighs against granting the application.

Factor Five—Other Factors That Are Relevant to and Consistent With Public Health and Safety

Numerous DEA cases recognize that the sale of certain List I chemical products by non-traditional retailers is an area of particular concern in preventing diversion of these products into the illicit manufacture of methamphetamine. See Joey Enterprises, 70 FR 76866, 76867 (2005). As Joey Enterprises explains, ''[w]hile there are no specific prohibitions under the Controlled Substances Act regarding the sale of listed chemical products to [gas stations and convenience stores], DEA has nevertheless found that [these entities] constitute sources for the diversion of listed chemical products.'' Id. See also TNT Distributors, 70 FR 12729, 12730 (2005) (special agent testified that ''80 to 90 percent of ephedrine and pseudoephedrine being used [in Tennessee] to manufacture methamphetamine was being obtained from convenience stores''); OTC Distribution Co., 68 FR 70538, 70541 (2003) (noting ''over 20 different seizures of [gray market distributor's] pseudoephedrine product at clandestine sites,'' and that in eight-month period distributor's product ''was seized at clandestine laboratories in eight states, with over 2 million dosage units seized in Oklahoma alone.''); MDI Pharmaceuticals, 68 FR 4233, 4236 (2003) (finding that ''pseudoephedrine products distributed by [gray market distributor] have been uncovered at numerous clandestine methamphetamine settings throughout the United States and/or discovered in the possession of individuals apparently involved in the illicit manufacture of methamphetamine'').

Moreover, these seizures have frequently found high-strength, high count List I chemical products, thus indicating that these are the preferred products for illicit methamphetamine manufacturers. See OTC Distribution, 68 FR at 70541, MDI Pharmaceuticals, 68 FR at 4236. Respondent proposed to sell similar high strength, high count products. Moreover, all of Respondent's proposed customers participate in the non-traditional market for ephedrine and pseudoephedrine products, and a significant portion of Respondent's proposed business would violate recently enacted provisions of Wisconsin law.[1] See Joy's Ideas, 70 FR 33195, 33199 (2005).

DEA final orders recognize that there is a substantial risk of diversion of List I chemicals into the illicit manufacture of methamphetamine when these products are sold by non-traditional retailers. See, e.g., Joy's Ideas, 70 FR at 33199 (finding that the risk of diversion was ''real, substantial and compelling''); Jay Enterprises, 70 FR at 24621 (noting ''heightened risk of diversion'' should application be granted); Cf. Xtreme Enterprises, 67 FR at 76197. Under DEA precedents, an applicant's proposal to sell into the non-traditional market weighs heavily against the granting of a registration under factor five. So too here.

Furthermore, DEA has repeatedly denied an application when an applicant proposed to sell into the non-traditional market and analysis of one of the other statutory factors supports the conclusion that granting the application would create an unacceptable risk of diversion. Thus, in Cf. Xtreme Enterprises, my predecessor denied an application observing that respondent's ''lack of criminal record, compliance

[1] The State of Wisconsin recently enacted legislation to prevent the diversion of List I chemical products from their legitimate uses into the illicit manufacture of methamphetamine. See 2005 Wis. Act 14. Under Wisconsin law, pseudoephedrine products are now classified as a Schedule V controlled substance unless they are sold in liquid form or as a liquid-filled gelcap. See Wis. Stat. § 961.01; § 961.22. As such, pseudoephedrine products ''may be sold at retail only by a registered pharmacist or * * * by a person who is working under the directions of a registered pharmacist when sold in a retail establishment.'' Id. § 961.23.

with the law and willingness to upgrade her security system are far outweighed by her lack of experience with selling List I chemicals and the fact that she intends to sell ephedrine almost exclusively in the gray market.'' 67 FR at 76197. More recently, I denied an application observing that the respondent's ''lack of a criminal record and any intent to comply with the law and regulations are far outweighed by his lack of experience and the company's intent to sell ephedrine and pseudoephedrine exclusively to the gray market.'' Jay Enterprises, 70 FR at 24621. Accord Prachi Enterprises, 69 FR 69407, 69409 (2004).

Here, there are several factors which support the conclusion that granting the application would be inconsistent with the public interest. Respondent's proposed security measures are plainly inadequate and are thus grounds alone to deny the application. Moreover, Respondent lacks experience in the distribution of List I chemicals and proposes to sell into the non-traditional market. I thus conclude that granting Respondent's application would be ''inconsistent with the public interest.'' 21 U.S.C. 823(h).

Order

Accordingly, pursuant to the authority vested in me by 21 U.S.C. 823(h), and 28 CFR 0.100(b) & 0.104, I hereby order that the previously submitted application of David M. Starr, d/b/a Northern Starr products, for a DEA Certificate of Registration as a distributor of List I chemicals be, and it hereby is, denied. This order is effective August 11, 2006.

Dated: July 5, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–10925 Filed 7–11–06; 8:45 am]

BILLING CODE 4410–09–P

MISSISSIPPI RIVER COMMISSION

Sunshine Act; Notice of Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 7 p.m., August 14, 2006.

PLACE: On board MISSISSIPPI V at Riverside Park Landing, La Crosse, WI.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Paul District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 6:30 p.m., August 15, 2006.

PLACE: On board MISSISSIPPI V at City Front, Dubuque, IA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Rock Island District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., August 18, 2006.

PLACE: On board MISSISSIPPI V at Melvin Price Lock & Dam, Alton, IL.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Louis District and; (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., August 21, 2006.

PLACE: On board MISSISSIPPI V at City Front, New Madrid, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., August 22, 2006.

PLACE: On board MISSISSIPPI V at Mud island, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of engineers.

TIME AND DATE: 9 a.m., August 23, 2006.

PLACE: On board MISSISSIPPI V at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of engineers.

TIME AND DATE: 9 a.m., August 25, 2004.

PLACE: On board MISSISSIPPI V at Cenac Towing Co. Dock, Houma, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of Engineers.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Gambrell, telephone 601–634–5766.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–6194 Filed 7–10–06; 1:21pm]

BILLING CODE 3710–GX–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Firstenergy Nuclear Operating Company, Firstenergy Nuclear Generation Corp., Davis-Besse Nuclear Power Station, Unit 1; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of the Facility Operating License, No. NPF–3, for the Davis-Besse Nuclear Power Station, Unit 1 (DBNPS) to the extent currently held by FirstEnergy Nuclear Generation Corp. (FENGenCo), regarding its ownership of the facility.

According to an application for approval filed by FirstEnergy Nuclear Operating Company (FENOC), the licensed operator of DBNPS, acting on behalf of FENGenCo and FirstEnergy Solutions Corp. (FE Solutions), a corporate restructuring is planned such that FE Solutions will become the new direct corporate parent of FENGenCo. FE Solutions is currently a wholly-owned subsidiary of FirstEnergy Corp., as is FENGenCo. After the corporate restructuring, FE Solutions will continue to be a wholly-owned subsidiary of FirstEnergy Corp., while FENGenCo will be an indirect wholly-owned subsidiary of FirstEnergy Corp. and direct wholly-owned subsidiary of FE Solutions.

No physical changes to the DBNPS facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve the application for the indirect transfer of the license, if the Commission determines that the proposed corporate restructuring will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon Mr. David W. Jenkins, Esq., address: 76 South Main Street, Mail Stop A–GO–18, Akron, OH 44308, telephone: 330–384–5037, and e-mail: *djenkins@firstenergycorp.com*; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated June 6, 2006, available for public inspection at the Commission'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 System's (ADAMS) Public Electronic Reading Room on the Internet 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 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 3rd day of July 2006.

For the Nuclear Regulatory Commission.

Stephen J. Campbell,

Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–10905 Filed 7–11–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

Firstenergy Nuclear Operating Company, FirstEnergy Nuclear Generation Corp., Perry Nuclear Power Plant, Unit 1; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of the Facility Operating License No. NPF–58 for the Perry Nuclear Power Plant, Unit 1 (PNPP) currently held by FirstEnergy Nuclear Generation Corp. (FENGenCo), regarding its ownership interests in PNPP.

According to an application for approval filed by FirstEnergy Nuclear Operating Company (FENOC), the licensed operator of PNPP, acting on behalf of FENGenCo and FirstEnergy Solutions Corp. (FE Solutions), a

corporate restructuring is planned such that FE Solutions will become the new direct corporate parent of FENGenCo. FE Solutions is currently a wholly-owned subsidiary of FirstEnergy Corp., as is FENGenCo. After the corporate restructuring, FE Solutions will continue to be a wholly-owned subsidiary of FirstEnergy Corp., while FENGenCo will be an indirect wholly-owned subsidiary of FirstEnergy Corp. and a direct wholly-owned subsidiary of FE Solutions. The Ohio Edison Company, which holds a leased interest in PNPP and is licensed to possess such interest, is not involved in the planned corporate restructuring.

No physical changes to the PNPP facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed corporate restructuring will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon Mr. David W. Jenkins, Esq., address: 76 South Main Street, Mail Stop A–GO–18, Akron, OH 44308, telephone: 330–384–5037, and email: *djenkins@firstenergycorp.com;* the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated June 6, 2006, available for public inspection at the Commission'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 System's (ADAMS) Public Electronic Reading Room on the Internet 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 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 3rd day of July 2006.

For the Nuclear Regulatory Commission.

Stephen J. Campbell,

Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–10906 Filed 7–11–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

FirstEnergy Nuclear Operating Company, FirstEnergy Nuclear Generation Corp., Beaver Valley Power Station, Units 1 and 2; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of the Facility Operating Licenses, Nos. DPR–66 and NPF–73, for the Beaver Valley Power Station (BVPS), Units 1 and 2, to the extent currently held by FirstEnergy Nuclear Generation Corp. (FENGenCo), regarding its ownership interests in BVPS, Units 1 and 2.

According to an application for approval filed by FirstEnergy Nuclear Operating Company (FENOC), the licensed operator of BVPS, Units 1 and 2, acting on behalf of FENGenCo and FirstEnergy Solutions Corp. (FE Solutions), a corporate restructuring is planned such that FE Solutions will become the new direct corporate parent of FENGenCo. FE Solutions is currently a wholly-owned subsidiary of FirstEnergy Corp., as is FENGenCo. After the corporate restructuring, FE Solutions will continue to be a wholly-owned subsidiary of FirstEnergy Corp., while FENGenCo will be an indirect wholly-owned subsidiary of FirstEnergy Corp. and a direct wholly-owned subsidiary of FE Solutions. The Ohio Edison Company and the Toledo Edison Company, which hold leased interests in BVPS, Unit 2 and are licensed to possess such interests, are not involved in the planned corporate restructuring.

No physical changes to the BVPS facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly,

through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve the application for the indirect transfer of the licenses, if the Commission determines that the proposed corporate restructuring will not affect the qualifications of the licensee to hold the licenses, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon Mr. David W. Jenkins, Esq., address: 76 South Main Street, Mail Stop A–GO–18, Akron, OH 44308, telephone: 330–384–5037, and email: *djenkins@firstenergycorp.com*; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated June 6, 2006, available for public inspection at the Commission'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 System's (ADAMS) Public Electronic Reading Room on the Internet 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 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 3rd day of July 2006.

For the Nuclear Regulatory Commission.

Stephen J. Campbell,

Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–10907 Filed 7–11–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–008]

Dominion Nuclear North Anna, LLC; Notice of Availability of the Supplement to the Draft Environmental Impact Statement for an Early Site Permit (ESP) at the North Anna ESP Site and Associated Public Meeting

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC, the Commission) has published Supplement 1 to NUREG–1811, ''Draft Environmental Impact Statement for an Early Site Permit (ESP) at the North Anna ESP Site'' (SDEIS), and is making it available for comment. The site is located near the Town of Mineral in Louisa County, Virginia, on the southern shore of Lake Anna.

Dominion Nuclear North Anna, LLC (Dominion, the applicant) is seeking an ESP for the North Anna site in accordance with Subpart A of 10 CFR Part 52. The ESP process allows resolution of issues relating to siting separate from the filing of an application for a construction permit (CP) or a combined construction permit and operating license referred to as a combined license (COL) for a nuclear power facility. At any time during the term of an ESP (up to 20 years), the permit may be referenced in an application for a CP or COL.

The application for the ESP was submitted by letter dated September 25, 2003. In the draft environmental impact statement (DEIS), published in December 2004 (69 FR 71854), the staff evaluated the proposed action (issuance of an ESP at the North Anna ESP site) including the no action alternative and alternative sites to determine if any alternative site identified was obviously superior to the proposed site. On April 13, 2006, Dominion submitted Revision 6 to its application. The revision described changes to the cooling water system for postulated Unit 3 at the North Anna ESP site and an increase in power level for both postulated Units 3 and 4. In view of these changes, the NRC staff, pursuant to 10 CFR 51.72, determined to prepare a supplement to its DEIS. A notice of intent to prepare a supplement to the draft environmental impact statement was published in the **Federal Register** on May 15, 2006 (71 FR 28392). In addition, on June 21, 2006, Dominion submitted Revision 7 of the application. Revision 7 of the application included changes in response to the staff's request for additional information on Revision 6.

The scope of the SDEIS is limited to the environmental impacts associated

with the changes in ER Revision 6, *i.e.*, the new cooling system for Unit 3 and the increase in the maximum power level described in the PPE. The evaluation in the SDEIS addresses the wet and dry cooling system for Unit 3 and modifies the analysis of impacts related to the power level increase for both Units 3 and 4. There is no change to the cooling system for Unit 4. These revised evaluations will be incorporated into the final EIS. The final EIS will also set forth the public comments on the analysis presented in this SDEIS received within the comment period described below, together with comments concerning the draft EIS received within the draft EIS comment period, and the staff's responses to comments. The staff will address comments on portions of the DEIS not affected by the changes in Revisions 6 and 7 of the application in the FEIS only to the extent such comments were received during the comment period on the DEIS or there is otherwise time for the staff to address them.

The purpose of this notice is to inform the public that the SDEIS is available for public inspection and comment. The DSEIS is available in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS Accession No. ML061800217), and will also be placed directly on the NRC Web site at *http://www.nrc.gov.* ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* In addition, the Louisa County Library, located at 881 Davis Highway, Mineral, Virginia, has agreed to make the DSEIS available for public inspection.

The NRC staff will hold a public meeting to present an overview of the SDEIS and to accept public comments on the DSEIS. The public meeting will be held in the Forum at the Louisa County Middle School, 1009 Davis Highway, Mineral, Virginia on Tuesday, August 15, 2006. The meeting will convene at 7:00 p.m. and will continue until 10:00 p.m., as necessary. The meeting will be transcribed and will include: (1) A presentation of the contents of the SDEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions 1 hour before the start of the meeting at the Louisa County Middle School. No formal comments on the SDEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing. Persons may register to attend or present oral comments at the meeting by contacting Mr. Jack Cushing, by telephone at 1–800–368–5642, extension 1424, or by Internet to the NRC at *North_Anna_comments@nrc.gov* no later than August 10, 2006. Members of the public may also register to speak at the meeting within 15 minutes of the start of the meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Mr. Cushing must be contacted no later than August 7, 2006, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Any interested party may submit comments on this report for consideration by the NRC staff. Comments may be accompanied by additional relevant information or supporting data. This draft report is being issued by the NRC for a 45-day comment period. The comment period begins on the date that the U.S. Environmental Protection Agency publishes a Notice of Filing in the **Federal Register** which is expected to be July 14, 2006; such Notices are published every Friday. The Notice will identify the comment period end date. Members of the public may send written comments on the SDEIS for the North Anna ESP to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** Notice. Comments may also be delivered to Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. Electronic comments may be sent by the Internet to the NRC at *North_Anna_comments@nrc.gov.* To assist the NRC staff in identifying and considering issue and concerns, comments on the supplement to the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft supplement. Comments will be available electronically and accessible through the NRC's PERR link at *http://www.nrc.gov/reading-rm/adams.html.*

For Further Information Contact: For further information regarding the environmental impact statement, contact Mr. Jack Cushing, Senior Environmental Project Manager, at telephone number 301–415–1424, or by mail at U.S. Nuclear Regulatory Commission, ATTN: Jack Cushing, Mail Stop 0–11F1, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738.

Dated at Rockville, Maryland, this 6th day of July 2006.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of New Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–10909 Filed 7–11–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Final Regulatory Guide; Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued a revision to an existing guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 4 of Regulatory Guide 1.97, entitled ''Criteria for Accident Monitoring Instrumentation for Nuclear Power Plants,'' describes a method that the NRC staff considers acceptable for use in complying with the agency's regulations with respect to satisfying criteria for accident monitoring instrumentation in nuclear power plants. Specifically, the method described in this regulatory guide relates to General Design Criteria 13, 19, and 64, as set forth in Appendix A to Title 10, Part 50, of the *Code of Federal Regulations* (10 CFR part 50), ''Domestic Licensing of Production and Utilization Facilities.'' In addition, Subsection (2)(xix) of 10 CFR 50.34(f), ''Additional TMI-Related Requirements,'' requires operating reactor licensees to provide adequate instrumentation for use in

monitoring plant conditions following an accident that includes core damage.

This revision of Regulatory Guide 1.97 represents an ongoing evolution in the nuclear industry's thinking and approaches with regard to accident monitoring systems for nuclear power plants. Specifically, this revision endorses (with certain clarifying regulatory positions specified in Section C of the revised guide) the ''Criteria for Accident Monitoring Instrumentation for Nuclear Power Generating Stations,'' which the Institute of Electrical and Electronics Engineers (IEEE) promulgated as IEEE Std. 497–2002.

This revised regulatory guide is intended for licensees of new nuclear power plants.[1] Previous revisions of this regulatory guide remain in effect for licensees of current operating reactors,[1] who are unaffected by this proposed revision. (See regulatory position #1 in Section C of the revised guide for information regarding the applicability of IEEE Std. 497–2002 for current operating reactors.)

The NRC previously solicited public comment on this revised guide by publishing a **Federal Register** notice (70 FR 49953) concerning Draft Regulatory Guide DG–1128 on August 25, 2005. Following the closure of the public comment period on October 14, 2005, the staff considered all stakeholder comments in the course of preparing Revision 4 of Regulatory Guide 1.97. The staff's responses to all comments received are available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession #ML061580516.

The NRC staff encourages and welcomes comments and suggestions in connection with improvements to published regulatory guides, as well as items for inclusion in regulatory guides that are currently being developed. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Revision 4 of Regulatory Guide 1.97 may be directed to Barry S. Marcus at (301) 415–2823 or *BSM@nrc.gov.*

Regulatory guides are available for inspection or downloading through the NRC's public Web site in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies of Revision 4 of Regulatory Guide 1.97 are also available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession #ML061580448.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov.* Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of June, 2006.

For the U.S. Nuclear Regulatory Commission.

Brian W. Sheron,

Director, Office of Nuclear Regulatory Research.

[FR Doc. E6–10908 Filed 7–11–06; 8:45 am]

BILLING CODE 7590–01–P

[1] The terms ''new nuclear power plant'' and ''new plant'' refer to any nuclear power plant for which the licensee obtained an operating license after the NRC issued Revision 4 of Regulatory Guide 1.97. The terms ''current operating reactor'' and ''current plant'' refer to any nuclear power plant for which the licensee obtained an operating license before the NRC issued Revision 4 of Regulatory Guide 1.97.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54104; File No. SR–Amex–2006–47]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 2 Thereto Relating to the Member Firm Guarantee for FLEX Equity Options

July 5, 2006.

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 May 12, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Amex filed Amendment No. 1 to the proposed rule change on June 5, 2006 and subsequently withdrew Amendment No. 1. The Amex filed Amendment No. 2 to the proposed rule change on June 12, 2006.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 904G(e)(iii) to change the current member firm guarantee for FLEX equity options to 40%. The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the Amex's Office of the Secretary, and at 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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 2, the Amex made technical corrections to the rule text of the proposed rule change.

[4] Pursuant to discussions with Amex staff, the Commission made clarifying changes to the purpose

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise the current participation or member firm guarantee [5] for FLEX equity options traded on the Exchange. Currently, the member firm guarantee provides that a Submitting Member or Submitting Member firm—an Exchange member deemed eligible by the Exchange to trade FLEX options—who has indicated an intention to cross or act as principal on the trade and who has matched or improved the best bid or offer entered in response to the Submitting Member's initial request for quotes (the ''BBO,'' as defined for purposes of Amex rules regarding FLEX options) with respect to FLEX equity options, is entitled to a participation guarantee of 25%. The Amex is proposing to amend Rule 904G(e)(iii) so that Submitting Members and Submitting Member firms would receive a guaranteed participation of 40% of an order, which is the current standard applicable to non-FLEX options.[6]

In April 2003,[7] the Exchange received permanent approval of a pilot program relating to the member firm guarantee for non-FLEX options initially approved by the Commission on June 2, 2000.[8] Commentary .02(d) to Amex Rules 950(d) and 950–ANTE(d) permits facilitation cross transactions in equity options and sets forth the member firm guarantee percentages.[9] The member firm guarantee for non-FLEX options was subsequently extended to index options in September 2004 [10]and to index options in the Amex New Trading Environment System (''ANTE'') in February 2005.[11] The amount of the guaranteed participation percentage for non-FLEX options is currently 40%, provided that the order trades at or between the best bid or offer given by the trading crowd in response to the floor broker's request for a market.[12]

Under the instant proposal, a Submitting Member or a Submitting Member firm trading FLEX equity options will be entitled to cross up to 40% of an order provided the order trades at a price that matches or improves upon the BBO. As with non-FLEX equity options, it is believed that providing Submitting Members or Submitting Member firms who are eligible to trade FLEX options and are seeking to cross or facilitate a trade with an across-the-board 40% member firm guarantee will provide additional incentive for such Submitting Member or Submitting Member firm to bring large FLEX option orders to the floor of the Amex rather than to the floor of another options exchange or to the over-the-counter (''OTC'') market. Additionally, the liquidity provided by such Submitting Member or Submitting Member firm seeking to facilitate their orders gives the Exchange the ability to provide deep liquid markets for investors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [13] in general and furthers the objectives of Section 6(b)(5) [14] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2006–47 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–2006–47. This file

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section of the proposed rule change. Telephone conversation between Caroline McCaffery, Assistant General Counsel, Amex, and Ira Brandriss, Special Counsel, and Kate Robbins, Attorney, Division of Market Regulation, Commission, on June 29, 2006.

[5] A ''member firm guarantee'' provides, under certain conditions, the ability to cross a specified percentage of a customer order on behalf of a member firm before specialists and/or registered options traders in the crowd can participate in the transaction. The member firm guarantee for FLEX equity options is set forth in Amex Rule 904G(e). The member firm guarantee for non-FLEX options is set forth in Rule 950(d) and 950–ANTE(d). The provision for non-FLEX options generally applies to orders of 400 contracts or more; however, the Exchange is permitted to establish smaller eligible order sizes, on a class-by-class basis, provided that size is not for fewer than 50 contracts.

[6] The text of Amex Rule 904G(e)(iii) provides that the Submitting Member is permitted to participate ''to the extent of at least 25% of the trade'' (40% under the proposal). The Submitting Member may participate in more than its guaranteed percentage to the extent that the trading crowd chooses not to trade against the remaining portion of the order.

[7] *See* Securities Exchange Act Release No. 47643 (April 7, 2003), 68 FR 17970 (April 14, 2003).

[8] *See* Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000).

[9] A facilitation cross transaction occurs when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

[10] *See* Securities Exchange Act Release No. 50326 (September 7, 2004), 69 FR 55479 (September 14, 2004).

[11] *See* Securities Exchange Act Release No. 51275 (February 28, 2005), 70 FR 10709 (March 4, 2005).

[12] Prior to February 2005, the member firm guarantee for non-FLEX options provided that a floor broker was entitled to a participation guarantee of 20% if the order was traded at the best bid or offer given by the trading crowd in response to a floor broker's request for a market or 40% if the order was traded at a price that improved the market, *i.e.*, at a price between the crowd's best bid or offer. This rule was revised in February 2005 so that floor brokers receive 40% of an order (after public customer orders on the specialist's book or represented by a floor broker in the crowd have been filled) if such order trades at a price that matches or improves the market. *See* Securities Exchange Act Release No. 51275 (February 28, 2005), 70 FR 10709 (March 4, 2005).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–47 and should be submitted on or before August 2, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–10921 Filed 7–11–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54105; File No. SR–BSE–2006–12]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Changes to the Minimum Activity Charge

July 6, 2006.

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 June 23, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 30, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

With respect to the BOX Fee Schedule, the Exchange proposes to (a) amend the Minimum Activity Charge (''MAC'') for certain classes of options, (b) exempt new BOX Market Makers from the MAC for the first three months as a BOX participant, (c) change the frequency at which the MAC classifications will be adjusted annually, and (d) change the indexing of the MAC Applicable Rates from overall market share to class-by-class market share. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

Boston Options Exchange Facility

Fee Schedule

(as of July 2006)

Sec. 1 through Sec. 2 No Change.

Sec. 3 Market Maker Trading Fees

a. No Change.

b. Minimum Activity Charge (''MAC'')

The ''notional MAC'' per options class (see table below) is the building block for the determination of the BOX Market Maker's monthly total MAC which is payable at the end of each month if the per contract fee of $ 0.20 per contract traded, when multiplied by the Market Maker's actual trade executions for the month, does not result in a total trading fee payable to BOX at least equal to the monthly total MAC.

New Market Maker's activity will be subject to the standard Market Maker per contract charge. However, new Market Makers to BOX will be exempt from the MAC during the first three months as a BOX market participant.

The MAC is totaled across all classes assigned to a Market Maker so that volume for one class is fungible against other classes for that Market Maker. As a result, although the volume on a given class needed to reach an implicit cost of $0.20 a contract may not be achieved, this can be compensated by volume in excess of the MAC on another class.

1. MAC ''Levels''

a. For Classes that have been trading on any options exchange for at least six calendar months.

The table below provides the MAC for each of the six ''categories'' of options classes listed by BOX. The category for each class is determined by its total trading volume across all U.S. options exchanges as determined by OCC data. The classifications will be adjusted at least [twice] annually (in January [and July], based on the average daily volume for the preceding [six month period] *year*).

Class	OCC average daily volume (number of contracts)	MAC per Market Maker per appointment per month
Category:		
A	>100,000	[$15,000] *$10,000*
B	50,000 to 99,999	[$3,000] *$3,500*
C	25,000 to 49,999	[$2,000] *$2,500*
D	10,000 to 24,999	$750
E	5,000 to 9,999	$250

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange (a) clarified in the proposed rule text that all Boston Options Exchange (''BOX'') Market Makers would be continually subject to the standard per contract charge, (b) made non-substantive, formatting changes to conform the proposed rule text with the current provisions of the Fee Schedule, and (c) clarified the purpose and scope of the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

Class	OCC average daily volume (number of contracts)	MAC per Market Maker per appointment per month
F	Less than 5,000	$100

b. For classes that have not been trading on any options exchange for at least six calendar months.

A class will not be placed into a MAC category until a class has been trading on any options exchange for a full calendar month. After a class has been trading for a full calendar month, the MAC category for such class will be determined, applying the criteria set forth in the table above, based on the average daily volume for such full calendar month across all U.S. options exchanges as determined by OCC data. The classification will be adjusted at the beginning of each new calendar month thereafter based on the average daily trading volume for the previous calendar months in which the options class was traded for the entire month, until the class has been trading for six full calendar months. Thereafter, the classification will be adjusted at least [twice] annually (in January [and July], based on the average daily volume for the preceding [six month period] *year*) as set forth in subsection 1.a. above. Until an options class is placed in a MAC category, only per contract trade execution fees will apply to trades in that class.

2. MAC ''Adjustments''

With respect to market makers appointed to classes traded by BOX Market Makers on the date of such appointment, if the market maker is not already a BOX Market Maker in at least one other class, the MAC will be applied the earlier of either (i) the date the Market Maker commences quoting the class, or (ii) three months after the date of such appointment. However, if the market maker is already a BOX Market Maker in at least one other class, the MAC will not be applied until the earlier of either (i) the date the Market Maker commences quoting the class, or (ii) the eleventh trading day after the date of such appointment.

With respect to market makers appointed to classes not traded by BOX Market Makers on the date of such appointment, if the market maker is not already a BOX Market Maker in at least one other class, the MAC will be applied [the earlier of either (i) the date the Market Maker commences quoting the class, or (ii)] three months after the date of such appointment. However, if the market maker is already a BOX Market Maker in at least one other class, the MAC will be applied the date the class is listed on BOX.

Any MAC that becomes applicable on a day other than the first trading day of a calendar month is applied on a pro rata basis based on the number of trading days in that month for which the class was traded on BOX.

Furthermore, the MAC will be ''indexed'' to BOX's [overall] market share as determined by OCC clearing volumes *on a class-by-class basis.* At the beginning of each calendar month, BOX will calculate its market share for the previous month (market share equals total BOX traded volume divided by the total OCC cleared volume for the classes that BOX has listed). If BOX's [overall] market share *in that particular class* is less than 10%, BOX will reduce the MAC applicable for each Market Maker according to the following table.

[BOX market share]	[MAC applicable rate]
[0% to 4.99%]	[33.3%]
[5% to 9.99%]	[66.7%]
[10% and more]	[Full MAC]

Market share	MAC applicable rate
0% to 1.99%	$.20 per contract
2% to 3.99%	20%
4% to 4.99%	40%
5% to 5.99%	40%
6% to 7.99%	60%
8% to 9.99%	80%
10%+	100%

These adjustments are subject to subsection 1.b. above.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

BOX levies a monthly fixed fee to its participant Market Makers for each option class traded by such participants. BOX classifies its traded classes into six categories (A through F), and the fee for each category is determined by overall OCC cleared volume. For example, classes trading less than 5,000 average daily OCC cleared contracts are assigned to category F, classes trading between 5,000 and 9,999 average daily OCC cleared contracts are assigned to category E, *etc.* The MAC amounts increase with higher traded volumes and range from $100 per month for Category F to $15,000 per month for Category A. Monthly discounts are subsequently applied to each firm's MAC based on overall OCC market share that BOX achieves on a monthly basis. The following are proposed changes to the MAC:

(a) *Changes to the Activity Levels:*

BSE proposes to amend BOX's Fee Schedule to account for the effect that current market conditions have had on the MAC. Recent increases in options trading have resulted in many BOX listed classes to be reclassified into higher MAC categories. BOX therefore seeks to amend its existing MAC program to modify the MAC for certain classes of options and provide uniform fee adjustments to BOX's participants. No changes are being sought to alter the fundamental structure of the existing MAC program.

(b) *Exemption for New Market Makers:*

BSE proposes to exempt new Market Makers from the MAC for the first three months as a BOX participant. BSE believes that it would be more equitable to allow new Market Maker participants to become familiar with BOX before imposing a fee based on a minimum level of activity.

(c) *Changing the Frequency of MAC Reclassifications:*

BSE proposes to change the frequency of MAC reclassifications from at least twice annually to at least once annually. BSE believes that this change would lessen the impact that market volatility has on BOX market participants.

(d) *Indexing the MAC on a Class-by-Class Basis:*

BSE proposes to change the indexing of the MAC from overall market share to class-by-class market share. BSE believes that this new structure would be more equitable and that Market Makers should pay for the level of liquidity in each class in which they trade.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among members of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, which has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder, 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.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–BSE–2006–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BSE–2006–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also 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 No. SR–BSE–2006–12 and should be submitted on or before August 2, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–10922 Filed 7–11–06; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] The effective date of the original proposed rule change is June 23, 2006, and the effective date of Amendment No. 1 is June 30, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers such period to commence on June 30, 2006, the date on which the Exchange filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54100; File No. SR–CHX–2006–13]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Participant Fees and Credits

July 5, 2006.

On April 24, 2006, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Participant Fee Schedule (''Fee Schedule'') to reduce, retroactively to March 1, 2006, the assignment fees charged to specialist firms seeking the right to trade securities, when the securities are assigned in competition with other firms. The proposed rule change was published for comment in the **Federal Register** on June 1, 2006.[3] The Commission received no comments regarding the proposal.

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, and in particular, with section 6(b)(4) of the Act,[4] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.[5] The proposed retroactive fee reduction was filed simultaneously with, and is identical to, a fee reduction applied by the Exchange prospectively as of April 24, 2006.[6] That fee reduction was based on the Exchange's belief that the right to trade securities as an Exchange specialist has only a short-term benefit, in view of an Exchange proposal pending with the Commission to implement a new trading model that does not involve the use of specialists to handle customer orders.[7] The Exchange believes that it is appropriate to apply the fee reduction

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53868 (May 25, 2006), 71 FR 31242.

[4] 15 U.S.C. 78f(b)(4).

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[6] *See* Securities Exchange Act Release No. 53781 (May 10, 2006), 71 FR 28727 (May 17, 2006) (notice and immediate effectiveness of SR–CHX–2006–12).

[7] *See* SR–CHX–2006–05.

retroactively to specialist assignments made in the period beginning March 1, 2006, a time when, the Exchange states, its management began talking with specialist firms about the reasons for, and possibility of, this type of fee reduction. The Commission believes such reduction is consistent with the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CHX–2006–13) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–6162 Filed 7–11–06; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54103; File No. SR–NASD–2004–043]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 to the Proposed Rule Change Relating to Disclosure of Fees and Expenses in Mutual Fund Performance Sales Material

July 5, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2005, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 4 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. This order notices, and solicits comments from interested persons on, Amendment No. 4 to the proposal and approves the proposal as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rules 2210 and 2211 to require member communications with the public, other than institutional sales material and public appearances, that present mutual fund performance information (''performance sales material'') to disclose the fund's fees, expenses and standardized performance. The text of the proposed rule change is available on NASD's Web site (*http://www.nasd.com*), at NASD's principal office, and at 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, NASD 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.

Purpose

On March 10, 2004, NASD filed with the Commission a proposal to amend NASD Rules 2210 and 2211 to require that mutual fund communications with the public that provide performance data disclosure the fund's fees, expenses and standardized performance. NASD believes these new requirements would improve investor awareness of the costs of buying and owning a mutual fund, facilitate comparison of funds and make the presentation of standardized performance more prominent. The Commission published the proposed rule change and Amendment No. 1 thereto for comment in the **Federal Register** on August 27, 2004.[3] The Initial Proposal would have required that:

- Performance sales material disclose:
  - The standardized performance information mandated by Rule 482 under the Securities Act of 1933[4] (''Rule 482'') and Rule 34b–1 under the Investment Company Act of 1940[5] (''Rule 34b–1'');
  - To the extent applicable, the maximum front-end and deferred sales charges stated in the fund's current prospectus; and
  - The fund's total annual operating expense ratio, as stated in the investment company's current prospectus.
- All required performance information and fee disclosure be set forth:
  - Clearly and prominently, and standardized performance information be in a type size at least as large as that used for any non-standardized performance information;
  - With respect to any radio, television or video advertisements, with equal prominence to that given to any non-standardized performance information; and
  - In any advertisement, other than radio, television or video advertisements, in a prominent text box that contains only the required information.

Comments Received on the Initial Proposal and NASD's Response

The Commission received five comment letters on the Initial Proposal.[6] Commenters' concerns fell into three principal categories. First, commenters either opposed the text box requirement in its entirety or believed that, to be workable, NASD needed to modify the proposal to allow greater flexibility for electronic media such as Web sites. Second, some commenters stated that ongoing fees should be calculated net of fee waivers and expense reimbursements. Finally, commenters urged NASD to provide members with ample time to comply with any new rule and to allow the use of templates when filing revised sales material. A summary of the comment letters and NASD's response is set forth below.

Text Box Requirement

Three commenters objected that the proposed text box requirement would be unduly restrictive and would make it difficult to advertise the performance of multiple funds.[7] These commenters also

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 50226 (Aug. 20, 2004), 69 FR 52738 (Aug. 27, 2004) (''Initial Proposal''). Amendment No. 2, which changed the proposal in response to industry comments, was filed on May 2, 2005. Amendment Nos. 3 and 4, which altered the proposed rule change to harmonize it with the requirements of Rule 482 and Rule 34b–1, were filed on July 27, 2005, and December 13, 2005, respectively. Amendment No. 4 replaced Amendment Nos. 2 and 3 in their entirety.

[4] 17 CFR 230.482.

[5] 17 CFR 270.34b–1.

[6] Letters to Jonathan G. Katz, Secretary, Commission, from Colon Brown, President, Brown & Brown Securities, Inc. (Sept. 10, 2004) (''Brown Letter''); Alexander G. Gavis, Vice President and Associate General Counsel, Fidelity Investments (Oct. 12, 2004) (''Fidelity Letter''); Frances M. Stadler, Deputy Senior Counsel, Investment Company Institute (Sept. 17, 2004) (''ICI Letter''); Stuart R. Strachan, Chairman, Investment Company Committee of the Securities Industry Association (Sept. 17, 2004) (''SIA Letter''); Heidi Stam, Principal, Securities Regulation, Vanguard Group, Inc. (Sept. 17, 2004) (''Vanguard Letter''). In addition, NASD received a letter from Forrest R. Foss, Associate Counsel, T. Rowe Price Associates, Inc. (Dec. 6, 2004) (''T. Rowe Price Letter''). We have included NASD's responses to the concerns expressed in the T. Rowe Price Letter in the discussion below.

[7] Fidelity Letter, ICI Letter, T. Rowe Price Letter. Two of the commenters opined that an advertisement that compares a fund's performance against a benchmark index could not include the

Continued

stated that the prohibition against including non-required information in the text box could result in poorly designed and repetitive fund advertisements. Two of the commenters recommended as an alternative to the text box a requirement that a fund's expense ratio be disclosed in the same manner in which a fund's maximum sales charge is required to be disclosed under Rule 482, which includes prominence requirements for certain required disclosures (*e.g.,* for sales charges).[8]

Finally, three commenters objected to applying the text box requirement to Web sites, arguing that the requirement does not take into consideration how individuals typically read and navigate Web sites and retrieve information (such as through the use of hyperlinks).[9] These commenters also urged NASD to modify the proposal to allow the use of hyperlinks to link from non-standardized performance information to the required standardized information.

NASD's response to comments: In response to commenters' concerns, NASD amended the prominence requirements of proposed NASD Rule 2210(d)(3)(B) to: (1) Eliminate language that might be deemed inconsistent with the prominence requirements of Rule 482 and Rule 34b–1; (2) apply the text box rule only to print advertisements; and (3) permit the inclusion of other pertinent comparative data and disclosures required by Rule 482 and Rule 34b–1 in the text box.[10]

As a result of this amendment, Web sites and other electronic advertisements would not have to present the required performance and fee information within a text box. And in those print advertisements where the text box still would be required, members would be allowed to present comparative performance and fee data (*e.g.,* non-standardized fund performance, the performance of a relevant benchmark index, or a comparison of the fund's expense ratio to the average expense ratio for similar funds) and disclosures required by rule 482 and Rule 34b–1.

The information required by proposed NASD Rule 2210(d)(3)(A) (*i.e.,* the standardized performance information, maximum sales charge, and total annual fund operating expenses) would have to be set forth prominently. NASD members could meet this prominence requirement by presenting this information in accordance with the prominence and proximity requirements of Rule 482 and Rule 34b–1.[11] Additionally, members would be required to present a fund's total annual operating expenses in a manner that meets the prominence and proximity requirements under Rule 482 for disclosure of a fund's maximum sales charge. Thus, for example, the quotations of the standardized average annual total returns for one, five and ten-year periods would have to be set forth with equal prominence, and any quotations of non-standardized performance could not be set forth in greater prominence than the standardized performance.[12] Similarly, the disclosures of a fund's maximum sales load and total annual operating expenses generally would have to be presented in print advertisements ''in a type size at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement * * *.'' [13]

NASD also has reconsidered the use of hyperlinks to show standardized performance information. Given that NASD no longer would require Web sites to present required disclosures in a text box, NASD stated that it also would be appropriate for members to present standardized performance and other required disclosures through the use of a hyperlink, provided that the required disclosures are prominent and consistent with the standards of Rule 482.[14]

Calculation of Expense Ratio

The Initial Proposal would have required performance sales material to show a fund's annual operating expenses as derived from the fund's most recent prospectus.[15] Two commenters stated that the proposal should be modified to allow member firms to disclose a fund's current expense ratio net of fee waivers and reimbursements, as long as the fact of the subsidization is disclosed.[16]

One commenter stated that expense ratios should be calculated in accordance with Item 3 of Form N–1A, without taking into account fee waivers and reimbursements because, in the commenter's opinion, prospective investors should base their decisions on the long-term costs of a fund rather than its current costs (which may include subsidization).[17]

NASD's response to comments: In response to commenters' concerns, NASD stated that since fund advertisements, like prospectuses, are directed to prospective investors, any required expense ratio disclosure should not reflect fee waivers or reimbursements.[18] According to NASD, the proposal would not preclude performance sales material from also presenting a fund's expense ratio net of fee waivers and reimbursements, as long as the sales material also presents the unsubsidized expense ratio, and the member presents the subsidized expense ratio in a fair and balanced manner in accordance with the standards of Rule 2210. NASD stated that it would expect that, if a subsidized expense ratio were presented, the sales material would disclose whether the fee waivers or expense ratios were voluntary or mandated by contract, and the time period during which the fee waiver or expense reimbursement obligation, if any, remains in effect.[19]

Compliance Lead Time and the Use of Templates

The Initial Proposal indicated that NASD would publish a Notice to Members announcing Commission approval of the proposed rule change within 60 days after such approval, and that the new requirements would become effective 30 days after publication of the Notice to Members. Three commenters requested that NASD provide additional time for members to comply with the proposal's new requirements.[20]

index performance in the text box, and thus might have to show the fund's performance again outside the text box in order to make an effective comparison.

[8] Fidelity Letter, ICI Letter.

[9] Fidelity Letter, ICI Letter, Vanguard Letter.

[10] Amendment No. 4.

[11] *See* Securities Act Rules 482(b) and 482(d).

[12] *See* Securities Act Rules 482(d)(3)(iii) and 482(d)(5)(iv).

[13] *See* Securities Act Rule 482(b)(5). Rule 482(b)(5) also provides that when performance data is presented in a print advertisement in a type size smaller than that of the major portion of the advertisement, the maximum sales load may appear in a type size no smaller than that of the performance data.

[14] Amendment No. 4.

[15] Proposed NASD Rule 2210(d)(3)(A)(ii)(b).

[16] Fidelity Letter, ICI Letter.

[17] Vanguard Letter.

[18] Amendment No. 4.

[19] In addition, one commenter opined that the Original Proposal was limited to disclosure of quantitative statistics rather than more qualitative information. Brown Letter. The commenter believed that the more important information involves the credentials and experience of mutual funds' advisors, the investment disciplines they follow and the ethical standards they employ regarding the distribution of their shares. The commenter recommended that such information be made available to investors in reasonably large print and understandable language. In response, NASD stated that the commenter's recommendation is beyond the scope of the proposal.

[20] Fidelity Letter, ICI Letter, Vanguard Letter. Two of the commenters also recommended that compliance with the proposal not be required until after the end of the second full calendar quarter following Commission approval of the proposed rule change. Fidelity Letter, ICI Letter. One of the commenters recommended that firms be given at least six months, and preferably nine to twelve

Two commenters requested that NASD allow member firms to file templates to show how substantially similar performance sales material would be revised to comply with the new standards.[21] These commenters believe that allowing templates to be filed would reduce compliance and filing costs for member firms while allowing NASD staff to identify and address any concerns with the format and content of performance sales material.

NASD's response to comments: In response to commenters' concerns, NASD amended the proposed effective date as follows: Should the Commission approve the proposal, NASD will publish a Notice to Members announcing Commission approval within 60 days thereafter. The proposal would become effective six months following the calendar quarter ended after publication of the Notice.

In Amendment No. 4, NASD also agreed to permit the filing of templates on a case-by-case basis to show compliance with the new rule requirements.[22]

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 4, including whether the amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2004–043. 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. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

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 the File Number SR–NASD–2004–043 and should be submitted on or before August 2, 2006.

IV. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to NASD.[23] Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act[24] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change is designed to accomplish these ends by requiring additional disclosures in mutual fund performance sales materials that should enable investors to compare the performance of various mutual funds and to make informed comparisons regarding the actual cost of buying and owning various mutual funds.

NASD has requested that the Commission approve Amendment No. 4 to the proposed rules change on an accelerated basis.[25] The Commission finds good cause for approving Amendment No. 4 to the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register**.[26] NASD amended the rule proposal in response to commenters and to harmonize the rule proposal with current regulatory disclosure requirements. Amendment No. 4 allows more flexibility in the way in which required disclosures are presented while retaining the content and prominence requirements for those disclosures, thereby easing compliance burdens without sacrificing the investor-protection goals of the proposal.

Specifically, in response to commenters, NASD amended the proposal to require text boxes for print advertisements only. Web sites and other electronic advertisements would not have to present the required performance and fee information within a text box. NASD also expanded the categories of information that would be allowed within the text box. Members would be allowed to include within the text box comparative performance and fee data (*e.g.,* non-standardized fund performance, the performance of a relevant benchmark index, or a comparison of the fund's expense ratio to the average expense ratio for similar funds) and the disclosures required by Rule 482 and Rule 34b–1.[27]

Amendment No. 4 also harmonizes the proposed disclosure standards with those that are already required under Rule 482 and Rule 34b–1 to ensure that member firms are able to comply simultaneously with both NASD and SEC rules. NASD also provided firms with guidance regarding the amount of time members will have to comply with the new requirements. NASD also agreed that the filing of templates may be appropriate to show how similar performance sales material will be revised to comply with the new standards. Use of templates should help firms obtain useful guidance from NASD staff to ensure that the required disclosures comport with the new provisions.

The Commission believes that NASD's proposed changes in Amendment No. 4 strengthen and

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months, to comply with the rule change. Vanguard Letter.

[21] Fidelity Letter, ICI Letter.

[22] To the extent that NASD permits members to file templates of sales material to show compliance with the new requirements of proposed NASD Rule 2210(d)(3) or for any other purpose, all such sales material covered by the template would be deemed filed with NASD. Pursuant to Rule 24b–3 under the Investment Company Act of 1940 (''Investment Company Act''), sales material filed with NASD is deemed filed with the Commission for purposes of Section 24(b) of the Investment Company Act.

[23] In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78*o*–3(b)(6).

[25] Telephone conference between Joseph Savage, Associate Vice President, Investment Companies Regulation, NASD, and David W. Blass, Branch Chief, Division of Market Regulation, Commission, on July 5, 2006.

[26] The Commission further notes that both the rule filing SR–NASD–2004–043 and the amendments thereto have been available since their respective filing dates on NASD's Web site *http://www.nasd.com*.

[27] NASD Rule 2210(d)(3)(B).

clarify the proposed rule change in direct response to issues raised by commenters and raise no new regulatory issues. Accordingly, the Commission believes that the accelerated approval of Amendment No. 4 is appropriate.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change, as amended, (SR–NASD–2004–043) is approved, and that Amendment No. 4 to the proposed rule change be, and hereby is, approved on an associated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–6137 Filed 7–11–06; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54101; File No. SR–NASD–2005–140]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Amendments No. 1 and 2 Regarding the Nasdaq Crossing Network

July 5, 2006.

I. Introduction

On December 2, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ('' Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish the Nasdaq Crossing Network. On February 28, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] On April 24, 2006, Nasdaq filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on May 5, 2006.[5] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description

Nasdaq proposes to establish the Nasdaq Crossing Network for Nasdaq-listed and certain exchange-listed securities. The Nasdaq Crossing Network would provide a process for executing orders at a uniform reference price at a randomly selected point in time during a one-minute trading window, commencing at designated times during the regular hours session and the after-hours session. The trading windows would begin at 11 a.m., 1 p.m., and 3 p.m. (ET) during the regular hours session and at 4:30 p.m. (ET) during the after-hours session. For the series of Nasdaq Reference Price Crosses (''RPCs'') that occur during regular trading hours, market participants would place orders to be executed at the midpoint of the National Best Bid and Offer (''NBBO''). During the after-hours crossing session, eligible orders would be executed at the Nasdaq Official Closing Price (''NOCP'') for Nasdaq-listed securities or the official closing price of the primary market for securities listed on the NYSE, Amex or a regional exchange (''Primary Market Close'').

Orders

Orders entered into the Nasdaq Crossing Network would be either market or limit orders and would be designated by a time-in-force indicator.[6] These orders would not be displayed and would be executed only during an RPC. In addition, RPC orders would be entered in round lots only; no mixed or odd lot execution amount would be permitted. Orders may not be cancelled or replaced during the time of the cross, but they may be cancelled or replaced at any time before the cross occurs. Also, RPC orders would be required to be available for automatic execution. The RPC would have no order delivery capability, and no special orders could be accommodated.

Nasdaq Reference Price Cross Priority and Reporting

Upon initiation of the cross, available shares would be treated as if they were the same price and would be allocated on a pro-rata basis to eligible orders. Such shares would be allocated based on the original size of the order, not on the size of the remaining unexecuted portion of the order. If additional shares remain after the initial pro-rata allocation, those shares would continue to be allocated pro-rata to eligible orders until a number of round lots remain that is less than the number of eligible orders. Any remaining shares would be allocated to the oldest eligible order.[7]

The executions would be reported to the market participants via Nasdaq Market Center execution reports as anonymous, single trades reflecting the aggregate shares executed. In addition, each execution would be reported to the Nasdaq Market Center trade reporting service for trade reporting, clearance and settlement.[8] Trades from the regular hours cross would be disseminated the regular way, and trades from the post close cross would be disseminated with a ''.PRP'' sale condition modifier.

Locked or Crossed Markets

In the event of a crossed NBBO at the time of a RPC during the regular hours session, the RPC would be delayed and would execute based on the midpoint NBBO when the quote becomes uncrossed. If the quote remains crossed, however, for five minutes beyond when the RPC normally would have occurred, the RPC would be cancelled and orders that are not designated for any future RPCs would be returned to the market participants. In the event of a locked NBBO at the time of a RPC during the regular hours session, the RPC would execute at the lock price.

Reference Price Cross Circuit Breaker

Nasdaq would establish a ''circuit breaker'' for RPCs that occur during the after-hours session to protect against unusual occurrences when the

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[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] In Amendment No. 2, Nasdaq made certain representations related to the applicability of Rule 11a2–2(T) under the Exchange Act and NASD IM–2110–2 (the ''Manning Rule'') to the proposed rule change. In addition, Nasdaq indicated its plan to request exemptive relief from Rule 10a–1 under the Exchange Act and NASD Rule 3350 (''Short Sale Rule''), as well as from Rule 602 of Regulation NMS (''Quote Rule''). Nasdaq also made clarifying edits to the proposed rule change.

[5] *See* Securities Exchange Act Release No. 53745 (May 1, 2006), 71 FR 26579 (SR–NASD–2005–140) (''Proposing Release'').

[6] RPC orders would be marked with one of the following: (1) ''NXT,'' which indicates that the order would participate in the next scheduled regular-hours cross, with unexecuted shares being immediately cancelled back to the market participant after that cross; (2) ''REG,'' which indicates that the order would participate in all remaining crosses during the trading day with unexecuted shares being immediately cancelled back to the market participant after the final regular hours cross; or (3) ''ALX,'' which indicates that the order would participate in all remaining crosses in the current day with unexecuted shares immediately cancelled back to the market participant after the after-hours cross.

[7] The Proposing Release provides an example that illustrates these priority principles. *See supra* note 5.

[8] Nasdaq would submit each underlying trade to the National Securities Clearing Corporation for clearing. When Nasdaq becomes operational as a national securities exchange, these trades will be reported as ''covered sales'' of the exchange for the purposes of Section 31 of the Exchange Act. If the Crossing Network is launched before Nasdaq is operational as an exchange, the NASD will report these trades to NSCC for the purposes of Section 31 of the Exchange Act.

consolidated last sale price varies significantly from the NOCP or the Primary Market Close, based on information that becomes available after the market close. If the post-close cross would not execute within a preset boundary (the ''Threshold Percentage''),[9] the cross would not occur and be automatically cancelled by Nasdaq.

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 15A of the Exchange Act[10] and the rules and regulations thereunder.[11] Specifically, the Commission finds the proposal to be consistent with Section 15A(b)(6) of the Exchange Act,[12] which requires the NASD's rules to be designed, among other things, 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Nasdaq Crossing Network would provide market participants and investors with an additional mechanism for order execution. The Commission, in relying on Nasdaq's representation that participation in the RPCs would be voluntary and open to all Nasdaq market participants and would not result in any advantage to market participants that participate in RPCs over those market participants that do not choose to participate, believes that the Nasdaq Crossing Network is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq has proposed to execute RPC orders at a predetermined reference price at a randomly selected point in time during a one-minute trading window. The Commission notes that using the automated and random matching mechanism to execute an RPC cross should minimize the opportunity for manipulation. In addition, the Commission notes that, should Nasdaq desire to add more frequent crosses or to modify the time of the crosses in the future, it must submit a rule change to the Commission pursuant to 19(b) of the Exchange Act.[13] Because RPC orders that are executed during the regular hours session would be executed at the midpoint of the NBBO, it is possible that a Nasdaq member would trade ahead of a held customer order by less than $0.01 (*i.e.*, $0.005). The Commission believes that such an event would trigger a Manning Rule obligation.[14]

The Commission believes that the RPC is reasonably designed to promote just and equitable principles of trade. The Commission notes that any transaction on the Crossing Network effected in non-Nasdaq listed securities would be subject to the relevant short sale restrictions until Nasdaq requests and receives appropriate relief.[15] In addition, the Commission notes Nasdaq's representation that this proposed rule change will not alter the continued accuracy of the representations made by Nasdaq in the letter requesting interpretive guidance with respect to the application of Rule 11a2–2(T) under the Exchange Act that was submitted in connection with Nasdaq's application for registration as a national securities exchange.[16]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[17] that the proposed rule change (SR–NASD–2005–140), as amended by Amendments No. 1 and 2, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–10923 Filed 7–11–06; 8:45 am]

BILLING CODE 8010–01–P

[9] Initially, the Threshold Percentage would be set at ten percent, with a $0.50 difference between the NCOP or the Primary Market Close and the consolidated last sale price. Any changes to the Threshold Percentage would be made in advance of application and would be communicated to members. Nasdaq would publish any changes to the Threshold Percentage via its public NasdaqTrader Web site.

[10] 15 U.S.C. 78*o*–3.

[11] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 15 U.S.C. 78s.

[14] *See supra* note 5.

[15] *Id.*

[16] *See* letter to Nancy M. Morris, Secretary, Commission, and Elizabeth King, Associate Director, Division of Market Regulation, Commission, from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, dated January 12, 2006. The ''effect and execute'' rule provides exchange members with an exemption from the prohibition in Section 11(a) of the Exchange Act against a member of a national securities exchange effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies. In reliance on Nasdaq's representations in its letter, the Commission concluded in its order approving Nasdaq's exchange registration application that Nasdaq Exchange members that enter orders into Nasdaq Execution Systems satisfy the requirements of Rule 11a2–2(T) under the Exchange Act. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order 12372

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 22 existing Small Business Development Centers (SBDCs) for refunding on October 1, 2006, subject to the availability of funds. Six states do not participate in the EO 12372 process; therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 60 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the **ADDRESSES** section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 30 days from the date of publication of this notice to the SBDC.

ADDRESSES:

Addresses of Relevant SBDC State Directors

Mr. Al Salgado, Region Director, Univ. of Texas at San Antonio, 501 West Durango Blvd., San Antonio, TX 78207. (210) 458–2450.

Mr. Conley Salyer, State Director, West Virginia Development Office, 950 Kanawha Boulevard, East Charleston, WV 25301. (304) 558–2960.

Mr. Clinton Tymes, State Director, University of Delaware, One Innovation Way, Suite 301, Newark, DE 19711. (302) 831–2747.

Ms. Carmen Marti, SBDC Director, Inter American University of Puerto Rico, Ponce de Leon Avenue, #416, Edificio Union Plaza, Seventh Floor, Hato Rey, PR 00918. (787) 763–6811.

Mr. Michael Young, Region Director, University of Houston, 2302 Fannin, Suite 200, Houston, TX 77002. (713) 752–8425.

Ms. Becky Naugle, State Director, University of Kentucky, 225 Gatton College of Business Economics, Lexington, KY 40506–0034. (859) 257–7668.

Ms. Liz Klimback, Region Director, Dallas Community College, 1402 Corinth Street, Dallas, TX 75212. (214) 860–5835.

Ms. Rene Sprow, State Director, Univ. of Maryland @ College Park, 7100 Baltimore Avenue, Suite 401, Baltimore, MD 20742–1815. (301) 403–8300.

Mr. Craig Bean, Region Director, Texas Tech University, 2579 South Loop 289, Suite 114, Lubbock, TX 79423–1637. (806) 745–3973.

Ms. Debbie Popp, Acting State Director, University of Wyoming, P.O. Box 3922, Laramie, WY 82071. (307) 766–3505.

Mr. Max Summers, State Director, University of Missouri, 1205 University Avenue, Suite 300, Columbia, MO 65211. (573) 882–1348.

Mr. Jon Ryan, State Director, Iowa State University, 340 Gerdin Business Building, Ames, IA 50011–1350. (515) 294–2037.

Mr. James L. King, State Director, State University of New York, Corporate Woods Building, Albany, NY 12246. (518) 641–0613.

Ms. Michele Abraham, State Director, Ohio Department of Development, 77 South High Street, 28th Floor, Columbus, OH 43216–1001. (614) 466–5102.

Ms. Lenae Quillen-Blume, State Director, Vermont Technical College, P.O. Box 188, Randolph Center, VT 05061–0188. (802) 728–9101.

Mr. Warren Bush, SBDC Director, University of the Virgin Islands, 8000 Nisky Center, Suite 720, St. Thomas, U.S. VI 00802–5804. (340) 776–3206.

FOR FURTHER INFORMATION CONTACT: Antonio Doss, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW., Sixth Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with SBA, the general management and oversight of SBA, and a state plan initially approved by the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) Increase economic growth;

(c) Assist more small businesses; and

(d) Broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC service centers. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate service centers so that they are as accessible as possible to small businesses;

(b) Open all service centers at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) Develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) Maintain lists of private consultants at each service center.

Dated: June 29, 2006.

Antonio Doss,

Associate Administrator for Small Business Development Centers.

[FR Doc. E6–10872 Filed 7–11–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing U.S. Small Business Administration Region IX Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region IX Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Thursday, July 20, 2006, at 9 a.m. The meeting will take place at the San Diego Unified Port District, Don L. Nay Port Administration Building, 3165 Pacific Highway, San Diego, CA 92101–3500. The purpose of the meeting is to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Cynthia Harris, in writing or by fax, in order to be put on the agenda. Cynthia Harris, Public Information Officer, SBA, 550 West C Street, Suite 550, San Diego, CA 92101–3500, phone (619) 557–7250, Ext. 1155 and fax (619) 557–5894, e-mail: *Cynthia.harris@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Matthew K. Becker,

Committee Management Officer.

[FR Doc. E6–10887 Filed 7–11–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2006–24502]

Notice of Request for Information Collection Approval

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice

announces that the Information Collection Request abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval. The ICR describes the nature of the information collection and its expected cost and burden.

The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 19, 2006, [FR Vol. 71, No. 75, page 20154]. No comments were received.

DATE: Comments on this notice must be received by August 11, 2006: attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Aloha Ley, Office of Aviation Analysis, X–50, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2347.

SUPPLEMENTARY INFORMATION:

Titles: (1) Application for Small Community Air Service Development Program Grant; (2) Enplanement Data form; (3) Final Report form; and (4) Grant Reimbursement form.

OMB Numbers: Existing Collection without prior OMB authorization

Affected Public: Small communities/airports seeking financial grants to improve their air service and grant recipients under the Small Community Air Service Development Program.

Total Annual Estimated Burden: 13,200 hours. This consists of a maximum of 8,000 hours for the filing of applications; 480 hours for enplanement reports; 400 hours for the filing of final reports; and 4,320 for reimbursement requests.

Comments are invited on: (a) Whether the proposed collection of information is reasonable for the proper administration of the Small Community Air Service Development Program by the Department, and (b) the accuracy of the Department's estimate of burden of the described information collection.

Issued in Washington, DC, on July 6, 2006.

Steven B. Lott,

Manager, Strategic Integration, IT Investment Management Office.

[FR Doc. E6–10918 Filed 7–11–06; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at Aransas County Airport, Rockport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Aransas County Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before August 11, 2006.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Honorable Glenn D. Guillory, Aransas County Judge, at the following address: Aransas County Judge, 301 North Live Oak, Rockport, Texas 78383.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Clark, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650, Telephone: (817) 222–5659, e-mail: *rodney.clark@faa.gov*, fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at Aransas County Airport under the provisions of the AIR 21.

On May 9, 2006, the FAA determined that the request to release property at Aransas County Airport, submitted by the State, met the procedural requirements of the Federal Aviation Regulations, Part 155.

The following is a brief overview of the request: The County of Aransas requests the release of 8.75 acres of non-aeronautical use airport property. The land was part of a transfer from the Federal government via the Surplus Property Act of 1944. The funds generated by the release will be used for upgrading, maintenance, operation and development of the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Aransas County Airport in Rockport, Texas, telephone number 361–790–0141.

Issued in Fort Worth, Texas on June 27, 2006.

Kelvin Solco,

Manager, Airports Division.

[FR Doc. 06–6142 Filed 7–11–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Operating Requirements: Commuter and On-Demand Operation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This information is needed to identify and track regulated entities required to implement anti-drug and alcohol misuse prevention programs as well as those companies that opt to implement programs.

DATES: Please submit comments by September 11, 2006.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Tile: FAA Research and Development Grants.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0685.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: A total of 7240 Respondents.

Frequency: The information is collected as needed.

Estimated Average Burden per Response: Approximately 10 minutes per response.

Estimated Annual Burden Hours: An estimated 1,066 hours annually.

Abstract: This information is needed to identify and track regulated entities required to implement anti-drug and alcohol misuse prevention programs as well as those companies that opt to implement programs. The respondents are aviation employees operating under 14 CFR parts 121, 135, and 145, Air traffic control facilities not operated by the FAA or the U.S. military, operators as defined in 14 CFR 135(c), and certain contractors.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 1033, Federal Aviation Administration, Information Systems and Technology Services Staff, ABA–20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection or other forms of information technology.

Carla Mauney,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 06–6140 Filed 7–11–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Flight Operational Quality Assurance (FOQA) Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. FOQA is a voluntary program for the routine collection and analysis of digital flight data from airplane operations. The purpose is to enable early corrective action for potential threats to safety.

DATES: Please submit comments by September 11, 2006.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Flight Operational Quality Assurance (FOQA) Program.

Type of Request: Revision of an approved collection.

OMB Control Number: 2120–0660.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 30 Respondents.

Frequency: The information is collected monthly.

Estimated Average Burden per Response: Approximately 1 hour per response.

Estimated Annual Burden Hours: An estimated 360 hours annually.

Abstract: FOQA is a voluntary program for the routine collection and analysis of digital flight data from airplane operations. The purpose is to enable early corrective action for potential threats to safety. This final rule codifies protection from punitive enforcement action based on FOQA information, and requires participating air carriers to provide aggregate FOQA data to the FAA.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 1033, Federal Aviation Administration, Information Systems and Technology Services Staff, ABA–20, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 6, 2006.

Carla Mauney,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 06–6141 Filed 7–11–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–25324, Notice 1]

Automobili Lamborghini SpA; Bugatti Automobiles S.A.S. and Bugatti Engineering GmbH; Group Lotus Plc; Morgan Motor Company Limited; Maserati Receipt of Applications for a Temporary Exemption From Advanced Air Bag Requirements of FMVSS No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of petitions for temporary exemptions from provisions of Federal Motor Vehicle Safety Standard No. 208, *Occupant crash protection.*

SUMMARY: In accordance with the procedures in 49 CFR part 555, Automobili Lamborghini SpA (''Lamborghini''); Bugatti Automobiles S.A.S. and Bugatti Engineering GmbH (collectively, ''Bugatti''); Group Lotus Plc (''Lotus''); Morgan Motor Company Limited (''Morgan''); and Maserati SpA (''Maserati'') have separately petitioned the agency for a Temporary Exemption from certain advanced air bag requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant crash protection.* The basis for each application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.[1]

This notice of receipt of applications for temporary exemption is published in accordance with the statutory provisions of 49 U.S.C. 30113(b)(2). NHTSA has made no judgment on the merits of the applications. Please note that we are publishing the notice of receipt of the five applications together to ensure efficient use of agency resources and to facilitate the timely processing of the applications. NHTSA will consider each application separately. We ask that commenters also consider each application separately and submit comments specific to individual applications.

DATES: You should submit your comments not later than July 27, 2006.

FOR FURTHER INFORMATION CONTACT: Ed Glancy or Eric Stas in the Office of Chief Counsel at NHTSA NCC–112, 400 7th

[1] To view the applications, go to: *http://dms.dot.gov/search/searchFormSimple.cfm* and enter the docket number set forth in the heading of this document.

Street, SW., Room 5215, Washington, DC 20590 (Phone: 202–366–2992; Fax 202–366–3820).

Comments: We invite you to submit comments on the applications described above. We ask that the application from each manufacturer be considered separately and comments be submitted for individual manufacturers. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site by clicking on ''Help and Information'' or ''Help/Info.''
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided.

Docket: For access to the docket in order to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

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

We shall consider all comments received before the close of business on the comment closing date indicated below. To the extent possible, we shall also consider comments filed after the closing date.

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks requiring what is commonly known as ''advanced air bags.'' [2] The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate to high speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats. The new requirements were phased in beginning with the 2004 model year.

Small volume manufacturers are not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years ago. However, because the new requirements were challenging, major air bag suppliers concentrated their efforts on working with large-volume manufacturers and thus, until recently, small volume manufacturers had limited access to advanced air bag technology. Because of the nature of the requirements for protecting out-of-position occupants, ''off-the-shelf'' systems could not be readily adopted. Further complicating matters, because small volume manufacturers build so few vehicles, the costs of developing custom advanced air bag systems compared to potential profits discouraged some air bag suppliers from working with small volume manufacturers.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers' providing de-powered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implication of any temporary exemptions granted by this agency. In the present case, we are seeking comments on five separate petitions for a temporary exemption from the advanced air bag requirements. The petitioners are all manufacturers of very expensive, low volume, exotic sports cars.

[2] See 65 FR 30680.

II. Petitioners for Economic Hardship Exemptions

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, Lamborghini, Bugatti, Lotus, Morgan, and Maserati have separately petitioned the agency for a Temporary Exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for each application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

Each of the individual petitions are provided for review in the docket for this notice.

III. Statutory Background for Economic Hardship Exemptions

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not include any provision indicating that a manufacturer might have substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of ''manufacturer'' (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

IV. Lamborghini

Background. Lamborghini is an Italian corporation formed in 1963 to produce high-performance sports cars. This application concerns the Lamborghini Murcielago which was developed in the mid 1990s and is now scheduled to continue in production until 2009. Originally, Lamborghini planned to begin selling the Murcielago in 1999 and to end production before September 2006. Because of financial hardship and a change in corporate ownership, the

petitioner did not begin sales of Murcielago until the very end of 2001, and is now forced to extend the product cycle of this vehicle.

Lamborghini has experienced financial problems for several years. Over the last 4 years (2001–2004), the company lost more than 180 million dollars. Lamborghini claims this economic hardship precluded the timely development of a new vehicle that could comply with advanced air bag requirements. With respect to the Murcielago, Lamborghini also has been unable to overcome a number of engineering problems associated with installing advanced air bags in the current vehicle configuration. If the exemption is not granted, the Murcielago model cannot be sold in the U.S. during the period 2006–2009, which petitioner stated could further delay the introduction of a fully compliant vehicle. Lamborghini thus asks for a temporary exemption from the advanced air bag requirements for the Murcielago until it is replaced by a brand new vehicle in 2009.

Eligibility. Lamborghini's total motor vehicle production in the most recent year of production was less than 10,000 vehicles. However, in 1998, Lamborghini was acquired by Audi, a large motor vehicle manufacturer. In discussing its eligibility for hardship relief, Lamborghini asserts that its relationship with Audi is ''arm's-length.'' Lamborghini operates independently, and services provided by Audi or Audi affiliates are paid for by Lamborghini.

The agency examined the relationship between Lamborghini and Audi. We tentatively conclude that Lamborghini is eligible to apply for a temporary exemption based on the following factors. First, there is no similarity of design between the cars produced by Lamborghini and cars produced by Audi. Second, Lamborghini has indicated that it has paid for all services or assistance provided by Audi. Third, cars are imported and sold through separate distribution channels independent of the Audi dealer network. We note that our conclusions as to eligibility are tentative and the agency has not made a final determination as to whether Lamborghini is eligible to obtain an exemption.

Requested exemptions. Lamborghini states that it intends to certify the Murcielago as complying with the rigid barrier belted test requirement using the 50th percentile adult male test dummy set forth in S14.5.1 of FMVSS No. 208. The petitioner states that it previously determined the Murcielago's compliance with rigid barrier unbelted test requirements using the 50th percentile adult male test dummy through the S13 sled test using a generic pulse rather than a full vehicle test. Lamborghini states that it, therefore, cannot at present say with certainty that the Murcielago will comply with the unbelted test requirement under S14.5.2, which is a 25 mph rigid barrier test.

As for the Murcielago's compliance with the other advanced air bag requirements, Lamborghini states that it does not know whether the Murcielago will be compliant because to date it has not had the financial ability to conduct the necessary testing.

As such, Lamborghini is requesting an exemption for the Murcielago from the rigid barrier unbelted test requirement with the 50th percentile adult male test dummy (S14.5.2), the rigid barrier test requirement using the 5th percentile adult female test dummy (belted and unbelted, S15), the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25).

Economic Hardship. Lamborghini states that over the last 4 years (2001–2004), it lost over $180 million with the yearly losses averaging ~ $47 million. Lamborghini asserts that, notwithstanding engineering impracticability described below, it could not afford to develop an advanced air bag system for the Murcielago and engineer its replacement by 2009. If the exemption is denied and U.S. sales of the Murcielago end on September 1, 2006, Lamborghini projects a loss of $12.7 million between September of 2006 and September of 2009.

Lamborghini estimates the total cost of an advanced air bag program to be about $24 million. Lamborghini states that the development of an advanced air bag system for the Murcielago's successor can be funded through the Murcielago's continued U.S. sales.

Lamborghini initially did not foresee that the Murcielago would still be in production when advanced air bags became mandatory. It was designed in the mid-1990s and was intended to be launched in 1999, with production ending in 2006. Due to financial hardship and changes in ownership, the Murcielago was not sold until late in 2001. Further financial hardship compounded by shifts in the exchange rate between the U.S. dollar and the Euro and the need to amortize costs of developing the Murcielago necessitate continued production of that vehicle until 2009.

Good faith efforts to comply. Once the petitioner realized that the Murcielago would have to continue beyond September 2006, Lamborghini undertook to development an advanced air bag system. As early as 2001, Lamborghini began contacting air bag manufacturers in an effort to develop a compliant advanced air bag system. It pursued this matter with at least four suppliers. However, none provided a workable solution. The efforts continued until the summer of 2005, at which point Lamborghini concluded that technical constraints prevented development of advanced air bags for the Murcielago. Specifics of the technical difficulties are described in the petition.

Lamborghini argues that an exemption would be in the public interest. The petitioner argues that the number of vehicles affected by an exemption would be very small and will therefore have, at most, a negligible impact on the overall safety of U.S. highways. Further, the Murcielago is likely to be operated only on a limited basis. Lamborghini also argues that granting an exemption will assure proper parts and service are available in the U.S. to support existing owners of Lamborghini automobiles. Finally, it argues that the Murcielago features other voluntarily provided safety features including a passenger air bag ''on-off switch,'' ABS, Traction Control System, and 4-wheel drive.

V. Bugatti

Background. Bugatti was a manufacturer of high performance motor vehicles from 1909 until the outbreak of World War II. In the past two decades, several attempts were made to revive the marquee. Finally, under the new ownership in 1998, the petitioner began designing a new vehicle called the Veyron 16.4 (Veyron). Only 300 vehicles are to be made, each costing in excess of $1,000,000. Bugatti originally planned to begin selling the vehicle in September of 2003 and end production before the advanced air bag requirements went into effect. However, significant development issues delayed production until September of 2005. The petitioner argues that it tried in good faith but could not bring the vehicle into compliance with the advanced air bag requirements, and would incur substantial economic hardship if it cannot sell approximately 100 vehicles in the U.S. after September 1, 2006.

Eligibility. Bugatti just began producing vehicles and its total production has not reached 100. However, in 1998, Bugatti was acquired by Volkswagen AG (VW), a large motor vehicle manufacturer. In discussing its eligibility for hardship relief, Bugatti asserts that its relationship with VW is ''arm's-length.'' Bugatti operates independently, and services provided by Bugatti affiliates were paid for by Bugatti.

The agency examined the relationship between Bugatti and VW. We tentatively conclude that Bugatti is eligible to apply for a temporary exemption based on the following factors. First, there is no similarity of design between the cars produced by Bugatti and cars produced by VW. Second, Bugatti operated independently from VW in designing and developing the Veyron. Third, almost all of the parts used in the Veyron production are obtained from suppliers that do not supply parts to VW. Lastly, when Bugatti has used test tracks or other facilities of VW in the course of developing the Veyron, it has reimbursed Volkswagen AG for the costs of those facilities on an ''arms-length'' basis. We note that our conclusions as to eligibility are tentative, and the agency has not made a final determination as to whether Bugatti would be eligible to obtain an exemption.

Requested exemptions. Bugatti stated its intention to certify compliance of the Veyron model, produced on and after September 1, 2006 for sale in the United States, with rigid barrier belted and unbelted test requirements using the 50th percentile adult male test dummy (S14.5.1 and S14.5.2), the rigid barrier test requirements using the 5th percentile adult female test dummy (belted and unbelted, S15), and the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17).

As for the other advanced air bag requirements, Bugatti states that it does not know whether the Veyron will be compliant as it has not had the financial ability to conduct the necessary development and testing.

Bugatti is requesting an exemption from the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25).

Economic hardship. Publicly available information and also the financial documents submitted to NHTSA by the petitioner indicate that the Veyron project will result in financial losses whether or not Bugatti obtains a temporary exemption. At the time of the application, Bugatti had spent over $360 million on the Veyron project with little or no return on their investment. If the exemption is granted, Bugatti projects a net loss of $3.7 million. If the exemption is denied, Bugatti projects a net loss of $22.5 million. Further, denial of the petition would likely preclude the petitioner from developing new fully compliant vehicles. The petitioner argues that a denial of this petition could ultimately put Bugatti out of business.

Good faith efforts to comply. As stated above, Bugatti originally anticipated that all of the Veyrons destined for the U.S. market would be manufactured prior to September 1, 2006. As such, the company did not believe the vehicles would need to be equipped with advanced air bag systems. However, due to delays in completing the design and engineering of the vehicle, Bugatti did not begin production of the Veyron until the fall of 2005, nearly 2 years after the anticipated initial start date.

To install an advanced air bag system on the Veyron, modifications would be required to the steering wheel, the seats, the air bag system, the safety belts, the knee bolsters, and the instrument panel. Bugatti sought proposals from several potential suppliers for the development of an advanced air bag system for the Veyron, but received only one proposal. According to the petitioner, the proposal showed that the development and implementation costs for such a system was far beyond its current financial capabilities, particularly when considered in terms of amortizing those costs over a population of just 100 vehicles. The proposal indicated that total development, testing, and implementation of an advanced air bag system for the Veyron would cost over $12 million. More important, development would take at least 24 months, which would have required Bugatti to completely shut down its operations. The petitioner argued this scenario is not feasible for a manufacturer intending to produce a total of 300 vehicles. For further details, see the petition.

Bugatti argues that an exemption would be in the public interest. The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically, Bugatti asserted that there is consumer demand in the U.S. for the Veyron, and granting this application will allow the demand to be met. Bugatti also states that granting the exemption will ''have negligible impact on motor vehicle safety because of the limited number of vehicles sold and because each vehicle is likely to travel on the public roads only infrequently.'' Further, Bugatti states that it is extremely unlikely that young children would often be passengers in this vehicle, and therefore permitting a vehicle to be sold without an air bag designed to protect small children is unlikely to have any adverse impact on safety. Finally, Bugatti indicates that the Veyron incorporates many safety features that are not required by the FMVSSs, including anti-lock brakes, electronic stability control, all-wheel drive, run-flat tires, and a dynamic rear spoiler that acts as a ''parachute brake'' during high speed emergency braking.

VI. Lotus

Background. Lotus, which was founded in 1955, produces small quantities of performance cars. The company has experienced significant financial hardship issues for many years. In 1998, Lotus began to develop a fully compliant vehicle for the U.S. market. However, due to lack of capital, the project was cancelled in 2001. The petitioner instead decided to sell a vehicle designed for the European market, the Lotus Elise, in the U.S. Prior to the U.S. launch of the Elise in 2004, Lotus requested and received a part 555 temporary exemption for the Bumper Standard and certain headlamp requirements. Over the last 18 months, the petitioner continued to experience economic hardship. Nevertheless, Lotus has worked on the development of compliant bumpers and headlamps at the cost of $27 million. These systems will be put into production in September 2006 and April 2007, respectively. However, the petitioner has been unable to develop an advanced air bag system for the Elise. According to Lotus, the sales of the fully complaint vehicle are slated to begin in 2008, but only if it is able to derive revenue from the U.S. sales of the Elise in the interim.

Eligibility. Lotus produced approximately 5,600 vehicles in 2005. The issue of Lotus' eligibility for a financial hardship exemption was previously addressed by NHTSA on three separate occasions.[3] Although Lotus is owned by Proton Holdings Berhad, Lotus remains an operationally independent small volume manufacturer and the material facts regarding its ownership have not changed.

Requested exemptions. Lotus states that its United States vehicle production on and after September 1, 2006 will

[3] See 64 FR 61379 (November 10, 1999); 68 FR 10066 (March 3, 2003); 69 FR 5658 (February 5, 2004).

comply with the rigid barrier belted test requirement using the 50th percentile adult male test dummy (S14.5.1). The petitioner states that it previously determined the Elise's compliance with rigid barrier unbelted test requirements using the 50th percentile adult male test dummy through the S13 sled test using a generic pulse rather than a full vehicle test. Therefore, Lotus states, it cannot at present say with certainty that the Elise would comply with the unbelted test requirement under S14.5.2, which is a 25 mph rigid barrier test.

As for the other advanced air bag requirements, Lotus states that it does not know whether the Elise would be compliant as Lotus has not had the financial ability to conduct the necessary research and development.

As such, Lotus is requesting an exemption for the Elise from the rigid barrier unbelted test requirement with the 50th percentile adult male test dummy (S14.5.2), the rigid barrier test requirement using the 5th percentile adult female test dummy (belted and unbelted, S15), the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25).

Economic Hardship. Lotus has suffered substantial economic hardship for many years. In the past five years, its losses total almost $125 million. When Lotus successfully petitioned NHTSA for an exemption in 2004, it forecasted profits for fiscal years 2004 and 2005. However, these profits never materialized, and Lotus instead lost $13 million in 2004 and approximately $5 million in 2005.[4]

Lotus asserts that if the exemption is not granted, the company will be forced out of the U.S. market starting in September 2006 until sometime in 2008 for lack of any product to sell. Without an exemption, Lotus predicts losses totaling over $100 million in the next three years. Lotus argues that the cash required for Lotus to maintain a presence in the U.S. and to compensate its dealers for no product would not be sustainable. Further, there would not be funds to develop a new fully compliant vehicle. In short, the company could be forced entirely out of business.

Good faith efforts to comply. Lotus asserts that it has tried in good faith to comply with the advanced air bag requirements. The development work for advanced air bags did not begin until 2003 because Lotus was not originally planning on selling the Elise in the U.S. Instead a new fully compliant vehicle was intended to be sold in the U.S. That project was cancelled.

Lotus has been unable to acquire an ''off-the-shelf'' advanced air bag system. First, many existing advanced air bag designs, technical specifications, and tooling are the intellectual property of the original equipment manufacturer (OEM) and not the supplier. Lotus experienced reluctance to allow the transfer of this intellectual property for its use. Second, the passenger air bag size, inflator pressure, venting and deployment angle have been specifically designed for the original OEM vehicle crash pulse and interior geometry. Therefore, to source a passenger air bag requires reverse engineering, suiting the vehicles' interior package, and modifying the vehicle crash pulse to suit the OEM air bag. Third, the suppression option for compliance was not possible due to the lack of available sensor technology. Instead, to pursue the low risk deployment option, Lotus would need a top mounted passenger air bag. However, to package the top mounted passenger air bag in the Elise would require a complete redesign of a major structural part of the extruded aluminum chassis. At the location where the passenger air bag would need to be situated, there is a major structural cross beam that is bonded into the chassis. New tooling for the instrument panel would also be required along with a new air bag cover. The air bag cover would require a new unique design to overcome the issues of out-of-position, small occupant air bag deployments. Fourth, advanced air bag occupant classification systems require a compliant seat frame base. The Lotus Elise has a rigid shell seat with only a minimum level of foam; therefore, another technical solution would be required, such as seat frame weight sensors. Currently, this solution is under development by suppliers but is not now available as a production solution.

Lotus argues that an exemption would be in the public interest. First, Lotus asserts that the current Elise standard air bag system does not pose a safety risk. Lotus indicates that it knows of no injuries or deaths to infants, children, or other occupants caused by the Elise's current standard air bag system. Lotus further notes that the passenger seat is fixed in its rearmost position, thereby offering improved passenger safety. Lotus intends to use all available resources to try to engineer a passenger air bag on-off switch to be ready by September 2006. This switch will further reduce air bag risks to children.

Second, Lotus argues that denial of the petition would result in loss of jobs within Lotus and by independent dealers and repair specialists in the U.S. because the petitioner would be forced to abandon the U.S. market. Lotus also argued that consumer choice would be adversely affected.

VII. Morgan

Background. Founded in 1909, Morgan is a small privately owned vehicle manufacturer producing approximately 600 specialty sports cars per year. Morgan manufactures several models, but only sells the Aero 8 in the U.S. Morgan intended to produce a vehicle line specific to the U.S. market, with Ford supplying the engine and transmission. However, for technical reasons, the project did not work out, and Morgan temporarily stopped selling vehicles in the U.S. in 2004. In May of 2005, Morgan obtained a temporary exemption from the Bumper Standard and began selling the Aero 8 in the U.S. Morgan now asks for a temporary exemption from advanced air bag requirements because of financial hardship.

Eligibility. Morgan produces approximately 600 vehicles per year. Morgan is an independent company.

Requested exemptions. Morgan stated that it intends for its U.S. Aero production on and after September 1, 2006 to comply with the rigid barrier belted test requirement using the 50th percentile adult male test dummy (S14.5.1) and the rigid barrier belted test requirement using the 5th percentile adult female test dummy (S15.1).

Morgan states that the Aero's compliance with the rigid barrier unbelted test requirement using the 50th percentile adult male test dummy was determined through the S13 sled test using a generic pulse rather than a full vehicle test. This petitioner further states that it cannot at present say with certainty that the Aero would comply with the unbelted test requirement under S14.5.2, which is a 25 mph rigid barrier test.

As for the other advanced air bag requirements, Morgan states that it does not know whether the Aero would be compliant as Morgan has not had the financial ability to conduct the necessary development and testing.

Morgan is requesting an exemption for the Aero from the rigid barrier unbelted test requirement with the 50th percentile adult male test dummy (S14.5.2), the rigid barrier unbelted test

[4] Lotus also derives profits from engineering consulting for other small volume manufacturers. However, that business has declined. The weak dollar has also had a major effect on profits.

requirement using the 5th percentile adult female test dummy (S15.2), the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25).

Economic Hardship. Morgan argues that meeting the advanced air bag requirements is estimated to cost between $3,196,179 and $5,066,938 and is not within the financial capability of the company.[5] Morgan's financial submission indicates the company's losses over the last 5 years have totaled more than 3.6 million dollars. In 2004, Morgan made a small profit for the first time in 3 years. Morgan predicted a net loss for fiscal year 2005 and will submit updated financial statements prior to the agency making a final decision on the petition.

Without an exemption, Morgan would be forced once again to withdraw from the U.S. market. With no income from U.S. sales, Morgan asserts that it will not be able to fund an advanced air bag program for a future vehicle or return to profitability. A loss of $8.6 million is projected. Morgan further asserts that if the petition is denied, it could soon become insolvent.

Good faith efforts to comply. Morgan has been working with the air bag supplier Siemens to develop an advanced air bag system for the Aero 8. However, a lack of funds and technical problems precluded the implementation of an advanced air bag system for the Aero 8. The minimum time needed to develop an advanced air bag system (provided that there is a source of revenue) is 2 years. With no other product to sell in the meantime, Morgan needs to rely on the Aero 8 sales to finance this project.

Specific technical challenges include the following. Morgan does not have access to necessary sensor technology to pursue the ''full suppression'' passenger air bag option. Due to the design of the Aero 8 platform dashboard, an entirely new interior solution and design must be developed. Chassis modifications are anticipated due to the originally stiff chassis design.

Morgan argues that an exemption would be in the public interest. Morgan put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically, Morgan asserts the current Aero 8's standard air bag system does not pose a safety risk. Morgan knows of no injuries caused by the Aero 8's current standard air bag system. If the exemption is denied and Morgan stops U.S. sales, Morgan's U.S. dealers would unavoidably have numerous lay-offs, resulting in decreased U.S. unemployment. Denial of an exemption would reduce the consumer choice in the specialty sports car market sector into which Morgan cars are offered. The Aero 8 will not be used extensively by owners, and is unlikely to carry small children. Finally, according to Morgan, granting an exemption would assure the continued availability of proper parts and service support for existing Morgan owners. Without an exemption, Morgan would be forced from the U.S. market, and Morgan dealers will find it difficult to support existing customers.

VIII. Maserati

Background. Maserati is a small volume Italian automobile manufacturer formed in 1914 that produces performance sports cars and luxury automobiles. Maserati has experienced frequent changes in ownership and financial hardship. The exemption is being sought for the Maserati Coupe and Spyder for a period of 16 months.

Eligibility. Maserati produced less than 6,000 vehicles in the most recent year of production. However, Maserati is owned by Fiat, a large vehicle manufacturer. Maserati asserts that its relationship with Fiat is ''arm's-length.'' Maserati operates independently, and services provided by Fiat are paid for by Maserati.

The agency examined the relationship between Maserati and Fiat. We tentatively conclude that Maserati is eligible to apply for a temporary exemption based on the following factors. First, there is no similarity of design between the cars produced by Maserati and cars produced by Fiat, and the Maserati Coupe/Spyder was designed without assistance from Fiat. Second, Maserati cars are imported and sold through separate distribution channels independent of Fiat, which does not sell vehicles in the U.S. We note that our conclusions as to eligibility are tentative, and the agency has not made a final determination as to whether Maserati is eligible to obtain an exemption.

Requested exemptions. Maserati stated that it intends for the Coupe/Spyder produced for the United States market on and after September 1, 2006 to comply with the rigid barrier belted and unbelted test requirements using the 50th percentile adult male test dummy (S14.5)

As for the Coupe/Spyder's compliance with the other advanced air bag requirements, Maserati states that it does not know whether the Coupe/Spyder will be compliant as it has not had the financial ability to conduct the necessary development and testing.

Accordingly, Maserati is requesting an exemption from the rigid barrier test requirement using the 5th percentile adult female test dummy (belted and unbelted, S15), the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25).

Economic hardship. Over the period of 2000–2005, the company lost 320,996,665 Euros ($385,195,998)[6]. The petitioner argues that an exemption is needed in order to avoid massive disruptions to the Maserati production system and loss of revenue until a fully-compliant model is introduced in early 2008. The exempted-vehicles will ''bridge the gap'' between the current Coupe/Spyder, with standard air bags, and the next version of the model line arriving in 2008 with advanced air bags. If the exemption is denied, the petitioner anticipates layoffs and a delay in introducing a new, fully complaint vehicle.

Good faith efforts to comply. Maserati states that it has been unable to overcome engineering problems associated with installing advanced air bags in the current Coupe/Spyder, a model line that is soon to go out of production. The design of the current Coupe/Spyder started in 1996, before the advanced air bag rule was promulgated. In the late 1990s, when Maserati decided to re-enter the U.S. market, it made the decision that the Coupe/Spyder would have a life span in the U.S. of 5 years, from 2002 through 2006. This decision was based on the fact that the model was introduced in Europe in 1997, and that the basic platform would therefore have a total life span of 9 years. Only in late 2005, Maserati concluded that it had to extend the life span of the Coupe/Spyder, by 16 months beyond the planned 2006 end date, because a fully compliant vehicle is not yet ready.

According to Maserati, it tried, but could not overcome the technical challenges associated with borrowing the advanced air bag system from Maserati's other model, the

[5] When costs for interior redesign, crash cars, and tooling are included, the estimate raises to between $5,648,679 and $7,519,438.

[6] The dollar-euro exchange rate used herein is 1 euro = $1.20.

Quattroporte, because the steering column and steering wheel are incompatible with the electrical system in the Coupe/Spyder. Use of the Quattroporte's passenger air bag would require redesigning the entire Coupe-Spyder dashboard. To position the Quattroporte's sensors in the Coupe-Spyder, it would have been necessary to change the seats. The sensors also could not be packaged in the Coupe-Spyder due to space problems, and the sensor software was incompatible with the Coupe-Spyder's electrical system.

Maserati argues that an exemption would be in the public interest. Maserati put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically, Maserati asserts the current Coupe-Spyder's air bag system does not pose a safety risk. Maserati knows of no injuries caused by the Coupe-Spyder's current standard air bag system. If the exemption is denied and Maserati stops U.S. sales, Maserati states that its goodwill with its U.S. dealer's would be negatively impacted. Further, Maserati asserts that denial of an exemption would reduce the consumer choice in the specialty sports car market sector into which Maserati cars are offered. Maseart asserts that the Coupe-Spyder will not be used extensively by owners, and is unlikely to carry small children. Finally, according to Maserati, granting an exemption would assure the continued availability of proper parts and service support for existing Maserati owners.

IX. Issuance of Notice of Final Action

We are providing a 15 day comment period in light of the short period of time between now and the time the advanced air bag requirements become effective for small volume manufacturers, i.e., September 1, 2006. After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued on: July 5, 2006.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. E6–10892 Filed 7–11–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–25323]

Saleen, Inc.; Receipt of Application for a Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of receipt of application for a temporary exemption from provisions of Federal Motor Vehicle Safety Standard No. 208, *Occupant crash protection.*

SUMMARY: In accordance with the procedures of 49 CFR part 555, Saleen, Inc. (Saleen) has applied for an extension of a Temporary Exemption from the automatic restraint requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection,* and an additional exemption from the advanced air bag requirements of that standard, both for the Saleen S7. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.[1]

We are publishing this notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and have made no judgment on the merits of the application.

DATES: You should submit your comments not later than July 27, 2006.

FOR FURTHER INFORMATION CONTACT: Ed Glancy or Eric Stas in the Office of Chief Counsel, NCC–112, (Phone: 202–366–2992; Fax 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Background

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production does not exceed 10,000, as determined by the NHTSA Administrator (15 U.S.C. 1410(d)(1)). Saleen has manufactured less than 20 Saleen S7's a year between model years 2003 and 2005. Applicant's other line of business consists of altering Ford Mustang vehicles. Saleen stated that it produced approximately 1500 Saleen Mustangs in model year 2005.

In June 2001, NHTSA granted Saleen a two-year hardship exemption from the automatic restraint requirements of FMVSS No. 208 (S4.1.5.3), expiring on April 16, 2003 (66 FR 33298; June 21, 2001). On January 22, 2004, we granted a renewal of the exemption for an additional three years, expiring on September 1, 2006.[2] Saleen has applied for a renewal of that exemption as well as an exemption from the advanced air bag provisions of FMVSS No. 208 (S14.2).[3]

In September of 2005, Saleen submitted an application for further exemption from the automatic restraint requirements of FMVSS No. 208, as well as an exemption from the advanced air bag requirements of the standard. Saleen subsequently withdrew the petition, and later resubmitted the application in January of 2006. Saleen then provided supplemental information May 11, 2006.

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what is commonly known as ''advanced air bags.'' [4] The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate to high speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats. The new requirements were phased in beginning with the 2004 model year.

Small volume manufacturers are not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years ago. However, because the new requirements were challenging, major air bag suppliers concentrated their efforts on working with large-scale manufacturers and thus, until recently, small volume

[1] To view the application using the Docket number listed above, please go to: *http://dms.dot.gov/search/searchFormSimple.cfm.*

[2] In accordance with 49 CFR 555.8(e), Saleen's original exemption remained in effect until the publication of the 2004 grant notice because the application for renewal was filed more than 60 days prior to the expiration of the exemption.

[3] Saleen's application states that Saleen is requesting an exemption from the advanced air bag provisions, which it cited as S5.1.1(b). S5.1.1 is the advanced air bag provision for occupant crash protection requirements for the 50th percentile adult male in a frontal barrier crash test. We believe that Saleen meant to cite S14.2, which establishes all of the advanced air bag requirements, including those for the 5th percentile adult female, children, and infants.

[4] See 65 FR 30680; May 12, 2000.

manufacturers had limited access to advanced air bag technology. Because of the nature of the requirements for protecting out-of-position occupants, ''off-the-shelf'' systems could not be readily adopted. Further complicating matters, because small volume manufacturers build so few vehicles, the costs of developing custom advanced air bag systems compared to potential profits discouraged some air bag suppliers from working with small volume manufacturers.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicates that the agency's efforts in the area of consumer education and manufacturers' providing de-powered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

We note that Saleen is requesting not only an exemption from the advanced air bag requirements, but also a continued exemption from the automatic restraint requirements altogether. As always, we are concerned about the potential safety implication of any temporary exemptions granted by this agency. The agency is accepting comment on granting Saleen's application.

II. Saleen's Statement of Need and Good Faith Effort

Saleen stated that its previous exemption extension request was intended to provide sufficient time for Saleen to sell and ship the Saleen S7 vehicles to generate the necessary cash flow to support the development of an air bag system that would be compliant with the advanced air bag requirements. The applicant stated that it intended to produce and sell a total of 36 vehicles by the end of 2003, with production slowly increasing to a rate of 50 vehicles per year. Saleen projected that this sales rate would have generated approximately $12.8 million in annual gross revenue by the end of 2003, which would then increase to approximately $17.8 million in annual gross revenue with the annual production of 50 vehicles. Saleen presented its actual annual sales as 13 vehicles, 8 vehicles, and 14 vehicles, in model years 2003, 2004, and 2005, respectively.

In the January 2005 application, Saleen stated that it intended to sell a total of 25 vehicles in the United States by the end of 2005, and an additional 10 vehicles in Europe. Maintaining an annual sales level of 35 vehicles, Saleen would generate a total of approximately $17.8 million. Saleen revised these projections stating that it was uncertain whether it would manufacturer the Saleen S7 for international sale, as European homologation is pending.

However, Saleen stated that increased sales of its other products in conjunction with the sales of the Saleen S7 will allow it to develop an air bag system that is compliant with FMVSS No. 208 by the end of calendar year 2008 at a cost of approximately $3.8 million. Saleen stated that this timeframe does not account for any delays, and as such, it is requesting a three year exemption, expiring September 1, 2009.

Saleen noted that in its previous application it explained that Saleen's relationship with Ford Motor Company in assisting in the manufacture of the Ford GT, an exotic sports car, would allow Saleen to rely on many of the components from the Ford GT. However, Saleen stated that the Ford GT was not manufactured as complying with the advanced air bag requirements. As such, Saleen stated that it was not able to rely on the advanced air bag technology used in the Ford GT.

Since the original air bag exemption, Saleen stated that it has hired an engineering project manger responsible for air bag development, has been working with engineers at Takata, Autoliv, and Bosch in researching all of the program requirements as well as developing a test plan and component designs for development of a system compliant with the advanced air bag requirement. Saleen also stated that it is working with Kettering University in Flint Michigan for additional research and testing.

III. Saleen's Statement of Public Interest

The applicant put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest. Specifically, Saleen stated that the Saleen S7 is a unique vehicle designed and produced in the United States utilizing many domestic sourced components. If an exemption were granted Saleen stated that it would be able to maintain its current payroll of 150 full time employees and continue the purchase of domestic sourced components. Further, Saleen stated that the Saleen S7 otherwise conforms to all applicable FMVSSs.

IV. How You May Comment on the Saleen Application

We invite you to submit comments on the application described above. You may submit comments (identified by the DOT Docket number in the heading of this document) by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site by clicking on ''Help and Information'' or ''Help/Info.''
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided.

Docket: For access to the docket in order to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

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

We are providing a 15 day comment period in light of the short period of time between now and September 1, 2006. We shall consider all comments received before the close of business on the comment closing date indicated below. To the extent possible, we shall also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: July 5, 2006.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. E6–10891 Filed 7–11–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket Number: RITA–2006–25247]

Request for Public Comments

AGENCY: Research and Innovative Technology Administration (RITA), DOT.

ACTION: Notice and request for comments.

SUMMARY: Pursuant to section 5208 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), the Secretary of Transportation, acting through the Administrator of the Research and Innovative Technology Administration (RITA), is developing a 5-year transportation research and development strategic plan. The purpose of this notice is to invite interested parties to review and submit comments on the draft Strategic Research, Development and Technology Plan of the Department of Transportation (DOT). The plan can be found by using the above docket number at *http://dms.dot.gov.*

DATES: Comments must be received on or before August 9, 2006.

ADDRESSES: You can mail or hand-deliver comments to the U.S. Department of Transportation (DOT), Dockets Management System (DMS). You may submit your comments by mail or in person to the Docket Clerk, Docket No. RITA–2006–25247, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001. Comments should identify the docket number; paper comments should be submitted in duplicate. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on Docket RITA–2006–25247.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (the Internet, fax, or professional delivery service) to submit comments to the docket and ensure their timely receipt at U.S. DOT. You may fax your comments to the DMS at (202) 493–2251.

If you wish to file comments using the Internet, you may use the DOT DMS Web site at *http://dms.dot.gov.* Please follow the online instructions for submitting an electronic comment. You can also review comments online at the DMS Web site at *http://dms.dot.gov.*

Please note that anyone is able to electronically search all comments received into our docket management system by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may review the Privacy Act Statement at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Lydia E. Mercado, RTD–10, Room 2440, Office of Research, Development & Technology, Research and Innovative Technology Administration, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–3372; Fax No. (202) 366–3671; e-mail: *lydia.mercado@dot.gov*. Office hours are from 7:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144). Title V, Subtitle B, section 5208(a) requires that the Secretary develop a 5-year transportation research and development strategic plan to guide Federal research and development activities. Furthermore, Section 5208(c)(1) requires that said plan be reviewed by the National Research Council.

A. Content of the Department of Transportation's Strategic Research, Development and Technology Plan (RD&T)

The DOT *Strategic RD&T Plan 2006–2010* presents the Department's broad approach to RD&T over the next five years and beyond. The plan describes the strategic goals that are the primary purposes for RD&T; the RD&T strategies the Department will pursue to accomplish these goals; and, for each RD&T strategy, the anticipated funding levels and information the Department expects to gain. Importantly, the plan also identifies the emerging research priorities that the Department intends to pursue over the next several years. The plan incorporates the RD&T programs of all DOT operating administrations and considers how research by other Federal agencies, state DOTs, the private sector, and others contributes to DOT objectives and how unnecessary duplication is avoided.

Plan Development

This *Strategic RD&T Plan* was developed as part of an ongoing planning process that incorporates multi-year strategic planning, annual program planning, and budget and performance planning across the Department. This process is led by two internal planning bodies: The RD&T Planning Council and the RD&T Planning Team. Through a broad Department-wide process, the RD&T Planning Council has identified a set of RD&T strategies and emerging research priority areas that will advance DOT goals and guide RD&T investments over the next five years. These RD&T strategies and priorities provide the framework for this plan and for RD&T across the Department. As required by SAFETEA–LU, this plan will be reviewed by the National Research Council and incorporate input from a range of stakeholders, including state and local transportation agencies, not-for-profit institutions, academia, and the private sector. This outreach and review process will continue as DOT revises the plan to reflect changing priorities, operating administration mission requirements, and customer needs.

B. RD&T Strategies

Through its RD&T Planning Council, the Department has identified the critical RD&T strategies that will address the relevant factors affecting the Nation's transportation system and advance DOT goals. These overarching strategies serve as the primary research topics for the Department's RD&T programs and activities. DOT's RD&T strategies for the next five years are as follows:

Safety

1. Sponsor and conduct research to understand and address the causal factors and risks in accidents and to anticipate future safety risks in all transportation modes.

2. Sponsor and conduct research to determine the most effective ways of mitigating the consequences of transportation accidents and incidents in all modes.

3. Provide support to safety rulemaking by assessing the potential safety impacts of new transportation technologies, vehicles, concepts, designs, and procedures.

Reduced Congestion

1. Conduct and sponsor research to reduce urban and suburban traffic congestion, freight gateway congestion, and aviation system congestion.
2. Conduct and sponsor research to extend the life of the existing transportation system and improve the durability of infrastructure.
3. Conduct and sponsor research to advance the use of next generation technologies and to make effective use of combinations of modes in moving people and goods.
4. Conduct and sponsor research to improve the planning, operation, and management of surface transportation and aviation services and assets.
5. Conduct and sponsor research to improve transportation services for underserved areas and populations.
6. Advance the Nation's transportation workforce and research capability through capacity building, fellowships, grants, and cooperative research with universities, the private sector, and state and local governments.

Global Connectivity

1. Conduct and sponsor research leading to harmonized international standards, improved cross-border collaboration, and global leadership for U.S. transportation providers.

Environmental Stewardship

1. Conduct and support research to understand the various impacts of transportation activities on the natural and built environment and communities and to advance technologies and concepts to mitigate those impacts.
2. Conduct and support research on ways to improve the environmental review process to achieve the timely delivery of transportation projects.

Security, Preparedness and Response

1. Conduct and support research to reduce the vulnerability of transportation systems and to improve their ability to prepare for and recover from attacks, natural disasters, and emergencies.
2. Conduct and support research to develop technologies and procedures to secure hazardous materials shipments and to assess the risks of hazmat events.

Organizational Excellence

Consistently apply the President's R&D Investment Criteria—relevance, quality, and performance—to all DOT-sponsored and in-house research.

C. Emerging Research Priorities

To support the Department's goals and RD&T strategies, the RD&T Planning Council identified six emerging research priorities to guide research investments both within and beyond the time period covered by this plan. Several of these priorities cut across transportation modes and operating administration mission requirements. The Department's emerging research priorities are as follows:

Human-Automation Interaction. Conduct and support research leading to an increased understanding of human-machine interactions related to safety performance.

Application of Enhanced Transportation Safety Data and Knowledge. Conduct and support efforts to convert the large quantities of data produced by applications of digital technology into useful knowledge that can improve transportation safety.

Congestion Reduction Policy Research and Technologies. Strengthen policy research and analysis into congestion reduction, congestion pricing, and innovative financing, and conduct RD&T to evaluate the effectiveness and market acceptance of traveler and traffic information technologies, products, and services.

System Resilience and Global Logistics. Conduct and support RD&T to identify freight bottlenecks and changing transportation patterns and to develop and implement technologies to enhance the efficiency of cargo flows.

Next Generation Air Transportation System. Provide the knowledge base to achieve greater aviation throughput and capacity; reduce user and service costs, including congestion; increase service productivity; and ensure a safe, secure, and environmentally compatible aviation system.

Energy Efficiency and Alternative Fuels. Conduct and support research to understand the impact of fuel prices and fuel efficiency on mobility, opportunities to improve fuel efficiency, transportation requirements associated with alternative fuel infrastructures, and safety impacts of alternative fuel vehicles.

D. The Strategic RD&T Plan Has the Following Chapters

Chapter 1—Introduction
Chapter 2—Strategic Planning Framework
Chapter 3—RD&T to Improve Transportation Safety
Chapter 4—RD&T to Reduce System Congestion
Chapter 5—RD&T to Enhance Global Connectivity
Chapter 6—RD&T to Support Environmental Stewardship
Chapter 7—RD&T to Ensure Security, Preparedness and Response
Chapter 8—Organizational Excellence in RD&T
Chapter 9—RD&T Coordination
Appendix A—National Research Council Letter Report (to be added)
Appendix B—Stakeholder Input (to be added)
Appendix C—RD&T Funding
Appendix D—Operating Administration advisory committees, stakeholder activities and RD&T plans.

II. Request for Comments

RITA requests comments on any aspect of DOT's Strategic RD&T Plan, including: (1) The relevance of the Department's emerging research priorities to the Nation's most pressing transportation challenges; (2) future directions for Departmental research; and (3) ways to minimize unnecessary research duplication.

Issued in Washington, DC on June 30, 2006.

Ashok Kaveeshwar,

Administrator.

[FR Doc. E6–10926 Filed 7–11–06; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Information and Collection; Notice and Request for Comments

SUMMARY: The Surface Transportation Board (Board), as part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA), gives notice that the Board will seek from the Office of Management and Budget (OMB) an extension of approval for the currently approved collection of maps in abandonment exemption proceedings. The Board is seeking comments from persons who have sought, or anticipate seeking, authority to abandon or discontinue rail service through the Board's exemption procedures concerning (1) Whether the collection of maps is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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 when appropriate. Submitted comments will

be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Maps Required in Abandonment Exemption Proceedings.

OMB Control Number: 2140–0008.

Form Number: None.

Type of Review: Extension without change.

Respondents: Railroads initiating abandonment exemption proceedings.

Number of Respondents: 91.

Estimated Time per Response: 1 hour, based on average time reported in informal survey of respondents conducted in 2003.

Frequency of Response: 1.

Total Annual Burden Hours: 91.

Total Annual ''Non-Hour Burden'' Cost: None have been identified.

Needs and Uses: Under 49 CFR 1152.50(d)(2) and 1152.60(b), the Board requires in each abandonment exemption proceeding a detailed map of the rail line, depicting the line's relation to other rail lines, roads, water routes, and population centers. The Board uses this information to determine the scope and the impact of the proposed abandonment. In addition, this information is posted on the Board's Web site and serves as a form of notice to current and/or potential shippers, and to persons who might want to make an offer of financial assistance under 49 U.S.C. 10904; acquire the line as a trail under the National Trails System Act, 16 U.S.C. 1247(d); or acquire the line for another public purpose under 49 U.S.C. 10905.

Deadline: Persons wishing to comment on this information collection should submit comments by September 11, 2006.

ADDRESSES: Direct all comments to Marilyn Levitt, Surface Transportation Board, Room 614, 1925 K Street, NW., Washington, DC 20423 or *levittm@stb.dot.gov* or by fax at (202) 565–9001. When submitting comments refer to the OMB number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Barbara G. Saddler, (202) 565–1656. Requests for a copy of the regulations pertaining to this information collection may be obtained by contacting Barbara G. Saddler at (202) 565–1656 or *saddlerb@stb.dot.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. Collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under section 3506(c)(2)(A) of the PRA, Federal agencies are required to provide a 60-day notice and comment period through publication 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.

Dated: July 12, 2006.

Vernon A. Williams,

Secretary.

[FR Doc. E6–10830 Filed 7–11–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34864 (Sub-No. 1)]

BNSF Railway Company—Temporary Trackage Rights Exemption—The Kansas City Southern Railway Company

The Kansas City Southern Railway Company (KCSR), pursuant to a written trackage rights agreement entered into between KCSR and BNSF Railway Company (BNSF), has agreed to provide BNSF with non-exclusive, overhead, temporary trackage rights, to expire on July 15, 2006, over KCSR's trackage between Jefferson, TX, and Metro, TX, a total distance of 200.9 miles. The original trackage rights granted in *BNSF Railway Company—Temporary Trackage Rights Exemption—The Kansas City Southern Railroad Company,* STB Finance Docket No. 34864 (STB served on May 4, 2006), covered the same line, but were due to expire on June 22, 2006. The purpose of this transaction is to modify the temporary overhead trackage rights exempted in STB Finance Docket No. 34864 to extend the expiration date from June 22, 2006, to July 15, 2006.

The transaction is scheduled to be consummated on the effective date of this notice. The modified temporary overhead trackage rights will allow BNSF to continue to bridge its train service while BNSF's main lines are out of service due to certain programmed track, roadbed and structural maintenance.

As a condition to this exemption, any employees affected by the acquisition of the temporary rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34864 (Sub-No. 1), must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sidney L. Strickland, Jr., Sidney Strickland and Associates, PLLC, 3050 K Street, NW., Suite 101, Washington, DC 20007.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 5, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–10829 Filed 7–11–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 7, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 11, 2006 to be assured of consideration.

Federal Consulting Group

OMB Number: 1505–0121.

Type of Review: Extension.

Title: Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons.

Description: Treasury disseminates to other agencies that are members of the Committee on Foreign Investment in the United States information collected under the regulations from parties involved in a foreign acquisition of a U.S. company in order to do a national security analysis of the acquisition.

Respondents: Business or other-for-profit.

Estimated Total Reporting Burden: 3,900 hours.

Clearance Officer: Francine Barber, (202) 622–1947, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–10927 Filed 7–11–06; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 6, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 11, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1520.

Type of Review: Extension.

Title: Revenue Procedure 2003–4 (Letter Rulings), Revenue Procedure 2003–5 (Technical Advice), Revenue Procedure 2003–6, and Revenue Procedure 2003–8 (User Fees).

Description: The information requested in Revenue Procedure 2003–4, Revenue Procedure 2003–6, and Revenue Procedure 2003–8 is required to enable the Office of the Division Commissioner (Tax Exempt and Government Entities) of the Internal Revenue Service to give advice on filing, letter ruling, determination letter, and technical advice requests, to process such requests, and to determine the amount of any user fees.

Respondents: Business or other for-profit, individuals and households, not-for-profit institutions, state, local or tribal governments, and farms.

Estimated Total Burden Hours: 117,986 hours.

OMB Number: 1545–0745.

Type of Review: Extension.

Title: LR–27–83 (Temporary) Floor Stocks or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks; LR–54–85 (Temporary) Excise Tax on Heavy trucks, Heavy Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements.

Description: LR–27–83 requires sellers of trucks, trailers and semitrailers, and tractors to maintain records of the gross vehicle weights of articles sold to verify taxability. LR–54–85 requires that if the sale is to be treated as exempt, the seller and the purchaser must be registered and the purchaser must give the seller a resale certificate.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 4,140 hours.

OMB Number: 1545–1438.

Type of Review: Extension.

Title: CO–8–91 (Final) Distributions of Stock and Stock Rights.

Description: The requested information is required to notify the Service that a holder of preferred stock callable at a premium by the issuer has made a determination regarding the likelihood of exercise of the right to call that is different from the issuer's determination.

Respondents: Business or other for-profit, individuals or households.

Estimated Total Burden Hours: 333 hours.

OMB Number: 1545–1059.

Type of Review: Extension.

Title: Form 7018—Employer's Order Blank for Forms; Form 7018–A—Employer's Order Blank for 2003 Forms.

Form: Forms 7018 and 7018–A.

Description: Forms 7018 and 7018–A allow taxpayers who must file information returns a systematic way to order information tax forms material.

Respondents: Business or other for-profit.

Estimated Total Burden Hours: 83,400 hours.

Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–10937 Filed 7–11–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''(MA) Securities Exchange Act Disclosure Rules (12 CFR Part 11).''

DATES: Comments must be received by September 11, 2006.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0106, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0106, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a

copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dickerson, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: (MA) Securities Exchange Act Disclosure Rules (12 CFR part 11).

OMB Number: 1557–0106.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB approve its revised estimates.

The Securities and Exchange Commission (SEC) is required by statute to collect, through regulation, from any firm that is required to register its stock with the SEC certain information and documents. 12 U.S.C. 78m(a)(1). The OCC is required by statute to apply similar regulations to any national bank similarly required to be registered (those with a class of equity securities held by 500 or more shareholders). 15 U.S.C. 78l(i). Part 11 ensures that ''publicly owned national banks'' provide adequate information about their operation to current and potential shareholders, depositors, and to the public. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed under these rules.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 58.

Estimated Total Annual Responses: 354.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 2,205.5.

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 5, 2006.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E6–10880 Filed 7–11–06; 8:45 am]

BILLING CODE 4810–33–P

Corrections

Federal Register

Vol. 71, No. 133

Wednesday, July 12, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0090]

Plant Protection and Quarantine Export-Related Services and Procedures

Correction

In notice document 06–5799 beginning on page 37032 in the issue of Thursday, June 29, 2006, make the following corrections:

1. On page 37033, in the second column, in footnote 1, in the second and third lines, ''*http://www.wto.org/enligh/docs_e/legal_e/legal_e.htm*'' should read ''*http://www.wto.org/english/docs_e/legal_e/legal_e.htm*''.

2. On page 37036, in the third column, in footnote 8, in the second line, ''Cnada'' should read ''Canada''.

[FR Doc. C6–5799 Filed 7–11–06; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL RESERVE SYSTEM

[Docket No. OP–1259]

Policy on Payments System Risk

Correction

In notice document 06–5843 beginning on page 36800 in the issue of Wednesday, June 28, 2006, make the following correction:

On page 36804, in the second column, under the heading ''**VII. Federal Reserve Policy on Payments System Risk**'', after entry I.C.2., add an entry I.C.3. to read as follows:

''3. Self-Assessments by Systemically Important Systems''.

[FR Doc. C6–5843 Filed 7–11–06; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1750

RIN 2550–AA35

Risk-Based Capital Regulation Amendment

Correction

In proposed rule document 06–5330 beginning on page 36231 in the issue of Monday, June 26, 2006, make the following corrections:

1. On pages 36235 and 36236, Table 3–4 is being reprinted in its entirety to read as follows:

TABLE 3–4.—ADDITIONAL MULTIFAMILY LOAN CLASSIFICATION VARIABLES

Variable	Description	Range
Multifamily Product Code	Identifies the mortgage product types for multifamily loans	Fixed Rate Fully Amortizing Adjustable Rate Fully Amortizing 5 Year Fixed Rate Balloon 7 Year Fixed Rate Balloon 10 Year Fixed Rate Balloon 15 Year Fixed Rate Balloon Balloon ARM Other
New Book Flag	''New Book'' is applied to Fannie Mae loans acquired beginning in 1988 and Freddie Mac loans acquired beginning in 1993, except for loans that were refinanced to avoid a default on a loan originated or acquired earlier	New Book Old Book
Ratio Update Flag	Indicates if the LTV and DCR were updated at origination or at Enterprise acquisition	Yes No
Current DCR	Assigned classes for the Debt Service Coverage Ratio based on the most recent annual operating statement	DCR<1.00 1.00<=DCR<1.10 1.10<=DCR<1.20 1.20<=DCR<1.30 1.30<=DCR<1.40 1.40<=DCR<1.50 1.50<=DCR<1.60 1.60<=DCR<1.70 1.70<=DCR<1.80 1.80<=DCR<1.90 1.90<=DCR<2.00 2.00<=DCR<2.50 2.50<=DCR<4.00 DCR>=4.00
Prepayment Penalty Flag	Indicates if prepayment of the loan is subject to active prepayment penalties or yield maintenance provisions	Yes No

2. On pages 36245 and 36246, Table 3–32 is being reprinted in its entirety to read as follows:

TABLE 3–32—LOAN GROUP INPUTS FOR MORTGAGE AMORTIZATION CALCULATION

Variable*	Description	Source
	Rate Type (Fixed or Adjustable)	RBC Report
	Product Type (30/20/15-Year FRM, ARM, Balloon, Government, etc.)	RBC Report
UPB_{ORIG}	Unpaid Principal Balance at Origination (aggregate for Loan Group)	RBC Report
UPB_0	Unpaid Principal Balance at start of Stress Test (aggregate for Loan Group)	RBC Report
MIR_0	Mortgage Interest Rate for the Mortgage Payment prior to the start of the Stress Test, or Initial Mortgage Interest Rate for new loans (weighted average for Loan Group) (expressed as a decimal per annum)	RBC Report
PMT_0	Amount of the Mortgage Payment (Principal and Interest) prior to the start of the Stress Test, or first payment for new loans (aggregate for Loan Group)	RBC Report
AT	Original loan Amortizing Term in months (weighted average for Loan Group)	RBC Report
RM	Remaining term to Maturity in months (i.e., number of contractual payments due between the start of the Stress Test and the contractual maturity date of the loan) (weighted average for Loan Group)	RBC Report
A_0	Age immediately prior to the start of the Stress Test, in months (weighted average for Loan Group)	RBC Report
	Interest-only Flag	RBC Report
RIOP	Remaining Interest-only period, in months (weighted average for loan group)	RBC Report
Additional Interest Rate Inputs		
GFR	Guarantee Fee Rate (weighted average for Loan Group) (decimal per annum)	RBC Report
SFR	Servicing Fee Rate (weighted average for Loan Group) (decimal per annum)	RBC Report
Additional Inputs for ARMs (weighted averages for Loan Group, except for Index)		
$INDEX_m$	Monthly values of the contractual Interest Rate Index	section 3.3, Interest Rates
LB	Look-Back period, in months	RBC Report
MARGIN	Loan Margin (over index), decimal per annum	RBC Report
RRP	Rate Reset Period, in months	RBC Report
	Rate Reset Limit (up and down), decimal per annum	RBC Report
	Maximum Rate (life cap), decimal per annum	RBC Report
	Minimum Rate (life floor), decimal per annum	RBC Report
NAC	Negative Amortization Cap, decimal fraction of UPB_{ORIG}	RBC Report
	Unlimited Payment Reset Period, in months	RBC Report
PRP	Payment Reset Period, in months	RBC Report
	Payment Reset Limit, as decimal fraction of prior payment	RBC Report
IRP	Initial Rate Period, in months	RBC Report

*Variable name is given when used in an equation

[FR Doc. C6–5330 Filed 7–11–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
July 12, 2006

Part II

Department of the Interior

Bureau of Land Management
43 CFR Part 4100
Grazing Administration—Exclusive of Alaska; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[WO–220–1020–24 1A]

RIN 1004–AD42

Grazing Administration—Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) amends its regulations concerning how BLM administers livestock grazing on public lands. The changes ensure that BLM documents its consideration of the social, cultural, environmental, and economic consequences of grazing changes; provide that changes in grazing use will be phased in under certain circumstances; allow permittees, lessees, and others to share title to range improvements with BLM in certain circumstances; make clear how BLM will authorize grazing if a BLM decision affecting a grazing permit is stayed pending administrative appeal; remove provisions in the present regulations concerning conservation use grazing permits; ensure adequate time for developing and successfully implementing an appropriate management action when BLM finds that rangelands do not meet standards and guidelines for rangeland health and that authorized grazing is a significant factor in not achieving one or more land health standards or not conforming with guidelines for grazing administration; and revise some administrative service charges. We intend these changes to contribute to improving working relationships with permittees and lessees, protecting the health of the rangelands and increasing administrative efficiency and effectiveness.

EFFECTIVE DATE: August 11, 2006.

ADDRESSES: You may send inquiries or suggestions to Director (220), Bureau of Land Management, Room 204 LS, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153.

FOR FURTHER INFORMATION CONTACT: Ken Visser, Rangeland Management Specialist, Rangeland, Soils, Water and Air Group, (775) 861–6492, or Ted Hudson (202) 452–5042 of the Regulatory Affairs Group. Individuals who use a telecommunications device for the deaf (TDD) may contact them individually through the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, seven days a week.

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I. Background

A. History

BLM administers livestock grazing on BLM lands within the continental United States under the regulations found at 43 CFR part 4100. Statutory authority for these regulations includes the following:

1. The Taylor Grazing Act (TGA) as amended (43 U.S.C. 315, 315a through 315r);

2. The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) as amended by the Public Rangelands Improvement Act (PRIA) (43 U.S.C. 1901 *et seq.*);

3. Section 4 of the Oregon and California Railroad Lands Act (43 U.S.C. 1181d);

4. Executive orders that transfer land acquired under the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1012) to the Secretary and authorize administration under TGA; and

5. Public land orders, executive orders and agreements authorizing the Secretary to administer livestock grazing on specified lands under TGA or on other lands as specified.

Section 202 of FLPMA requires the development and maintenance of land use plans for public lands. BLM land use plans are designed to provide guidance for future management actions and the development of subsequent, more detailed and limited-scope plans for resources and uses. Land use plans are developed under the multiple-use and sustained-yield mandate of FLPMA. Land use plans identify lands that are available for livestock grazing and the parameters under which grazing is to occur. BLM issues grazing permits or leases for available grazing lands. Grazing permits and leases specify the portion of the landscape BLM authorizes to the permittee or lessee for grazing (i.e., one or more allotments) and establish the terms and conditions of grazing use. Terms and conditions include, at a minimum, the number and class of livestock, when and where they are allowed to graze, and for how long. Grazing use must conform to any applicable allotment management plans, the terms and conditions of the permit or lease, land use plan decisions, the grazing regulations, and other applicable laws.

Since the first set of grazing regulations was issued after passage of the TGA in 1934, the regulations have

been periodically amended and updated. The last major revision effort was called ''Rangeland Reform ''94.'' In February 1995, BLM published comprehensive changes to the grazing regulations and put them into effect in August 1995. Major changes made to the regulations in 1995 included the following:

- Revised the term ''grazing preference'' to mean a priority position against other applicants for receiving a grazing permit, rather than a specified amount of public land forage apportioned and attached to a base property owned or controlled by a permittee or lessee, and added the term ''permitted use'' to describe forage use amounts allocated by or under the guidance of an applicable land use plan, and authorized by grazing permits or leases;
- Provided that BLM could issue a ''conservation use'' permit to authorize permittees not to graze their permitted allotments;
- Limited authorized temporary nonuse to 3 consecutive years;
- Required grazing fee surcharges for permittees who do not own the livestock that graze under their permits;
- Provided that the United States holds 100 percent of the vested title to permanent range improvements, such as fences, wells, and pipelines, constructed under cooperative agreements dated after August 21, 1995, rather than proportionately sharing title with the cooperators;
- Required livestock operators and BLM to use cooperative agreements to authorize new permanent water developments, instead of allowing some water developments to be authorized under range improvement permits;
- Provided that after August 21, 1995, any water right acquired on public land to be used for livestock watering on public land must be acquired, perfected, maintained, and administered under substantive and procedural laws of the state where the land is located, and that such water rights are to be acquired in the name of the United States, to the extent allowed by the law of the state;
- Established fundamentals of rangeland health; and
- Created a process for developing and applying state or regional standards for land health and guidelines for livestock grazing as a yardstick for grazing management performance.

Soon after the grazing regulations took effect on August 21, 1995, a lawsuit was filed challenging the validity of several of the new regulations. All challenged provisions except ''conservation use'' (see the second bullet, above) were upheld. *Public Lands Council* v. *Babbitt,* 167 F.3d 1287 (10th Cir. 1999), *aff'd,* 529 U.S. 728 (2000).

On March 3, 2002, BLM published an Advance Notice of Proposed Rulemaking (ANPR) and Notice of Intent (NOI) to prepare an environmental impact statement (EIS) in the **Federal Register** (68 FR 9964–9966 and 10030–10032, respectively). These notices requested public comment and input to assist BLM with the scoping process for the proposed rule and the EIS. The comment period on the ANPR and the NOI ended on May 2, 2003.

During the scoping process, BLM held four public meetings to elicit comments and suggestions for the proposed rule and development of the draft environmental impact statement (DEIS). The meetings were held during March 2003 in Albuquerque, New Mexico; Reno, Nevada; Billings, Montana; and Washington, DC. BLM received approximately 8,300 comments on the ANPR and the NOI. The majority of these were varying types of form letters.

We considered many of the issues that the public raised during the scoping period and discussed several of them as alternatives in the DEIS. We did not address, however, some of the issues that comments raised, because they were either beyond the scope of the document, did not meet the basic goals of these proposed changes to the regulations, or BLM decided we could better address the issues through internal policy changes. We listed and discussed these issues in the proposed rule (68 FR 68455), and in section 1.3.2 of the DEIS, and there is no need to repeat them here.

We published the proposed rule on December 8, 2003 (68 FR 68452), inviting public comments until February 6, 2004. On January 16, 2004, we published a notice to extend the comment period to March 2, 2004 (69 FR 2559). BLM held six public meetings in late January and early February, 2004, to provide the public an opportunity to comment on the proposed rule. Meetings were held in Salt Lake City, Utah; Phoenix, Arizona; Boise, Idaho; Billings, Montana; Cheyenne, Wyoming; and Washington, DC. Approximately 250 individuals attended the public meetings and 95 provided oral comments. These were transcribed and can be viewed on the BLM web site at *www.blm.gov/grazing.* We received about 18,000 comment letters and electronic communications. Most of the comments were form letters or emails. An exact count of the comments is not available because of the large amount of duplication among the comments due to individuals or entities submitting identical comments multiple times or via different media. We did not attempt to keep track of all the duplications, although we observed many. You may view comment letters, including scanned images of faxes and handwritten letters, on BLM's regulatory comment system accessible at *www.blm.gov/nhp/news/regulatory/index.html.*

B. Why We Are Amending the Regulations

The grazing regulations are being amended based largely on lessons learned in implementing the 1995 regulations. Other changes are designed to improve clarity, ensure internal consistency, and address the 10th Circuit holding regarding ''conservation use'' permits.

Many changes have been made in livestock grazing management and practices to improve the health of the public rangelands since the passage of the TGA in 1934 and FLPMA in 1976. The final rule recognizes the many benefits of livestock grazing on public lands, including its social and economic contributions to rural communities and its preservation of open space in the rapidly growing West, as well as the importance of maintaining healthy rangelands and wildlife habitat.

When we developed this final rule, we considered whether the changes facilitated improving working relations with grazing permittees and lessees, protecting the health of rangelands, or increasing administrative efficiency and effectiveness. The changes in the final rule enhance BLM's ability to accomplish each of these objectives.

The major changes in the final rule are listed below by objective.

Improving Working Relations With Grazing Permittees and Lessees

- Require BLM to follow a consistent approach in analyzing and documenting the relevant social, economic, and cultural effects of proposed changes in grazing preference and incorporate such analyses into appropriate National Environmental Policy Act (NEPA) documents.
- Require phase-in of changes in grazing use of more than 10 percent over a 5-year period, consistent with relevant law.
- Provide for joint ownership of range improvements—changes would allow BLM and a grazing permittee, or other cooperator, to share title to certain structural range improvements, such as fences, wells, or pipelines, if they are constructed under a Cooperative Range Improvement Agreement.
- Require BLM to cooperate with Tribal, state, county, and local

government-established grazing boards in reviewing range improvements and allotment management plans on public lands.

Protecting the Health of Rangelands

- Remove the 3-consecutive-year limit on temporary nonuse of a grazing permit but continue to require BLM to review nonuse annually to make sure it is still necessary, whether for resource conservation, enhancement, or protection, or for personal or business purposes.
- Provide that a standards assessment will be used by the authorized officer to gauge whether rangeland is failing to achieve standards or that management practices do not conform to the guidelines, and where assessments indicate failure to achieve standards or to conform with guidelines, require BLM to use existing or new monitoring data to identify the factors that significantly contribute to failing to achieve standards or conform with guidelines.
- Provide additional time after a determination that grazing practices or levels of use are significant factors in failing to achieve standards and conform to guidelines for BLM to formulate, propose, and analyze actions; to comply with all applicable laws; and to complete all consultation, cooperation, and coordination requirements before reaching a final decision on appropriate actions.

Increasing Administrative Efficiency and Effectiveness

- Eliminate the ''conservation use'' permit regulatory provisions to comply with the Tenth Circuit Court of Appeals decision in *Public Lands Council* v. *Babbitt,* 167 F.3d 1287 (10th Cir. 1999), *aff'd on other grounds,* 529 U.S. 728 (2000).
- Expand the definition of ''grazing preference'' to include an amount of forage on public lands attached to a rancher's private base property, which can be land or water. This expanded definition, similar to one that existed from 1978 to 1995, makes clear that grazing preference has a quantitative meaning (forage amounts, measured in Animal Unit Months (AUMs)) as well as a qualitative one (priority of position ''in line'' for grazing privileges).
- Modify the definition of ''interested public'' to ensure that only those individuals and organizations who actually participate in the process are maintained on the list of interested publics. (The regulations with respect to the interested public are also revised to improve efficiency in BLM's management of public lands grazing by reducing the occasions in which the Bureau is required to involve the interested public. Under this provision, BLM could involve the public in such matters as day-to-day grazing administration, but would no longer be required to do so. BLM would continue to require consultation, cooperation, and coordination with the interested public in grazing planning activities such as allotment management planning or range improvement project or program planning.)
- Provide flexibility to the Federal government in decisions relating to livestock water rights by removing the requirement that, if BLM acquires water rights for livestock watering on public land under state law, BLM must acquire, perfect, maintain, and administer those water rights in the name of the United States where allowed by State law.
- Clarify that an applicant for a new permit or lease will be deemed to have a record of satisfactory performance when the applicant has not had any Federal or state grazing permit or lease canceled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application, and a court of competent jurisdiction has not barred the applicant or an affiliate from holding a Federal grazing permit or lease.
- Clarify what is meant by ''temporary changes in grazing use within the terms and conditions of permits and lease.'' Under the 1995 regulations, BLM can approve temporary changes in grazing use within the terms and conditions of a permit or lease. The final rule clarifies that ''temporary changes in grazing use within the terms and conditions'' means temporary changes to livestock number, period of use, or both, that would result in nonuse or in grazing use where forage removal does not exceed the amount of active use specified in the permit or lease, and such grazing use occurs not earlier than 14 days before the begin date specified on the permit or lease and not later than 14 days after the end date specified on the permit or lease, unless otherwise specified in the appropriate allotment management plan.
- Increase certain service charges to reflect more accurately the cost of grazing administration.
- Clarify that if a permittee or lessee is convicted of violating a Federal or state law or regulation, and if the violation occurs while he is engaged in grazing-related activities, BLM may take action against his grazing permit or lease only if the violation occurred on the BLM-managed allotment where the permittee or lessee is authorized to graze.
- Provide the authority for BLM to issue an immediately effective decision on non-renewable grazing permits or leases or on applications for grazing use on designated ephemeral or annual rangelands. Under the final rule, if a stay on an appeal of such a decision is granted, the decision would be inoperative and, if appropriate considering the specific stay, the livestock may have to be removed from the allotment.
- Clarify how BLM will authorize grazing when the Office of Hearings and Appeals (OHA) stays all or part of a BLM grazing decision affecting a permit or lease. Such decisions may:
- Cancel, suspend or change terms and conditions of a permit or lease during its current term,
- Renew a permit or lease, or
- Grant or deny a permit or lease to a preference transferee.

Under the final rule, if OHA stays all or part of such a decision, then BLM will, with respect to any stayed portions of the decision, authorize grazing use on the allotment(s) or portions of the allotment(s) in question pursuant to terms or conditions that are the same as the permit or lease that immediately preceded BLM's decision, subject to any other provisions of the stay order.

- Clarify that a biological assessment or biological evaluation, prepared in compliance with the Endangered Species Act (ESA), is not a decision and therefore is not subject to protest or appeal.
- Provide that the primary function of the fundamentals of rangeland health is to describe land condition goals and to guide development of the Standards and Guidelines that must be implemented to ensure that the conditions described by the fundamentals of rangeland health exist.

The reasons for the changes in the final rule are described in the Record of Decision in Part III of this preamble.

C. Rules of Construction: Words and Phrases

For simplicity and to make the rule easier to read and understand we use words that signify the singular to include and apply to the plural and vice versa as provided in 43 CFR 1810.1. Words that signify the masculine gender also include the feminine. Words used in the present tense also apply to the future. The terms ''BLM'' and ''authorized officer'' are used interchangeably and include any person authorized by law or by lawful

delegation of authority to perform the duties described in this final rule.

II. Changes Made Since the Proposed Rule

This part of the preamble describes briefly the changes we made since the proposed rule as a result of comments and our own review. A reader who is interested in a quick overview of the changes we made between the proposed and final rules may find this part useful. However, if you are looking for a detailed description of all the final rule changes from the existing regulations, you should look at the section-by-section analysis which appears later in this preamble.

Section 4100.0–5 Definitions

We changed the definition section in several respects in the final rule.

Active use. In this definition, we have substituted the word ''livestock'' for ''rangeland'' in the reference to carrying capacity. The change makes the definition consistent with all other references to ''carrying capacity'' in the rule.

District. We have amended the definition for the term ''District'' to update the regulations as to the organization of BLM field offices.

Ephemeral rangelands. We have revised the definition for this term by removing the misstatement that production of sufficient forage by ephemeral range was necessarily unusual.

Interested public. We amended this section to make it clear that, in a request to be considered a member of the interested public, a person must identify the specific allotments in which the person or entity is interested. We also added language providing that when members of the interested public submit comments or otherwise participates, they must address the management of a specific allotment.

Subpart 4110 Qualifications and Preference

Section 4110.2–3 Transfer of Grazing Preference

In the final rule we amended this section to make it clear that a transfer application must show the base property and the grazing preference attached to that base property.

We also removed the phrase ''if the applicant leases the base property'' from the second sentence of paragraph (c), and removed the third sentence entirely. This will clarify that anyone with an interest in the base property, not just an owner who is leasing the property to the preference holder, must provide written consent before a preference transfer can take place. The third sentence addressed a situation unique to the historical origins of grazing preference that is no longer applicable.

Section 4110.3 Changes in Grazing Preference

We amended paragraph (a)(2) of section 4110.3 to make it clear that BLM can make changes in grazing preference to assist in making progress toward restoring ecosystems to properly functioning conditions. We also amended paragraph (c) to make it clear that the analysis of social, economic, and cultural factors that BLM will perform before changing preference will be under NEPA (42 U.S.C. 4332).

Section 4110.3–1 Increasing Active Use

In the final rule we have added language in the introductory text of section 4110.3–1 to make it clear that decisions increasing active use are also based on monitoring or documented field observations, just as decisions decreasing active use must be. Changes in preference, whether increases or decreases, already must be supported by monitoring or documented field observations.

We have also amended paragraphs (a) and (b) to make it clear that BLM must determine that additional forage is available for livestock, as opposed to other consumption or use, before we can authorize livestock grazing use of it on a temporary or sustained-yield basis.

Section 4110.3–3 Implementing Changes in Active Use

We amended section 4110.3–3 in the final rule in 3 respects:

- We changed ''shall'' to ''will'' in paragraph (b)(1) to reflect standard usage in BLM regulations. This change has no practical effect on the obligatory nature of the provision.
- We added the word ''or'' in paragraph (b)(1)(i) as a grammatical correction.
- We corrected a cross-reference in paragraph (b)(ii).

Section 4120.2 Allotment Management Plans and Resource Activity Plans

In section 4120.2(c), we changed ''shall'' to ''will'' to reflect standard usage in BLM regulations. This change has no practical effect on the obligatory nature of the provision.

Section 4120.3–1 Conditions for Range Improvements

In section 4120.3–1(f), we changed ''shall'' to ''will'' to reflect standard usage in BLM regulations. This change has no practical effect on the obligatory nature of the provision.

Section 4120.3–2 Cooperative Range Improvement Agreements

We further amended paragraph (b) by adding the word ''will'' to make it clear that shared ownership of range improvements is not merely descriptive but regulatory and prospective.

Section 4120.3–3 Range Improvement Permits

We have revised paragraph (c) of section 4120.3–3 for purposes of clarification. The language in the existing text is unnecessarily convoluted and confusing. The point of the paragraph is to set the stage for what this part of the regulations is really about: if BLM lets a third party graze on your allotment, how do we address the use and maintenance of range improvements occurring on that allotment? We also removed a reference to conservation use.

Section 4120.5–2 Cooperation With Tribal, State, County, and Federal Agencies

In the final rule, we have amended the introductory text and added paragraph (c) of section 4120.5–2 to add Tribal grazing boards to the list of entities with which we will cooperate, and to make it clear that BLM is formally required to cooperate only with Tribal, state, county, or local grazing boards that are established under Tribal or government authority, as opposed to private organizations that might assume the title ''grazing board.'' We also added ''Tribal agencies'' to the section heading and to the general provisions on cooperation.

Section 4130.1–1 Filing Applications

We further amended paragraph (b) of section 4130.1–1 to correct an unintentional flaw, in that the paragraph seemed to refer to renewal of new permits. We are also making it clear in paragraph (b)(2) that the section refers to permits and leases that authorize use of new or transferred preference.

Section 4130.3 Terms and Conditions

In the final rule, we amended proposed section 4130.3 by removing paragraphs (b)(1) and (b)(2) in response to comments. Paragraph (b)(1) referenced terms and conditions that are not subject to review by OHA, and identified terms and conditions derived from biological opinions as an example. Paragraph (b)(2) restricted the right of appeal and protest where it was not necessary to do so. We also amended

paragraph (c) to make clear how BLM would authorize grazing if BLM made numerous changes in terms and conditions of a permit or lease, and upon an appellant's petition, OHA stayed only one or a portion of them. In this circumstance, BLM would authorize use, with respect to the stayed terms and conditions, according the comparable terms and conditions that were in effect prior to BLM's decision to change them in combination with the changed terms and conditions that were not stayed by OHA.

Section 4130.3–2 Other Terms and Conditions

In the proposed rule, we amended section 4130.3–2 by removing paragraph (h), which provides that the authorized officer may include in permit and lease terms and conditions a statement disclosing the requirement that permittees and lessees shall provide administrative access across private and leased lands if it is necessary for the orderly management and protection of public lands. In response to public comments, we have restored paragraph (h) in this final rule. (We did this by removing the amendatory text that appeared in the proposed rule directing the removal of paragraph (h). Thus, although the regulatory text in this final rule contains no mention of section 4130.3–2, the effect of the final rule is to leave paragraph (h) intact.)

Section 4130.3–3 Modification of Permits or Leases

We removed the words ''biological assessments or biological evaluations prepared under the Endangered Species Act, and other'' from section 4130.3–3(b), because it is unnecessary to highlight biological assessments and biological evaluations as examples of reports during the preparation of which BLM seeks input from affected permittees, lessees, states, and the interested public. We added the word ''otherwise'' in paragraph (b) because increasing or decreasing grazing use is a change in terms and conditions of a grazing permit or lease. Without the word, the paragraph seems to read that such an increase or decrease is not a change in terms and conditions.

Section 4130.4 Authorization of Temporary Changes in Grazing Use Within the Terms and Conditions of Permits and Leases, Including Temporary Nonuse

In the final rule, we added ''temporary nonuse'' to the heading of section 4130.4 as a convenience to readers. We also removed language in paragraph (a) of the section listing reasons for allowing temporary changes in grazing use within the terms and conditions of the grazing authorization.

We have amended paragraph (d)(2) of section 4130.4 of the proposed rule, which becomes paragraph (e)(2) in the final rule, by changing the word ''will'' to ''may'' in order to avoid an interpretation of this provision that BLM has no discretion to deny temporary nonuse.

We also amended paragraph (f) of the proposed rule, which becomes paragraph (g) in the final rule, to provide that permittees or lessees ''must'' apply if they need temporary changes in grazing use. The proposed rule stated that they ''should'' apply. The final rule also makes it clear that such an application must be in writing.

We amended paragraph (b) to recognize that the same application may cover both temporary nonuse and removal of forage either before the begin date or after the end date, and to allow such changes that conform to flexibility limits specified in an allotment management plan under § 4120.2(a)(3) despite the 14 day limit.

Finally, we reordered the paragraphs in the section more logically, redesignating paragraph (a)(2) as (c) and adjusting the succeeding paragraph designations accordingly, and made editorial changes for purposes of clarity.

Section 4130.6–2 Nonrenewable Grazing Permits and Leases

In the final rule, we redesignated the proposed text as paragraph (a) and added a new paragraph (b) allowing BLM to make a decision issuing a nonrenewable grazing permit or lease, or affecting an application for grazing use on annual or designated ephemeral rangelands, effective immediately or on a date established in the decision.

For purposes of clarity and ease of usage, in the final rule we have amended the first sentence of section 4130.6–2(a) by adding a cross-reference to section 4110.3–1(a), which provides for the disposition of additional forage temporarily available.

Section 4130.8–1 Payment of Fees

In the final rule we further amended paragraph (h) of section 4130.8–1 to make it clear that failure to make payment within 30 days is a violation of a prohibited act in section 4140.1 and may result in enforcement action.

Section 4130.8–3 Service Charges

In the final rule we added language to paragraph (a) of section 4130.8–3 providing that BLM will adjust the service charges periodically as costs change, and publish notice thereof in the **Federal Register,** and revised paragraphs (a) and (b) for clarity. We also restored supplemental grazing fee billings to the list of services for which BLM imposes a service charge.

Section 4140.1 Acts Prohibited on Public Lands

In the final rule we made an editorial change in section 4140.1(a)(2) for purposes of clarity, and corrected a typographical error in section 4140.1(c)(3)(ii).

Section 4150.2 Notice and Order To Remove

In the final rule we corrected an erroneous cross-reference in paragraph (d).

Section 4150.3 Settlement

In the final rule, we amended new paragraph (f) of section 4150.3 to make it clear that ''this part'' refers to all of part 4100 and that grazing will continue pending completion of the administrative appeal process, as opposed to resolution of judicial appeals.

Section 4160.1 Proposed Decisions

In the final rule, we added necessary cross-references to paragraph (c) of section 4160.1, which was not amended in the proposed rule. These additions conform the paragraph to the addition of section 4130.6–2(b) in this rule, and the addition of section 4190.1(a) in a previous final rule (68 FR 33804, June 5, 2003).

Section 4160.3 Final Decisions

In the final rule, we also added necessary cross-references to paragraph (c) of section 4160.3 to conform the paragraph to the addition of section 4130.6–2(b) in this rule, and the addition of section 4190.1(a) in a previous final rule (68 FR 33804, June 5, 2003).

Section 4160.4 Appeals

In response to comments by OHA and others, we have removed § 4160.4(c) in the final rule, and simplified paragraph (b). We have revised § 4160.4(b)(1), (2), and (3) to clarify that, when OHA stays all or part of a decision modifying or renewing a grazing permit or lease, or a decision offering or denying a permit or lease to a preference transferee, grazing may proceed, with respect to the portions of the decision that were stayed, under comparable terms and conditions of the permit or lease that immediately preceded the decision that was stayed, subject to any relevant provisions of the stay order.

Section 4180.1 Fundamentals of Rangeland Health

We have removed the language from the introductory text of this section that requires BLM to modify grazing management to ensure that the conditions described by the fundamentals of rangeland health exist only where standards and guidelines have not been established under section 4180.2, and added in its place a characterization of the purpose of the fundamentals of rangeland health.

We have also amended paragraph (d) of section 4180.1 to remove the reference to ''at-risk'' species.

Section 4180.2 Standards and guidelines for grazing administration.

As in section 4180.1, in section 4180.2 also we have removed references to ''at-risk'' species in paragraphs (d)(4), (e)(9) and (f)(2)(viii). We also changed ''or'' to ''and'' before the phrase ''other special status species'' in (d)(4).

We have added language in section 4180.2(b) allowing BLM to extend the deadline for making a decision following a determination when legally required processes that are the responsibility of another agency prevent completion within 24 months.

Finally, we made procedural changes in paragraph (c) to provide that if a standards assessment indicates to the authorized officer that the rangeland is failing to achieve standards or that management practices do not conform to the guidelines, then the authorized officer will use existing or new monitoring data to identify the significant factors that contribute to failing to achieve the standards or to conform with the guidelines.

III. Record of Decision Under the National Environmental Policy Act

This preamble constitutes BLM's record of decision, as required under the Council on Environmental Quality regulations at 40 CFR 1505.2. The decision is based on the proposed action and alternatives presented in the Final Environmental Impact Statement, ''Revisions to Grazing Regulations for the Public Lands.''

A. Decisions

After considering all relevant issues, alternatives, potential impacts, and management constraints, BLM selects the Proposed Action, Alternative 2, in the Final EIS for implementation. Alternative 2 changes the existing grazing regulations in several areas as follows:

- A new provision requiring BLM to analyze and, if appropriate, document the relevant social, economic, and cultural effects as part of the NEPA analysis of proposed actions to change grazing preference;
- An amendment providing that, generally, changes in active use greater than 10 percent will be phased in over 5 years consistent with existing law;
- An amendment providing for proportional sharing of title to permanent range improvements between BLM and a cooperator, based on initial contribution to construction and installation;
- A new provision for cooperation with Tribal, state, county or local government-established grazing boards in reviewing range improvements and allotment management plans on public land;
- An amendment removing the 3-consecutive-year limit on temporary nonuse and substituting a provision for annual review of temporary nonuse.
- An amendment making BLM's finding that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve range health standards or conform with grazing management guidelines a two-step process. The authorized officer will use a standards assessment to gauge whether rangeland is failing to achieve standards or management practices do not conform to the guidelines, and, if this is the case, he will use existing or new monitoring data to identify the significant factors contributing to not meeting standards or conforming with guidelines.
- An amendment providing BLM up to 24 months after making a determination that grazing practices or levels of use are significant factors in failure to achieve standards or conform to guidelines, (1) to formulate, propose, and analyze appropriate action, (2) to comply with all applicable laws, and (3) to complete all consultation, cooperation, and coordination requirements before reaching a final decision on the appropriate action. The amendment allows for additional time beyond 24 months if necessary to meet legal obligations that are the responsibility of another agency.
- An amendment removing the provision that requires BLM to modify grazing management to ensure that the conditions described by the fundamentals of rangeland health exist. This amendment recognizes that BLM relies on evaluation of achievement of the standards of rangeland health and conformance with grazing management guidelines to determine whether grazing management needs to be modified in order to achieve the general descriptions of land health described by the Fundamentals.
- Amendments removing ''conservation use'' permit regulatory provisions throughout the grazing regulations in accordance with *Public Lands Council* v. *Babbitt, supra;*
- An amendment revising the definition of ''grazing preference'' to mean, in addition to a priority position against others for the purpose of receiving a permit or lease, the total number of AUMs on public lands apportioned and attached to base property owned or controlled by a permittee, a lessee, or an applicant for a permit or lease. Grazing preference includes active use and use held in suspension. Related to this change, we also removed the definition of ''permitted use'' from the regulations;
- Amendments revising the definition and role of the ''interested public'' to ensure that only those individuals and organizations who actually participate in the process are maintained on the list of interested publics, and to improve efficiency by reducing the occasions in which BLM is mandated to involve the interested public;
- An amendment removing the requirement that, if livestock water rights are acquired under state law, they must be acquired, perfected, and maintained in the name of the United States;
- An amendment clarifying the criteria that BLM considers when determining whether an applicant for a new permit or lease or a transfer of grazing preference has a satisfactory record of performance;
- An amendment defining the meaning of ''temporary changes in grazing use within the terms and conditions of the permit or lease'' and describing when and how BLM authorizes temporary changes in grazing use;
- An amendment raising service charges for a crossing permit, transfer of preference, and cancellation and replacement of a grazing fee billing;
- An amendment limiting the applicability of certain prohibited acts to those allotments where the permittee or lessee is authorized to graze;
- An amendment providing authority for BLM to issue immediately effective decisions on nonrenewable grazing permits or leases or on decisions affecting applications for grazing use on designated ephemeral or annual rangelands;
- An amendment clarifying the effect of an administrative stay on a decision to modify or renew a grazing permit or lease, or a decision to offer or deny a

permit or lease to a preference transferee; and

• An amendment clarifying that a biological assessment or evaluation prepared for a Section 7 consultation under the ESA is not a decision for purposes of protest or appeal.

Additional amendments are also effected by this decision. They are identified in the Preamble, Part V. Section-by-Section Analysis and Response to Comments, as well as in the regulatory text in this final rule.

One comment on the DEIS stated that BLM ''subverted'' the NEPA process by issuing the DEIS after the proposed rule was published and rewriting an earlier draft.

We discuss this comment in detail under Response to General Comments, General Opposition, section IV.C. of this preamble.

B. Alternatives Considered

BLM considered three alternatives in the EIS to address issues that were raised by the public during the EIS scoping period and issues that surfaced during implementation of the 1995 regulations. Alternatives were developed for 18 issues and combined. As stated in the EIS, the regulatory changes are narrow in scope, do not include changes in grazing fees or the fundamentals of rangeland health, or the standards and guidelines for grazing administration, and otherwise leave the majority of the 1995 regulatory changes in place. The changes that are analyzed address specific issues and concerns that have come to BLM's attention. These issues and concerns came to the fore as areas where BLM could improve working relations with permittees and lessees, protect the health of the rangelands, and improve administrative efficiency and effectiveness, including resolution of legal issues. The alternatives included Alternative 1, the required ''no action'' alternative, which would have retained the 1995 regulations, Alternative 2, the proposed action alternative, and Alternative 3, the modified action alternative.

The following is a brief description of the alternatives:

Alternative 1, No Action—This alternative would not have changed the regulations. Its consideration is required under NEPA.

Alternative 2, Proposed Final Regulations—This alternative is BLM's proposed action and the agency's ''preferred alternative.'' We modified the alternative between the draft and final EIS in response to public comments. This alternative represents BLM's preferred regulatory approach after the agency considered the results of public scoping and comments on the December 2003 proposed rule.

Alternative 3—Modified Action Alternative—This alternative differs from the preferred alternative in several respects:

• The 5-year phase-in of changes in use greater than 10 percent would have been discretionary rather than mandatory,

• Temporary nonuse would have been limited to 5 years rather than the current limit of 3 years,

• BLM would not have been required to use both assessments and monitoring as bases for determinations of rangeland health,

• Prohibited acts would have included failure to use certified weed seed free forage, grain, straw or mulch when required by BLM,

• The third category of prohibited acts, which pertain to violations of certain Federal or state laws or regulations, would have been removed from the regulations.

C. Environmentally Preferable Alternative

The Council on Environmental Quality's regulations for implementing NEPA (40 CFR 1505.2(b)) require that the Record of Decision specify the environmentally preferable alternative.

We determined the environmentally preferable alternative to be the Proposed Action (Alternative 2). The Proposed Action provides for the beneficial use of the public lands for livestock grazing while maintaining and improving the health of the land. The reasons why we determined the Proposed Action to be environmentally preferable to each of the alternatives are listed below.

The Proposed Action may result in more short-term adverse impacts in some areas than under the No Action alternative. However, it is expected to result in more beneficial long-term impacts than either the No Action alternative or the Modified Action Alternative (Alternative 3).

We determined that the Proposed Action is environmentally preferable to the No Action alternative for the following reasons:

• Under the Proposed Action a standards assessment will be used by the authorized officer to assess whether rangeland is failing to achieve standards or that management practices do not conform to the guidelines. BLM will use standards assessment and existing or new monitoring data to identify significant contributing factors in failing to achieve standards or conform with guidelines. The No Action alternative does not require monitoring. Use of monitoring data will enable more rigorous scientific analyses. As a result changes in range management actions will be more effective and decisions to increase or decrease active use will be more sustainable and less vulnerable to appeal.

• The Proposed Action allows up to 24 months (or longer if necessary to accommodate legally-required processes of another agency) following a determination on rangeland standards for BLM to formulate, propose, and analyze the appropriate action. This will allow BLM to complete required analyses and consultations, and provide additional time to collaborate with the permittee/lessee to examine alternatives and select the best solution for a sustainable decision with more acceptance from the permittee/lessee and more effective action to change grazing management to improve resource conditions. We expect the added collaboration to result in decisions that are less likely to be appealed. This will also allow more time to complete any necessary NEPA analysis and to ensure compliance with all applicable and relevant laws and regulations. BLM believes that adoption of the proposed rule will lead to improved land conditions in the long-term as indicated in the analysis in section 4.5 of the Addendum to the EIS. That analysis states that some adverse impacts are unavoidable, but in the long-term better and more sustainable decisions would be developed by using monitoring.

• The 5-year phase-in of reductions in active use of greater than 10 percent (which will likely be required on only a small percentage of allotments, as explained in detail in part III.D.3. of this preamble) may result in short-term adverse impacts to natural resources on some allotments. A phase-in period would avoid the adverse impacts of sudden herd size reductions on permittees/lessees. The ability of BLM to use the phase-in period helps BLM and the permittee/lessee to work collaboratively to ensure the appropriate changes in range management practices on a timely basis, while still retaining authority to implement changes on a faster time schedule if necessary to address ESA or other resource concerns.

• The provision for shared ownership in range improvements under the Proposed Action is expected to encourage investment in such projects by cooperators and result in improvements in resource condition.

• The Proposed Action has no limit on the number of years of nonuse that can be taken on an allotment. The No Action alternative has a 3 consecutive year limit on nonuse. The removal of

the limit under the Proposed Action improves cooperation with the permittee/lessee when nonuse is the best management practice to benefit resource conditions, *e.g.*, to remedy damage caused by fire, flood, drought, etc. BLM would be able to authorize nonuse on an annual basis for resource conservation, enhancement, or protection. The availability of nonuse as an easy-to-implement, collaborative option should result in more rapid recovery in damaged areas and more rapid progress toward meeting resource condition objectives. Further, it is a simpler process to approve an application for nonuse than it is to impose a formal suspension, thereby improving management efficiency in those cases where all involved parties agree that nonuse is warranted.

- The Proposed Action removes requirements that BLM consult with the interested public on day-to-day grazing matters, and requires that BLM provide opportunities for the interested public to participate in the decision-making process when the focus is on planning or on the preparation of reports that evaluate data that are used in grazing decisions. Less stringent requirements for public participation requirements in routine grazing management matters and excising non-participating interested publics from the list of those who it attempts to consult will free up BLM resources for more effective management to benefit the natural environment.
- The Proposed Action removes the requirement that on Federal land BLM seek livestock watering water rights in the name of the United States to the extent allowed by State law, and thus provides BLM additional flexibility for cooperative development of water projects that will benefit livestock grazing management and wildlife.
- The Proposed Action removes the provision that directs BLM to take action to remedy improper grazing practices when the authorized officer determines that existing livestock grazing management needs to be changed to achieve the conditions described in the fundamentals of rangeland health, and makes it clear that standards evaluation and conformance determination will be the benchmark by which we determine the need to adjust grazing management. It retains the requirement that standards and guidelines developed by BLM State Directors be consistent with the Fundamentals. The resulting improved efficiency in implementing our rangeland health improvement processes will benefit the environment.

We determined that the Proposed Action is environmentally preferable to Alternative 3 (Modified Action) for the following reasons:

- Under the Proposed Action a standards assessment will be used by the authorized officer to gauge whether rangeland is failing to achieve standards or that management practices do not conform to the guidelines. BLM will use standards assessment and existing or new monitoring data to identify significant contributing factors in failing to achieve standards or conform with guidelines. Under Alternative 3, monitoring is discretionary. Consequently, some rangeland health determinations would not be as rigorously developed as under the proposed action. Using existing or new monitoring data will lead to more scientifically sound analyses. As a result, changes in range management actions will be more effective, and decisions to increase or decrease active use should be less vulnerable to appeal.
- The Proposed Action has no limit on the number of years of nonuse that can be taken on an allotment. The Modified Action Alternative, Alternative 3, has a 5 consecutive year limit on nonuse. The removal of the limit under the Proposed Action enhances cooperation with the permittee/lessee when nonuse is the best management practice to benefit resource conditions, e.g., to remedy damage caused by fire, flood, drought, etc. BLM would be able to authorize nonuse on an annual basis for resource conservation, enhancement, or protection. The availability of nonuse as an option should result in more rapid recovery in damaged areas and more progress toward meeting resource objectives.
- Under the Proposed Action, BLM may impose civil penalties on a permittee/lessee (e.g., canceling his grazing permits) if he is convicted of violating certain specific Federal or state environmental and cultural laws. Alternative 3 would eliminate the potential civil penalty for a permittee/lessee because such an action is not included under ''prohibited acts'' under Alternative 3.
- Alternative 3 includes failing to use weed seed-free forage products (when required by the Authorized Officer) as a ''prohibited act,'' and the Proposed Action does not include it as a prohibited act. While a weed-seed free forage provision would be more environmentally desirable, due to the lack of state weed seed-free forage laws in some western states, BLM has decided to work with each state in its efforts to develop a law, and will pursue enforcement of weed seed-free forage on public lands through a subsequent, separate rulemaking.

D. Decision Rationale

During the years that BLM has been working with the 1995 grazing regulations, we recognized several areas where BLM could benefit from amending the 1995 regulations. Based on the analysis in the EIS (including the Revisions and Errata document issued June 17, 2005, and the Addendum to the FEIS, published March 31, 2006), which analyzes three alternatives for amending the regulations, and a review of public comments, we selected Alternative 2 (Proposed Action).

BLM provided opportunities for public involvement throughout the process of preparing the EIS and the publication of the Advanced Notice of Proposed Rulemaking and the proposed rule in the **Federal Register**. We considered all public comments, both oral and written. We made changes in the final rule and EIS as a result of public comment and further review.

The Congressionally mandated purposes for managing BLM-administered lands (public lands) include both conserving the ecosystems upon which species depend and providing raw materials and other resources that are needed to sustain the health and economic well-being of the people of this Nation. To balance these sometimes conflicting purposes, we selected the alternative that will reduce confusion that has been evident over recent years, increase clarity, enhance administrative effectiveness, and provide for grazing use while maintaining the health of the land. FLPMA clearly states that the Nation's public lands are to be managed on the basis of multiple use and sustained yield principles. FLPMA defines BLM's mission to include livestock grazing as one of many uses of public lands. However, FLPMA does not identify where livestock grazing will occur and how livestock grazing operations will be conducted. Those decisions are made during the preparation of land use plans and more site-specific decisions, such as allotment management plans, and through issuance of grazing permits and leases. These regulations provide the framework for managing livestock grazing where BLM has determined it to be an appropriate use under multiple use principles. The regulations provide for including all practical means to avoid or minimize environmental harm in implementing BLM's livestock grazing program and future decisions under these regulations within the

context of BLM's multiple use and sustained yield mission under FLPMA.

The reasons for selecting Alternative 2 are that it—

- Best meets the purpose of and need for the action, as described in the EIS;
- Amends portions of the 1995 regulations and retains the emphasis on BLM's rangeland management objectives and the 1995 regulations to maintain and improve the health of the land;
- Builds on the relationships between BLM and livestock permittees and lessees;
- Makes changes in the 1995 regulations needed to comply with court decisions; clarifies certain provisions in the 1995 regulations that have been found to be unclear;
- Is consistent with statutory requirements and national policy; and
- Is the environmentally preferable alternative for the reasons described in the Environmentally Preferable Alternative section of this Record of Decision.

A specific rationale for the selection of each major regulatory amendment is discussed below. Rationale for other changes in the regulations appears in Part V of this Preamble under Section by Section Analysis and Response to Comments.

1. Analysis and Documentation of Social, Economic and Cultural Effects

The final rule amends paragraph (c) of section 4110.3 on changes in grazing preference to provide that BLM will analyze and, if appropriate, document the relevant social, economic, and cultural effects of a proposed action. This will improve consistency when BLM documents its consideration of social, economic, and cultural effects of certain grazing decisions, thereby improving working relations with permittees and lessees.

Generally, BLM managers consider the possible effects of their decisions through the NEPA process. NEPA requires the analysis of social, economic, and cultural effects of proposed actions. However, the current grazing regulations are silent on the issue.

The preferred alternative adds a new provision requiring BLM to analyze and, if appropriate, document the relevant social, economic, and cultural effects of a proposed action before changing grazing preference. This will ensure a consistent approach to the decisionmaking process for those most directly affected by a decision to change grazing preference. We did not select Alternative 1, the continuation of the current regulations, because the regulations would remain silent on this issue and potentially foster inconsistent consideration of the social, economic, or cultural effects of changing preference. Alternative 3 does not differ from the preferred alternative.

2. Phase-in of Changes in Active Use of More Than 10 Percent

The final rule amends section 4110.3–3 on implementing changes in active use by providing for a 5 year phase-in of changes in active use when that change exceeds 10 percent. The rule provides that changes may be implemented in less than 5 years by agreement between BLM and the permittee or lessee. The preferred alternative gives BLM sufficient discretion to handle a wide range of circumstances when changing active use, while giving permittees and lessees additional time to make changes in their overall business operations. Changes in active use exceeding 10 percent are infrequent, but may create significant disruptions for an individual permittee or lessee when they do occur. On the other hand, as we have stated elsewhere in this preamble, if conditions are such that phasing in changes exceeding 10 percent would not prevent significant resource damage, or if conditions such as drought, fire, flood, or insect infestation require that resources be protected immediately, BLM can close allotments or portions of allotments under section 4110.3–3(b).

The 1995 regulation amendments deleted the then existing provisions regarding the timing of implementation of decisions to change grazing use. In some instances, this lack of guidance has led to decisions for full implementation of grazing reductions in a single season, resulting in disruptions of ranching enterprises.

The preferred alternative provides that BLM will implement changes in active use in excess of 10 percent over a 5-year period unless (1) an agreement with the affected permittee or lessee is reached to implement the change within a shorter period of time, or (2) the changes must be made before 5 years have passed in order to comply with applicable law. Prior to 1995, the regulations provided for a 5-year implementation period that proved to be a practical interval for implementing changes. The phase-in should help permittees and lessees to avoid sudden adverse economic effects resulting from a reduction by allowing time to plan livestock management changes such as in herd size. The total number of allotments affected by the preferred alternative is expected to be small, because only 16 percent of the allotments evaluated during the last 5 years needed adjustments in current livestock grazing management. See Section 4.3.1 of the EIS. Most of these adjustments have been made in the season of use, or in movement and control of livestock, rather than in active use. Finally, the rule retains provisions for immediate, full implementation of a decision to adjust grazing use if continued grazing use poses an imminent likelihood of significant soil, vegetation, or other resource damage.

We did not select Alternative 1, the continuation of existing regulations, because the 1995 regulations were silent regarding the timing of implementation of decisions to change grazing use. If, for example, a permittee or lessee challenged full implementation of a grazing reduction, appealed the decision, and was granted a stay of the decision by IBLA, then implementation of the grazing decision would be delayed. Until the appeal is resolved, grazing would continue at greater levels than are desirable, and delaying implementation of necessary changes. The ability to phase in changes may help avoid appeals and stays, thus improving administrative efficiency.

We did not select Alternative 3, which would have made the 5-year phase-in discretionary, because we felt that additional discretion was not warranted when considering the small number of allotments that would be affected. Since the rule retains provisions for immediate, full implementation of a decision to adjust grazing use, we believe the provision for phase-in of changes, coupled with the resulting improved cooperation with permittees and lessees, will result in greater efficiency and improved resource conditions in the long-term.

3. Sharing Title to Permanent Range Improvements

The final rule amends section 4120.3–2 on cooperative range improvement agreements by providing for shared title of permanent range improvements. Sharing title between cooperators and BLM allows operators to maintain some asset value for investments made, improving working relationships and encouraging private investment in range improvements.

In 1995, the regulations were revised to provide that permittees and lessees do not share title with the United States. BLM's data indicate that construction of range improvements has declined since that rule change. The 1995 rule change is one among several factors that may have contributed to the decline. The preferred alternative provides that BLM and cooperators share title to permanent

structural range improvements in proportion to their contribution to on-the-ground project development and construction costs.

Private investment in range improvements may lead to better overall watershed conditions and improved wildlife habitat. BLM believes this will be the case because allowing shared title to range improvements provides an opportunity for permittees and lessees to document investment in their business enterprises, which is useful for securing business capital and demonstrating the value of their overall private investment in public and private lands. Permittees and lessees perceive this recognition of investment as crucial to their business, and therefore as an important factor when considering personal investment in range improvements. Most existing and, since 1995, all new permanent structural range improvements are implemented through Cooperative Range Improvement Agreements that include provisions to protect the interest of the United States in its lands and resources and ensure BLM's management flexibility on public lands.

We did not select Alternative 1, which does not allow shared title of range improvements, because it did not contain any incentive for private investment on public lands or recognize the contributions made by permittees and lessees. This lack of recognition of investments may have contributed to the substantial drop in construction of new range improvement projects following the removal of shared title provision in the 1995 rule. Alternative 3 does not differ from the preferred alternative.

4. Cooperation With Tribal, State, County, or Local Government-Established Grazing Boards

The final rule amends section 4120.5–2 on cooperation with Tribal, state, county, and Federal agencies by adding a requirement to cooperate with Tribal, state, county, or local government-established grazing boards for purposes of reviewing range improvement and allotment management plans. This will improve our cooperative relationship with government-established agencies and boards. The changes also comply with Executive Order 13352 of August 26, 2004 (69 FR 52989), on Facilitation of Cooperative Conservation.

State and local grazing interests had expressed concern that BLM has not used existing established grazing advisory boards effectively. Grazing board review and input, to the extent consistent with the applicable laws of the United States, will help us consider how to apply land management practices and spend range improvement funds. Cooperation with grazing boards, where they exist, will benefit BLM land managers because the boards can contribute resource-related information from local subject matter experts, thus increasing our ability to develop appropriate strategies for managing grazing allotments and developing range improvements. This provision is consistent with section 4120.5–1, which requires cooperation, to the extent appropriate, with all groups and individuals, including Tribal entities, to achieve the objectives of grazing management. These locally established grazing boards, where they exist, would be a valuable tool for gathering additional local input for BLM's decisionmaking processes and would help satisfy the FLPMA Section 401(b)(1) provision that calls for BLM to consult with local user representatives when considering range rehabilitation, protection, and improvement actions.

We did not select Alternative 1, which did not require cooperation with grazing boards, because we want to encourage and institutionalize participation by these grazing boards when we are preparing range improvement or allotment management plans, to ensure a consistent, cooperative approach. Alternative 3 does not differ from the preferred alternative.

5. Removal of Temporary Nonuse Limit

The final rule moves the provisions on temporary nonuse from section 4130.2(g) to section 4130.4 on authorization of temporary changes in grazing use within the terms and conditions of permits and leases including temporary nonuse, and amends this section by removing the 3-consecutive-year limit on temporary nonuse. The agency needs the flexibility to authorize temporary nonuse on an annual basis so that it may adapt its management to the needs of the resources as well as the resource user. This flexibility will improve working relationships with permittees and lessees and provide another tool to protect the health of rangelands.

Prior to the 1995 regulatory change, a permittee or lessee could apply for temporary nonuse of all or a portion of his active grazing use, and there was no restriction on the number of consecutive years of nonuse. The 1995 rules established provisions for ''conservation use,'' which provided an alternative to annually authorized nonuse and introduced a 3-consecutive-year limit on temporary nonuse. However, a 1999 court ruling determined that BLM did not have authority to issue conservation use permits, resulting in a regulatory framework that limits BLM's authority to approve temporary nonuse to 3 consecutive years.

Temporary nonuse is one of the most efficient means BLM has at its disposal to facilitate nonuse when drought, wildfire, or other episodic events dictate nonuse. The 3-consecutive-year limit on temporary nonuse restricts BLM's ability to respond to resource conservation, enhancement, or protection needs, or the personal or business needs of the permittee or lessee. Even if BLM believes that resources would benefit and would like to approve nonuse, we are prevented from using temporary nonuse after 3 years and forced to use alternative authority. The removal of the limitation on temporary nonuse in the preferred alternative provides regulatory flexibility for responsible and responsive rangeland management.

We did not select Alternative 1 or 3 because they restricted temporary nonuse to 3 or 5 consecutive years, respectively. We believe that there should be no rigid limit on the number of consecutive years of nonuse for reasons of resource conservation, enhancement, or protection (as opposed to nonuse for business or personal reasons). There may be times when nonuse is justified for longer than 5 years, which BLM will determine based on monitoring and standards assessment on a year-to-year basis.

6. Requiring Assessment and Monitoring for Determinations on Standards and Guidelines

The final rule amends section 4180.2 on standards and guidelines for grazing administration to provide that BLM will use standards assessment and monitoring data to support a determination that existing grazing management or levels of use are significant factors in the failure to meet standards or conform to guidelines. If a standards assessment indicates to the authorized officer that the rangeland is failing to achieve standards or that management practices do not conform to the guidelines, then he will use relevant monitoring data to identify the significant factors contributing to the failure to achieve the standards or to conform with the guidelines. The preferred alternative will protect the health of the rangeland and improve working relations with permittees and lessees because determinations on the causes of failure to meet a standard will be based on monitoring and assessment data, thus helping to ensure

comprehensive and sustainable decisions.

Many members of the public articulated a strong interest in BLM's monitoring program, and expressed concern about the adequacy of data used to support our decisions and determinations. Some individuals are under the impression that BLM supports determinations with a one-time assessment of rangeland conditions. Current regulations do not specify the methods to be used to analyze and evaluate rangeland conditions. However, guidance exists in policy in BLM Manual Section 4180 and Handbook H–4180–1.

Raising the issue of monitoring from the policy level to the regulatory level will help BLM to focus monitoring efforts in those areas with critical resource issues, as disclosed by standards assessments. Under the preferred alternative, monitoring will not be necessary on every allotment in order to make a determination, but only on those allotments that fail to meet standards or conform with guidelines due to levels of grazing use or management practices. By the end of Fiscal Year 2002, BLM had determined that about 16 percent of the 7,437 allotments evaluated were not meeting land health standards because of existing livestock grazing management. Since these assessments were first focused on areas with known problems, it is reasonable to assume that the proportion of allotments not likely to meet standards because of livestock grazing management practices or levels of use in the future will not exceed 16 percent. Thus, at a maximum, the preferred alternative may require monitoring data to support 16 percent of the future determinations. We expect to have appropriate monitoring data to support a significantly larger proportion of our determinations, regardless of whether or not they involve a finding of failure to meet standards due to livestock grazing. While BLM cannot control the number of appeals or lawsuits resulting from grazing decisions, we believe ensuring sufficient monitoring will reduce the number of instances where appropriate action is delayed because of protracted administrative and judicial processes.

We did not select Alternative 1 because it left the regulations unchanged, that is, silent on the basis for supporting a determination. We did not select Alternative 3 because it required determinations to be supported by either standards assessments or monitoring, not both. Neither of these alternatives is responsive to the concern about monitoring data, and neither provides the level of assurance desired that critical management decisions would be based on appropriate monitoring data.

7. Time Frame for Taking Actions

The final rule amends sections 4180.1 and 4180.2(c). These sections cover fundamentals of rangeland health, and standards and guidelines for grazing administration, respectively. We have removed the language in section 4180.1 of the proposed rule that would have required, for those areas where state or regional standards and guidelines have not been established and where conditions described by the fundamentals of rangeland health do not currently exist, that BLM modify grazing practices before the start of the next grazing year that follows BLM's completion of mandatory procedural and consultation requirements. However, the fundamentals themselves remain as approved in 1995. Section 4180.2(c) was amended to allow BLM adequate time (up to 24 months) for cooperative formulation, proposal, and analysis of appropriate management actions when we determine that changes in current management are necessary to ensure progress towards achieving standards and conforming with guidelines. Allowing additional time for this process will help improve the health of rangelands, because cooperatively-developed management actions based on reasoned analysis have a greater likelihood of successful implementation, and yield long-lasting resource benefits.

The preferred alternative for section 4180.1 is Alternative 2 in the EIS. It would have directed the authorized officer to modify grazing management if BLM determined that conditions described by the fundamentals of rangeland health do not currently exist because of current grazing practices, but only where standards and guidelines have not been established. However, as a result of comments and implementation experience, we are adjusting the proposed action to achieve a better reflection of the relationship between the fundamentals and the standards and guidelines. The regulatory provision for adjusting management to ensure progress towards rangeland health would be in section 4180.2 rather than both sections 4180.1 and 4180.2. While BLM still must take appropriate action to remedy grazing management practices that are detrimental to rangeland health, now the final rule allows time for cooperative formulation, proposal, and analysis of appropriate management actions prior to their implementation.

As explained in the 1995 final rule, the ''fundamentals will guide BLM in the development of plans for public lands and in the authorization of grazing related activities consistent with the provisions of FLPMA and TGA, that lead toward or maintain healthy sustainable rangelands.'' 60 FR 9954. The 1995 rule further explained the broad nature of the fundamentals: ''[F]undamentals are statements of the conditions that are representative of healthy rangelands across the West, and as such, are relatively broad * * *.'' Id. The fundamentals, therefore, reflect goals that may be incorporated into land use plans. With respect to grazing, the 1995 rule explained specifically that the ''State or regional standards and guidelines will be developed under the umbrella of the fundamentals, to provide specific measures of rangeland health and to identify acceptable or best management practices in keeping with the characteristics of a State or region such as climate and landform.'' Id. In essence, the ''overarching principles'' set forth in the fundamentals were to be supplemented by standards and guidelines tailored to more local conditions.

Although the 1995 rule established requirements for ''appropriate action'' when either the fundamentals or established standards and guidelines were not being met due to existing grazing, we believe requiring ''appropriate action'' in both circumstances is unnecessary and inefficient. Standards and guidelines have been developed in conformance with the fundamentals and adopted for all states and regions except southern California. These standards and guidelines provide the basis for the application of the broadly stated fundamentals to the management of public lands. In southern California, the fallback standards and guidelines provide for the application of the fundamentals to those public lands. This means that, in the California Desert District, the fallback standards and guidelines will be applied until standards and guidelines for the District are developed and approved, so that requiring BLM action under section 4180.1 is unnecessary.

On all other public lands, the standards and guidelines provide specific measures for achieving healthy rangelands within the framework of the broad fundamentals. Therefore, a duplicate administrative mechanism to require ''appropriate action'' under the fundamentals is unnecessary. Further, as previously noted, the fundamentals are broad concepts that describe healthy rangelands. Because the standards and

guidelines are more specific, they lend themselves to determining whether the ecosystem functions and processes as described by the fundamentals are in fact occurring, and to communicating achievement status in a way that the fundamentals do not. For this same reason, the standards also lend themselves to enforcement in a way that the fundamentals do not. Finally, we believe that removing the ''appropriate action'' requirement under the fundamentals will better enable authorized officers to focus on the implementation of the standards and guidelines, which we in turn expect to result in more efficient implementation of decisions that will maintain healthy rangelands.

The 1995 regulations sought to implement timely and responsive remedial action when BLM determines that existing practices are significant factors in failing to achieve standards and conform to guidelines. However, in practice, the requirement to take action ''before the start of the next grazing year'' has proven to be impracticable, often allowing BLM considerably less than a year to begin action. If BLM determines in October, for example, that an allotment failed a standard due to grazing management, in many cases only 4 months would be available before the typical March begin date under current regulations to develop new management alternatives before the beginning of the next grazing year for that allotment. This restricted time frame has made it difficult or impractical to implement decisions, and has damaged working relationships with permittees and lessees. If a common allotment with several permittees or lessees does not meet a standard because of current grazing practices, and numerous public land users wish to participate in the formulation of remedial management actions, the time frame for reaching consensus may be lengthy. In these instances it is very difficult to develop and implement appropriate action before the next grazing year. Further, failing to meet the deadline in one case opens the involved BLM office to legal action, to which resources and personnel must be devoted, diminishing that office's ability to meet the deadline in all cases, possibly leading to a snowballing effect as litigation mounts.

During the formulation, proposal, and analysis of appropriate action, several steps are necessary to develop sustainable management strategies that will yield long-term improvements in rangeland health. Adequate time is needed to obtain comment and input from permittees, lessees, states and the interested public on reports that are used as bases for making decisions to modify permits or leases, or otherwise to consult and cooperate with permittees, lessees, states, and Tribes; to carry out consultation with the Fish and Wildlife Service (FWS) or the National Oceanic and Atmospheric Administration (NOAA Fisheries), or both, under Section 7 of the ESA, 16 U.S.C. 1536; and to complete analysis and documentation required by NEPA.

The preferred alternative for section 4180.2(c) establishes a more reasonable time frame within which BLM must take appropriate action if we determine that existing grazing management or levels of use are significant factors in the failure to meet standards or do not conform with guidelines. Generally, under the final rule, BLM must develop appropriate action as soon as practicable but not later than 24 months after the determination and then implement that action no later than the start of the next grazing year.

The final rule at section 4180.2(c) has been amended between the proposed and final rule. It now includes a provision extending the deadline for developing appropriate action if legally required processes that are the responsibility of another agency prevent completion within 24 months. For example, if an ESA Section 7 consultation is required, it may be difficult to complete the process within the 24-month time frame.

This extended deadline will allow BLM to fulfill all required legal obligations and should result in more sustainable and effective decisions. Taking time at this stage of the process, and involving those most directly affected by BLM decisions, to propose, formulate, and analyze appropriate actions will save time in the future by reducing the likelihood of appeals and litigation that may occur as a result of hastily prepared management actions.

We did not select Alternative 1 because the 1995 regulations did not provide enough time to formulate and analyze management alternatives and complete all consultation and documentation requirements. Alternative 3 in this respect was the same as the proposed action.

8. Conservation Use

The final rule amends several sections of the regulations by removing all reference to conservation use and authority to issue conservation use permits. This affects sections 4110.0–5 Definitions, 4120.3 Range improvement permits, 4130.2 Grazing permits or leases, 4130.5 Free use grazing permits, 4130.8 Service charges, 4140.1 Prohibited acts. The1995 regulations allowed BLM to issue ''conservation use'' permits for the purpose of protecting the land, improving rangeland conditions, or enhancing resource values. This authority was challenged in court, resulting in a ruling that BLM did not have authority to issue permits exclusively for conservation purposes. By removing conservation use references from the final rule we are bringing the regulations into compliance with the court's holding.

We did not select Alternative 1 because it proposed to leave the conservation use authority in the regulations. Alternative 3 does not differ from the preferred alternative.

9. Definition of Preference, Active Use and Removal of Permitted Use

The final rule revises the definition of ''preference'' and ''active use'' in section 4110.0–5 on definitions, and removes the term ''permitted use'' from the rule. Where it occurred in the rule, the term ''permitted use'' has been replaced by either ''preference,'' ''grazing preference'' or ''active use,'' depending on the regulatory context. These amendments make the definition of ''preference'' similar to the meaning first formally promulgated in 1978. Elimination of the concept of ''conservation use'' made necessary the revision of the definition of ''active use.'' These changes will provide a consistent framework for the efficient administration of public lands.

The definition of ''preference''—along with the synonymous term ''grazing preference''—has been revised to include the total number of AUMs attached to base property, including active use and use held in suspension. The definition also retains the meaning of a priority position for the purposes of receiving a grazing permit or lease.

In 1978, BLM formally defined ''grazing preference'' to mean the total number of AUMs of livestock grazing on public lands apportioned and attached to base property owned or controlled by a permittee or lessee. Grazing preference represented a specific portion of forage out of all the vegetation that a land use plan determined to be available for livestock. The 1995 rule introduced some inconsistencies in the regulations by creating the term ''permitted use'' to mean the forage allocation, and narrowing the definition of ''preference'' to mean only a priority position as against other applicants for forage. For example, the regulations provide that an application to transfer preference shall describe the ''extent'' of the preference being transferred. This usage does not comport with the concept that

preference is a singular ''priority position,'' but rather, that it can be expressed in terms of its ''extent'' or quantity. Also, the current definition of ''permitted use'' is in some cases not appropriately used in the regulations. For example, even though permitted use encompasses ''suspended use'' and ''active use,'' the regulations state that failure to make substantial use of the ''permitted use'' authorized by the grazing permit or lease shall give BLM cause to take action to cancel whatever amount of ''permitted use'' the permittee has failed to use. This is paradoxical as ''suspended use'' is by definition not currently available for grazing use.

In the preferred alternative, the re-revised definition of grazing preference is once again consistent with its longstanding meaning—a meaning that was in formal usage for 17 years before it was changed by the 1995 grazing regulations. The definition is also consistent with how the term ''preference AUM's'' was informally used before 1978. Attaching a forage allocation to base property provides a reliable way to associate ranch property transactions with the priority for use of public land grazing privileges. This has been a foundation of BLM's system for tracking who has priority for those grazing privileges since the enactment of the TGA.

In revising the definition of ''preference,'' this final rule seeks to reinstate a familiar method of identifying the total number of AUMs apportioned and attached to base property. Preference includes both active use and use held in suspension. This definition of ''preference'' does not override the requirement that livestock forage allocations be made within a multiple use context as set forth in land use plans. The proposed definition should not be erroneously construed to imply that satisfying a permittee's or lessee's livestock forage allocation (his preference) has the highest priority when BLM employs land use planning or activity planning processes to determine the appropriate combination of resource uses on BLM-administered lands.

Since 1995, ''active use'' has meant ''current authorized use, including livestock grazing use and conservation use.'' BLM must remove conservation use from the definition because of a court ruling that BLM could not issue permits exclusively for conservation purposes. In the final rule the term ''active use'' is the amount of forage that is available for grazing use under a permit or lease based on rangeland carrying capacity and resource conditions in an allotment.

Permitted use was introduced as a term in the 1995 regulations to define an amount of forage allocated by a land use plan for livestock grazing. It is expressed in terms of AUMs and includes ''active use'' and ''suspended use''. Since we have revised the definition of preference to include this same livestock forage allocation, the term is no longer necessary.

We did not select Alternative 1 because the definition of preference would have remained simply a priority position to receive a grazing permit or lease, a definition that was inconsistent with traditional usage of the term which identified the total AUMs attached to specific base property. The definition of active use would have remained unchanged and inconsistent with the need to remove ''conservation use'' from the regulations. Alternative 3 does not differ from the preferred alternative.

10. Interested Public

The final rule amends sections 4100.0–5 Definitions, 4110.2–4 Allotments, 4110.3–3 Implementing changes in active use, 4130.2 Grazing permits and leases, 4130.3–3 Modification of permits or leases, and 4130.6–2 Nonrenewable grazing permits and leases, in order to streamline the role of the interested public. These changes should foster increased administrative efficiency by focusing the role of the interested public on planning decisions and reports that influence daily management, rather than on daily management decisions themselves.

Under the existing regulations, any person or group may obtain ''interested public'' status simply by requesting that status for a specific allotment in writing or by submitting a written comment on the management of livestock grazing on a specific allotment. Members of the interested public are mailed, at government expense, documents related to decisions on a particular grazing allotment. BLM must also consult, cooperate, and coordinate with members of the interested public on a host of decisions. The interested public provides valuable input, but some of those who have enlisted as interested public rarely, if at all, participate in the decisionmaking process. Others have obtained ''interested public'' status for numerous allotments, but only participate in the decision-making process for a select few. Additionally, management actions that now require consultation, cooperation, and coordination with the interested public include common management operations, such as the renewal or modification of individual permits, that are preceded by grazing decisions describing the management action to be implemented. These decisions are made available, with right of protest and appeal, to the interested public. Moreover, while formulation of grazing management decisions can greatly benefit from consultation with the interested public, we have found that consultation requirements for actions that implement those decisions and are intended to achieve the resource management goals set forth in those decisions are unnecessarily duplicative. These consultation requirements can slow our ability to act promptly to further those goals when necessary to respond to changing range conditions or transitory management circumstances. Clerical demands associated with maintaining non-participating members of the interested public also divert limited BLM resources from other valuable uses.

The final rule has amended the definition of ''interested public'' so that one must actually participate in the decisionmaking process in order to maintain interested public status. This change should improve administrative efficiency by allowing BLM to purge the names of nonparticipating persons from its interested public lists. The regulations have also been amended to remove consultation, cooperation, and coordination requirements from the following decisions: (1) Adjustments to allotment boundaries (section 4110.2–4); (2) changes in active use (section 4110.3–3(a)); (3) emergency allotment closures (section 4110.3–3(b)); (4) issuance or renewal of individual permits or leases (section 4130.2(b)); and (5) issuance of nonrenewable grazing permits and leases (section 4130.6–2). In adopting these changes, BLM has attempted to balance the important role of the interested public with the need for prompt decisionmaking on day-to-day management issues. Thousands of these decisions are made annually by BLM. Actions are guided by broader decisions (such as allotment management plans) and monitoring and other reports as to which the interested public will continue to have an opportunity to review and provide input. In addition, prior to considering any on-the-ground action, BLM must determine whether the proposed action conforms to the applicable land use plan. If a proposed action does not conform to the land use plan, a land use plan amendment must be completed before BLM can further consider the proposed action. The

public is assured involvement in the land use planning process.

We expect the changes in the definition and role of the interested public in the grazing program to improve administrative efficiency and lead to more timely decision making. It is BLM's expectation that this increased efficiency and faster reaction time will ultimately benefit overall rangeland health. Also note that these changes do not affect public participation opportunities available through the NEPA environmental analysis process, in administrative appeals of grazing decisions, or, to the extent practicable, in the preparation of reports and evaluations.

After publishing the Final EIS in June 2005, BLM proposed two categorical exclusions (CX) for issuing grazing permits (71 FR 4159, January 25, 2006). One of the proposed exclusions is for issuing grazing permits in general, and the other is for issuing nonrenewable permits. As proposed, the CXs would be limited to grazing permits where land health standards have been assessed and evaluated and the authorized officer has documented that the standards are achieved, or if not achieved, that livestock grazing is not a causal factor; and to permits issued as a result of administrative action such as changing the termination date or the name of the permittee, and where none of the 12 extraordinary circumstances listed in Appendix 2 of Departmental Manual 516 apply. If the CXs are approved, the public would continue to have opportunity to participate in the grazing permitting process on those allotments that qualify for a CX—

- Through the development of Resource Management Plans and activity plans (section 4120.2),
- Before a decision is made to increase a permittee s forage allocation (section 4110.3–1(c)),
- To the extent practicable in the preparation of reports and evaluations that are used to support modifications of grazing permits and leases (section 4130.3–3(b)), and
- In protests and administrative appeals of grazing decisions (subpart 4160).

We did not select Alternative 1, the continuation of existing regulations, because BLM's view is that those who become ''interested public'' oblige themselves to participate in the process that leads to a decision affecting management of the allotment(s) in which they are interested, and Alternative 1 does not provide for this. BLM has noted that in some cases, interested public who have been provided consultation opportunities regarding management of grazing on a specific allotment have failed to participate, but then file, in a relatively generic format, a protest and/or appeal of the final decision—which BLM then must address through a formal administrative process. BLM believes that it is appropriate to provide that those who forfeit their opportunities for participation in the processes leading up to the decision then also forfeit their opportunities to contest the decision after it is issued. BLM has noted that in other cases, some interested publics use the consultation opportunities provided to them as a forum for their advocacy of a particular position that has little direct bearing on issues at hand with respect to management of a specific allotment. The primary purpose for BLM allowing participation by the interested public in its grazing decision making process is to obtain specific insights regarding specific management on specific allotments. Such interested public participation opportunity is not intended to serve as a forum for espousing general opposition (or support) regarding programs and policies of the United States Government. For this and other reasons, the interested public provisions have proven costly to implement, have decreased administrative efficiency, and have, at times, hindered the administration of daily grazing management. Alternative 3 did not differ from the preferred alternative.

11. Water Rights

The 1995 rule added section 4120.3–9 on water rights. In simplified form, it provides that if livestock water rights are acquired under state law, they shall be acquired, perfected, and maintained in the name of the United States to the extent allowed by the pertinent state law. The final rule revises the section by limiting its applicability to water rights acquired by the United States and by removing the language stating that the water rights shall be acquired, perfected, and maintained in the name of the United States to the extent allowed by the applicable state law. Removal of this requirement will clarify BLM's flexibility in seeking water rights, and in pursuing administrative options including joint ownership of water rights with permittees or lessees.

Although the 1995 **Federal Register** preamble to the rule change stated that joint ownership of water rights was consistent with the regulations, some interpreted the provision to exclude cooperatively held water rights on public lands. Many water rights are currently held by permittees or lessees, or jointly owned with BLM. We have not seen evidence in these instances that a permittee or lessee holding a water right discourages cooperation or compliance with terms and conditions of grazing permits or complicates land exchanges.

The preferred alternative retains the requirement that BLM follow the substantive and procedural laws of the state when acquiring, perfecting, maintaining, and administering livestock water rights on public lands. This language makes it clear that, within the scope of state processes, BLM may seek co-ownership of water rights with permittees and lessees or, in certain circumstances, agree that permittees and lessees own the water rights. BLM continues to have the option of acquiring an exclusive water right as long as we do so in compliance with state water law. States assign water rights under different state laws, regulations, and policies. The flexibility afforded by the preferred alternative will facilitate BLM's ability to administer grazing permits and leases in varied circumstances.

We did not select Alternative 1 because it retained the wording in the 1995 regulation, which decreases BLM's flexibility to obtain livestock water rights to an extent that is less than that allowed under state law when BLM deems it desirable to do so. We believe that the preferred alternative best provides BLM with the flexibility to seek water rights appropriate to the circumstances. Alternative 3 does not differ from the preferred alternative.

12. Satisfactory Performance of Applicants

The final rule amends section 4130.1–1, on filing applications, to clarify the requirements for satisfactory performance of a permit or lease applicant. Portions of the existing section 4110.1 on mandatory qualifications were moved to section 4130.1–1 and amended. These changes should provide applicants with a clearer statement of BLM's expectations, improving working relationships and increasing administrative efficiency.

The existing regulations at section 4110.1(b)(2) list 3 situations where an applicant for a new permit would ''be deemed not to have a record of satisfactory performance.'' The regulation thus implied that more situations could lead to an unsatisfactory performance determination, but it did not specify further criteria. This produced some confusion among applicants, and it also led to some inconsistent application of this regulation within BLM. The final rule corrects this situation by stating

that an applicant will be deemed ''to have a record of satisfactory performance'' when the applicant (1) has not had a Federal grazing permit or lease canceled for a violation, (2) has not had certain state grazing permits or leases canceled, or (3) has not been barred from holding a grazing permit or lease by a court. The 3 criteria remain essentially unchanged from the existing section 4110.1(b)(2). By stating the provision in a positive way, however, we make it clear that applicants have a satisfactory record of performance unless they fail to meet one of these criteria.

Other portions of existing section 4110.1 related to applications for renewal were also moved but not modified.

Alternative 1, the continuation of the existing regulations, was not adopted because: (a) Satisfactory performance requirements are more appropriately addressed in the section of the regulations that addresses to whom BLM will issue a grazing permit or leases, rather than the section of the regulations that addresses who is qualified for grazing use on public lands; and (b) BLM intends that satisfactory performance requirements be clearly and unequivocally based on matters directly related to livestock grazing and not be based on violations of laws and regulations that may have no bearing on the potential ability of the applicant to manage grazing successfully under a BLM grazing permit or lease. This is consistent with the intent expressed by the Department when the regulations were first promulgated in 1995 that permittees be good stewards of the land (60 FR 9926), but sharpens the rule's focus on grazing lands. Alternative 3 did not differ from the preferred alternative.

13. Temporary Changes in Grazing Use Within the Terms and Conditions of Permit or Lease, Including Temporary Nonuse

The final rule amends section 4130.4 on authorization of temporary changes in grazing use within the terms and conditions of a permit or lease, including temporary nonuse, by defining the phrase ''temporary changes in grazing use within the terms and conditions of the permit or lease.'' Under existing regulations, this phrase is not defined. The clarification associated with this change should improve administrative efficiency.

Most permits or leases include a period of use described by specific dates. These dates do not always account for the natural fluctuations that can lead to forage availability outside the listed dates. Existing regulations allow for temporary changes but this authority has, at times, been applied inconsistently within BLM. The new definition clarifies the amount of flexibility BLM authorized officers will have when considering temporary changes. Under the new definition, a temporary change can be made to the livestock number and/or period of use. Temporary changes cannot result in the removal of more forage than the ''active use'' specified by the permit or lease. Neither can a temporary change authorize grazing earlier than 14 days before the grazing start date or later than 14 days after the grazing end date specified in the permit or lease, unless an allotment management plan under § 4120.2(a)(3) specifies different flexibility limits. This change will help ensure consistent application across BLM.

We did not select Alternative 1, the continuation of existing regulations, because of the inconsistent application associated with the current regulations. Alternative 3 did not differ from the preferred alternative in this regard.

14. Service Charges

The final rule amends section 4130.8–3 on service charges in order to reflect more accurately the current costs of processing and, thereby, contribute to administrative efficiency. Editorial modifications have also been made to remove a reference to ''conservation use,'' a term that has been removed from the regulations generally, and provide for increased clarity.

Current service charges are $10 for issuing a crossing permit, transferring grazing preference, or canceling and replacing or issuing a supplemental grazing fee bill. These charges are well below BLM's actual processing costs. The preferred alternative increases service charges to reasonable levels that capture more of the actual cost of processing. The change complies with section 304(a) of FLPMA, 43 U.S.C. 1734(a), where reasonable charges are authorized. The newly effective charges are $75 for a crossing permit; $145 to transfer grazing preference; and $50 to cancel and replace or to issue a supplemental grazing fee billing. These new charges are subject to later modifications through public notice in the **Federal Register.**

We did not select Alternative 1, continuation of the existing regulations, because those regulations contain a reference to ''conservation use'' that should be removed for consistency within these regulations. Under existing regulations service charges could still be adjusted through a **Federal Register** notice, but it is efficient to make these initial changes in this well-publicized rule. This technique has allowed for extensive public input on the issue. Alternative 3 did not differ from the preferred alternative as to this matter.

15. Prohibited Acts

The final rule modifies section 4140.1 on acts prohibited on public lands in order to reduce ambiguity and contribute to administrative efficiency. Some minor editorial modifications have also been made. The preferred alternative maintains the 3 sets of prohibited acts present in the existing grazing regulations.

The first set, section 4140.1(a), addresses various grazing-specific violations made by a permittee or lessee. The final rule clarifies that supplemental feed placed contrary to the terms and conditions of the permit or lease is a violation. The existing rule states only that supplemental feed placed ''without authorization'' was a violation, and this has produced some confusion among permittees, lessees, and BLM personnel. The added language clarifies that supplemental feeding made contrary to permit or lease terms and conditions is a violation even if the permittee or lessee is authorized to undertake some level of supplemental feeding.

The second set of prohibited acts, section 4140.1(b), applies to all persons performing acts on all BLM lands, not just permittees and lessees. The preferred alternative clarifies that the prohibited activity listed in the second set must occur on ''BLM-administered lands.'' The existing phrase ''related to rangelands'' created confusion. The rule clarifies that it is a prohibited act to graze without a permit, lease, or other grazing use authorization. The amended language accounts for situations where BLM allows grazing through authorizations other than a term permit or lease, such as a crossing permit. Also, the final rule clarifies that grazing fees must be paid in a timely manner to avoid violating these regulations. Thus, this section provides, among other things, useful authority to encourage timely payment of grazing fees.

The third set of prohibited acts, section 4140.1(c), pertains to violations of certain Federal or state laws or regulations. The final rule now clarifies that the section applies to prohibited acts performed by a permittee or lessee ''on the allotment where he is authorized to graze.'' This replaces ambiguous language that stated the provision applied to acts ''where public land administered by the [BLM] is involved or affected [and] the violation

is related to grazing use authorized by a permit or lease issued by the [BLM].'' Few actions on lands outside the grazer's authorized allotment could have triggered a violation under the existing language. The existing language created confusion regarding its scope while providing BLM with little useful authority. The more precise language of the final rule will be more understandable and improve the efficiency with which this regulation can be enforced. Violations of statutes or regulations on non-allotment lands will continue to be subject to the normal penalties available under those authorities, regardless of whether the violations are related to grazing use.

We did not select Alternative 1, the continuation of existing regulations, due to the presence of the ambiguity previously discussed. Alternative 3, the Modified Action alternative, proposed two provisions that differed from the Proposed Action. The first provision would have required the use of weed seed-free forage, grain, straw, or mulch when required by the authorized officer. We did not include the provision at this time as we are still developing a nationwide weed-free policy for public lands. The second provision would have deleted the third category of prohibited acts, those pertaining to violations of certain Federal and state laws or regulations, from the regulations. Although relatively few violations have been documented, BLM believes this category serves a deterrent purpose and has chosen to retain it.

16. Decisions on Ephemeral or Annual Rangeland Grazing Use and Nonrenewable Permits

The final rule amends section 4130.6–2 on nonrenewable grazing permits and leases by adding a new paragraph (b) allowing BLM to make a decision issuing a nonrenewable grazing permit or lease, or affecting an application for grazing use on annual or designated ephemeral rangelands, effective immediately or on a date established in the decision. The final rule has removed language from existing section 4160.3(d) on final decisions that described the effect of an administrative stay on decisions related to designated ephemeral or annual rangelands and temporary nonrenewable grazing. The ability to make decisions on nonrenewable grazing permits and leases, or ephemeral or annual rangelands grazing use, effective immediately on a date established in the decision under final rule section 4130.6–2(b) has largely eliminated the need for any special stay provisions. These changes should improve administrative efficiency and effectiveness by allowing faster responses to time-sensitive requests and clarify compliance with legal requirements.

The existing regulations at section 4160.3(d) state that when OHA stays a decision regarding designated ephemeral or annual rangeland grazing ''the authorized grazing use shall be consistent with the final decision pending'' the final determination on the appeal. In addition, under the existing regulations a decision shall not be in effect for a 30-day period during which an appeal may be filed, and for an additional 45-day period if a petition for stay is filed. This creates a problem where the decision is to grant (rather than deny) the application for nonrenewable use, or use on ephemeral or annual ranges, because in some cases the forage quality rapidly declines and loses its nutritional value during this combined 75-day waiting period. Thus, a simple appeal of a decision to grant an application for use of ephemeral or annual rangeland, or for temporary and nonrenewable use, can render both the application and approval futile for the purpose intended, namely, to use available forage to provide nutrition for livestock. BLM considers this to be a procedural flaw.

When BLM grants an application for temporary and nonrenewable use, or use on annual or ephemeral ranges, this indicates that BLM has evaluated the merits of the application and has determined that such use would be consistent with achieving resource management objectives specified in land use plans. BLM intends that the simple act of an appeal alone, with nothing more, should not render both the application and approval an exercise in futility.

The proposed rule addressed this 75-day waiting period issue by placing language similar to that in existing section 4160.3(c) into section 4160.4(c) on appeals. However, in response to comments from OHA, this section has now been removed from the final rule. Instead, BLM may now issue nonrenewable permits as immediately effective decisions under section 4130.6–2(b). This change will allow time-sensitive decisions on forage to be made and immediately put into practice, without waiting up to 75 days. If that decision to authorize the use is appealed and a stay is granted, the decision would be inoperative and livestock would have to be removed. In the alternative, if the decision is appealed and a stay is denied, the appellant would have the option of seeking an injunction of the application approval in Federal court. In either case, an appellant would be required to show why it would have a reasonable chance of prevailing on the merits of the appeal in order to halt the action, and the act of filing an appeal, in and of itself, would not frustrate the purposes intended by the application and approval.

We did not select Alternative 1, the continuation of existing regulations, because of the issues discussed above. Alternative 3 did not differ from the preferred alternative.

17. Effect on Grazing Use When a Stay Has Been Granted on an Appeal of a Decision Associated With Changes to a Permit or Lease or Grazing Preference Transfers

The final rule amends sections 4160.3 Final decisions and 4160.4 Appeals, as these sections relate to administrative stays of decisions associated with (1) changes made to a permit or lease (other than a nonrenewable permit), or (2) grazing preference transfers. The final rule will allow grazing to continue under the terms of an immediately preceding permit or lease if all or a part of a decision is stayed.

Under this provision, although the grazing decision appealed is stayed, grazing can continue at the previous levels of use. This ensures that the decision appealed is rendered inoperative for exhaustion purposes under 5 U.S.C. 704 and the status quo prior to issuance of the decision appealed remains in effect. In the instance of an appeal and stay preventing implementation of a new grazing authorization, the fact that a permittee may still be authorized to graze at some level is not a function of the stayed decision being implemented. It is worth noting that the APA provides at 5 U.S.C. 558(c) that when a licensee has made a timely and sufficient application for a renewal or a new license in accordance with agency rules, a license authorizing an activity of a continuing nature does not expire until the application has been finally determined by the agency.

Under the existing regulations, the effects of an administrative stay are addressed at § 4160.3(c)–(e). Existing § 4160.3(d) allows grazing to continue at the previous year's level when a stay is granted unless the permit or lease applicant had no authorized grazing use during the previous year. The final rule clarifies, in § 4160.4(b)(1), that BLM will continue to authorize grazing under prior terms when a stay is issued for all or part of a decision that (1) cancels or suspends a permit or lease, (2) changes the terms or conditions of a permit or

lease during its current term, or (3) renews a permit or lease. Existing § 4160.3(d) applied the continuation of prior terms to decisions on ''an application for grazing authorization.'' This general phrase created some ambiguity that the more precise list in the final rule seeks to clarify.

The continuation of grazing under prior terms in existing § 4160.3(d) does not apply to those who had no authorized grazing use in the prior year. Typically, this exception has affected applicants who obtained grazing preference through a transfer. For example, assume a person has recently purchased the base property of another, such as a ranch. The previous ranch owner's grazing preference can be transferred to the new owner; however, the new owner must apply for a new permit because the existing permit automatically expires when the transfer is approved. See 43 CFR 4110.2–3. If the new owner is granted a permit authorizing less grazing than the previous owner's permit, the new owner can appeal to OHA. He can also seek a stay of the BLM decision. If a stay is granted, however, the new owner would not be authorized to graze at the higher level associated with the previous ranch owner's permit under existing section 4160.3(d). Conversely, had no ranch sale occurred and a renewal permit application led to a reduction in grazing use, the ranch owner would face a different situation. Should he appeal and receive a stay, the rancher would be allowed to continue grazing at the higher level under his previous permit. Many believed this differentiation in existing section 4160.3(d) between existing permittees and transferees was not justified. Also, requiring any grazer to reduce operational levels temporarily is contrary to a stay designed to maintain the status quo while the appeal is considered.

Existing § 4160.3(e) also creates confusion among grazing users, the public, and BLM. This paragraph states that when OHA stays a final decision that changes authorized grazing use, the grazing use that will be authorized while the decision is stayed ''shall not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized.'' This paragraph has since been interpreted by OHA to mean that the use BLM can authorize cannot exceed the use specified by the grazer's existing permit or lease, regardless of the use that may have been made under that permit or lease in the immediately preceding year (*Fallini, Fallini Living Trust,* IBLA 2002–139, March 4, 2002).

The final rule has addressed these issues by removing the discussion of stays from section 4160.3 Final decision and placing that in section 4160.4 Appeals. Now, when a decision on a preference transferee's application is stayed, BLM will issue a temporary permit that contains the same terms and conditions as the permit previously applicable to the area in question, subject to any relevant provisions in the stay order itself. The permit will be in effect until OHA resolves the administrative appeal. This change will enhance the continuity of grazing operations and remove some of the uncertainty associated with preference transfers. This change does not prevent BLM from making emergency allotment closures or suspending grazing use to protect rangeland health, but it does allow grazing to continue under normal circumstances as a use compatible with BLM's multiple use mission. BLM is making these changes to balance the exhaustion of administrative remedies under the APA and our responsibilities under FLPMA and TGA to

- Manage lands for multiple use and sustained yield,
- Regulate the occupancy and use of the rangelands,
- Safeguard grazing privileges,
- Preserve the public rangelands from destruction or unnecessary injury, and
- Provide for the orderly use, improvement, and development of the range.

Also, to address the unclear language in existing § 4160.3(e), these stay regulations clearly reference grazing permits and leases as the document upon which BLM must rely to determine allowable grazing use levels, and removes the language that refers to the ''authorized use in the last year during which any use was authorized.''

Alternative 1, the continuation of existing regulations, was not selected because of the problems discussed above. Alternative 3 did not differ from the preferred alternative.

18. Biological Assessments and Evaluations Are Not Decisions and Therefore not Subject to Protest or Appeal

The final rule adds section 4160.1(d), stating that a biological assessment (BA) or biological evaluation (BE) is not a BLM decision for purposes of protest or appeal. BAs and BEs are documents prepared by BLM for ESA compliance purposes. This change should improve administrative efficiency by lessening the time associated with ESA consultation.

This change is made in response to the decision of the Interior Board of Land Appeals (IBLA) in *Blake* v. *BLM*, 145 IBLA 154, (1998), *aff'd on reconsideration,* 156 IBLA 280 (2002). There, the IBLA held that a change proposed by BLM in a permit or lease and evaluated in a BA or BE is a proposed decision under the existing regulations at section 4160.1. *Blake (on reconsideration)*, 156 IBLA at 283–86. After the opportunity for a protest, that change could be set forth in a final decision subject to appeal under section 4160.4. *Blake*, 145 IBLA at 166. The *Blake* holding has led to a situation where a BLM BA or BE addressing possible grazing changes may trigger the need for two final decisions, the first of which cannot be directly implemented. BLM believes a BA or BE is better viewed as an intermediate step that may later lead to a single final decision that can be implemented. This regulatory change is designed to implement that view—a view that formed the basis of BLM actions prior to the *Blake* decisions. By this change, the Secretary has prospectively superseded the *Blake* decisions through rulemaking.

For example, under the existing *Blake* interpretation, after any protests to a change evaluated in a BA or BE are resolved, the BA or BE would be subject to appeal. However, assuming there were no appeals, any grazing-related changes contemplated in this ''final'' decision would *not* be implemented at that time. Instead, the BA or BE is merely submitted by BLM for consideration by the FWS. If formal consultation is required, FWS later issues a biological opinion (BO) in response to the BA. This FWS BO may differ from BLM's BA or BE. Moreover, BLM may exercise discretion as it makes implementation decisions based on the findings and advice contained in the FWS BO. Any grazing-related changes are then issued as proposed decisions under section 4160.1 and subject to protest under section 4160.2. Assuming protests are resolved, a final decision is then issued and is subject to administrative appeal under section 4160.4. After any appeals are resolved, this final decision can then be implemented. This time-consuming process has slowed the ability of BLM to respond to ESA related issues.

The final rule eliminates the potential for protests and appeals of a BA or BE prepared by BLM. A BA or BE does not grant or deny a grazing permit application, assess trespass damages, or make other decisions that are typically subject to protest and appeal. Rather, a BA or BE is a tool used to decide whether to initiate formal consultation under section 7 of the ESA.

The TGA requires BLM to provide, by appropriate rules and regulations, for local hearings on appeals of grazing decisions. 43 U.S.C. 315h. These local hearings are administered by an administrative law judge (ALJ) from the Hearings Division of OHA. ALJ decisions can then be appealed to IBLA within OHA. While the Secretary has delegated review authority to OHA over decisions regarding land use, the Secretary has not delegated authority to OHA to review biological opinions of the FWS. *See* Secretarial Memorandum of January 8, 1993 (Secretary Lujan); Secretarial Memorandum of April 20, 1993 (Secretary Babbitt). This final rule does not modify this longstanding policy. The ESA does not mandate the creation of an administrative appeal procedure for biological opinions and instead authorizes a civil suit in Federal Court. 16 U.S.C. 1540(g). Biological opinions may also be challenged in Federal court under the Administrative Procedure Act (APA). *See Bennett* v. *Spear*, 520 U.S. 154, 178 (1997).

Alternative 1, the continuation of existing regulations, was not selected because it would continue the requirement that BLM issue a biological assessment that is created for the purposes of ESA consultation on a grazing-related proposed action as if it were a grazing decision under the TGA, and perpetuate the confusion and inefficiencies affecting BLM's grazing decision-making processes addressed above. On September 20, 2004, BLM issued Information Bulletin 2004–148. Among other things, this IB pointed out that BLM will notify applicants for grazing permits or leases that if ESA matters must be considered in the course of processing their application for issuance or renewal of a grazing permit or lease or other grazing use authorization, that under the ESA they may request BLM to grant them ''applicant status'' under 16 U.S.C. 1536(a)(3), and that individuals with applicant status will be given the opportunity to comment on and provide input regarding:

- The modifications suggested by the Services (i.e., U.S. Fish and Wildlife Service (FWS) and/or National Marine Fisheries Service (NMFS)) during informal consultations, in order to avoid the likelihood of adverse effects on listed species or critical habitat. See 50 CFR 402.13(b).
- The submission of information to the Services for consideration during the consultation. See 50 CFR 402.14(d).
- Ensuring that they make no irreversible or irretrievable commitment of resources, with respect to the action, that has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives chosen to avoid violating Section 7(a)(2). See 50 CFR 402.09.

BLM believes that its guidance on early consultation with applicants addresses the need identified by *Blake* for consultation with existing or prospective permittees or lessees regarding the contents of biological assessments that BLM prepares for the purposes of ESA-required consultation.

Alternative 3 did not differ from the preferred alternative.

IV. Response to General Comments

The extended comment period on the proposed rule ended on March 2, 2004. We received about 18,000 comment letters and electronic communications. An exact count of the comments is not available due to the large amount of duplication among the comments; very often a single individual or entity submitted identical comments multiple times or via different media. We did not attempt to keep track of all the duplications, although we observed many. Large numbers of comments supported or opposed the proposed rule in general terms, or discussed issues without addressing specific sections. Most gave reasons that do not relate to specific provisions of the regulations. In this section, we will discuss the comments that addressed the regulatory process as it pertains to this rule, general comments supporting and opposing this rule, issue-oriented comments that do not address specific sections, and comments raising issues not addressed in the proposed rule. The comments are organized by subject and presented in groups that address a theme on the subject. We have grouped similar comments together into themes and addressed them with a single response.

BLM published a Notice of Availability for the associated Draft EIS on January 6, 2004 (69 FR 569). On January 16, 2004 BLM published a notice that extended the public comment period on the proposed rule and Draft EIS until March 2, 2004 (69 FR 2559) so that those commenting would have sufficient time to review the Draft EIS.

Over 18,000 comments were received combined on the draft EIS and proposed rule. Responses to those comments were summarized along with the comments and enclosed in the Final EIS that was published on June 17, 2005.

Approximately 188 comments were submitted after close of the extended public comment period. Five raised specific issues, and one was submitted from a sister agency, the U.S. Fish and Wildlife Service.

We decided that an additional document was necessary to respond to those comments, while also further clarifying issues in the FEIS, and began working on an Addendum to the FEIS. On March 31, 2006, BLM published the Notice of Availability for this Addendum to the original FEIS, which was entitled ''Proposed Revisions to Grazing Regulations for the Public Lands Final Environmental Impact Statement.''

A. The Regulatory Process

Some comments addressed the regulatory process itself. One comment urged BLM to clarify when comments are due by specifying a date and time, including time zone, stating that they find it uncertain when the exact comment deadline is in the electronic age. Another comment stated that BLM should not ignore comments received from the public during the rulemaking process.

We always accept comments postmarked or electronically dated within the stated comment period, regardless of the time zone of origin. In future proposed rules, we will make this clearer. We received almost 18,000 letters, postcards, e-mails, faxes, Web-based comments on the proposed rule and the DEIS, and statements made at the public meetings, and the BLM staff reviewed every comment numerous times.

We have responded to comments on the content of the proposed rule and the DEIS in either this final rule or the final EIS (including the Revisions and Errata document and the Addendum to the FEIS), or both. In some cases, we responded with a change in the regulatory text, and in others with revised or additional language in the EIS. In other cases, we have tried to explain in this preamble why we did not adopt the comment. Since we received so many communications to analyze, we have not attempted to respond separately to every duplicate or substantially similar communication individually, and we did not adopt every suggestion contained in the comments. We often receive conflicting comments from the public. BLM considered all views and suggestions regarding the rule, especially suggestions to improve the language in the regulations. We discuss either in this preamble or in the EIS every discrete suggestion and argument raised in the comments.

Those comments that appeared in form letters or that were expressed multiple times in multiple ways have

been addressed in a response to a prototypical example of each such communication, or have been summarized and responded to as a general comment. BLM has not ignored any comments received at any point during the rulemaking process.

One comment stated that BLM should have answered questions at the public meetings to help clarify the proposed rule.

During the public meetings, BLM sought direction from the audience on other possible policy issues or regulation changes that we should consider for implementation. BLM did not want to influence the audience or limit the possible discussion during the meetings.

One comment stated that BLM should give more weight to comments and concerns from the agricultural industry than those from other interests. Another stated that the Public Lands Council comments should be the first guide in amending the grazing regulations.

BLM considered all relevant comments from the public equally on their merits, whether they were from industry, other government agencies, staff comments, academia, other interest groups, or individuals.

One comment stated that BLM ''subverted'' the NEPA process by issuing the DEIS after the proposed rule was published.

We respond in detail to this comment in the discussion of NEPA compliance under C. General Opposition, below.

B. General Support

Many comments supported the proposed rule because it recognized the socio-economic and cultural importance of public land grazing to adjacent and local communities and considered the concerns of public land grazing users. Others stated that the rule would protect the health of the land by relying on science, improving working relations with permittees and lessees, improving administrative effectiveness and efficiency, and making it clear that changes in use must be based on monitoring and assessment.

C. General Opposition

Many of those who opposed the proposed rule stated that BLM should not adopt the rule because it would give ranchers preferential treatment at the expense of the nation's natural resources; favor ranchers and elevate grazing as the primary use of public land instead of managing for multiple resources and restoring degraded resources; weaken the conservation and restoration of public lands; limit public participation; limit BLM's regulatory authority with respect to public lands; and return to the archaic notion that the grazing lessee in essence owns the public's land. Others opposed the rule, stating that it hampers the work of BLM field offices, or that it fails to identify good and bad grazing practices. Many comments opposed the rule, expressing their opposition in terms of opposing public land grazing itself.

BLM makes no changes in the final rule in response to these comments. We agree that we are a multiple use agency and that single uses should not generally be favored at the expense of other users or resources. These regulations do not favor ranchers at the expense of other resources. BLM has never operated under the notion that the grazing operator in essence owns the public land, and these regulatory changes do not introduce provisions that would provide for rancher ownership of the public lands. Rather, the changes are intended, among other things, to improve the cooperative environment within which ranching takes place on public land. At the same time we have made certain that these adjustments to the regulations do not harm the rangeland resources or prevent significant involvement of the public in rangeland management. We need to amend the current regulations to improve working relationships with permittees and lessees, to protect and enhance the health of the public rangelands, to resolve some legal issues, and to improve administrative efficiency. The final rule continues to provide for BLM cooperation with other government agencies that have responsibility for grazing on public lands. The final rule provides for the interested public to review, provide input, and comment on reports that evaluate monitoring and other data used as a basis for developing terms and conditions of a grazing permit or lease. Also, the final rule retains interested public participation when preparing allotment management plans, developing range improvement projects, and apportioning additional forage. In the final rule, the interested public retains the opportunity to review proposed and final decisions, as well as the right to protest proposed decisions and appeal final decisions as long as they meet the requirements of 43 CFR 4.470.

BLM manages for multiple uses. We also restore degraded resources, and believe that we can pursue restoration while administering grazing in accordance with the regulations.

We do not seek to elevate grazing to be the primary use of public land. BLM manages the public land on the basis of multiple use and sustained yield. We intend the regulatory changes to improve working relationships with permittees and lessees. We anticipate that these changes will improve consultation, cooperation, and day-to-day coordination with them. Additionally, the rule focuses communication efforts on those groups most interested in the management of public lands for grazing. The cooperation fostered by the final rule should help make BLM's field work more efficient and cost effective.

BLM does not believe that the final rule weakens environmental standards. For example, it strengthens standards by requiring monitoring and land assessment in areas that do not meet rangeland health standards due to grazing practices before BLM makes a determination to that effect. As a result, BLM's decisions are expected to reflect a more comprehensive analysis that in turn can be anticipated to help ensure defensible decisions if appealed and ultimately more effective decisions from both an implementation and land health perspective. The final rule retains the fundamentals of rangeland health and requires that Standards and Guidelines developed by BLM State Directors be consistent with these fundamentals. The final rule retains the regulatory requirement that BLM take appropriate action whenever existing grazing management practices or levels of grazing use are significant factors in not achieving standards or conforming with guidelines. The final rule retains provisions that allow BLM to close areas to grazing or modify grazing practice when necessary for immediate protection of resources because of conditions resulting from fire, drought, flood, or insect infestation. The final rule retains provisions for BLM to review grazing permits and leases and to make changes as needed to maintain or improve rangeland productivity or assist in making progress toward restoring ecosytems to properly functioning condition. The final rule retains provisions that the range improvement fund be used for improvements that benefit rangeland resources, including riparian area rehabilitation, improvement, and protection, fish and wildlife habitat improvement or protection, soil and water resource improvement, wild horse and burro management facilities, vegetation improvement and management, and livestock grazing management. The final rule retains provisions that prohibit cutting, burning, spraying, destroying or removing vegetation without authorization. The final rule provides

that BLM may suspend or cancel the permits or leases of operators who are convicted of performing environmentally degrading acts on allotments where they are permitted to graze. Nothing in the final rule diminishes BLM's regulatory authority.

As for distinguishing between good and bad grazing practices, the rule does change the way BLM determines whether an operator has a satisfactory record of performance. See the discussion under section 4130.1–1, below.

Some comments stated that BLM should not change the regulations because the new regulations do not follow the Secretary's ''4 Cs'' philosophy.

The changes in the regulations are designed to improve communication, consultation, and cooperation in the service of conservation. We explain elsewhere in this preamble how the various changes help to conserve the health of the land by encouraging cooperation between BLM and grazing permittees and lessees, and how the interested public can participate at various stages of the range management process.

One comment stated that BLM should revise the proposed regulations in order to better reflect its multiple use mandates, and that BLM failed to justify reversing current regulations. Another stated that the proposed rule represented fundamental policy shifts. Others stated that the current regulations were litigated and upheld in Federal court.

BLM stated the reasons for the changes in the grazing regulations in the proposed rule. The final rule does not contain fundamental policy shifts, although it amends aspects of the 1995 rule. We intend the revisions to improve working relations with permittees and lessees, to protect the health of the rangelands, to increase administrative efficiency and effectiveness, and resolve legal issues. The fact that a regulation has been approved in a court decision does not mean that the agency can never amend it further if it finds a need to do so. The changes in the final rule are driven by specific issues and concerns that have come to BLM's attention through experience with the 1995 regulations and from public comments.

The regulatory changes are narrow in scope, do not include changes in the fundamentals of rangeland health or the standards and guidelines for grazing administration, and otherwise leave the majority of the 1995 regulatory changes in place. FLPMA provides authority and direction for managing the public lands on the basis of multiple use and sustained yield principles. FLPMA land use planning has determined that grazing continues to be an appropriate use of a large portion of the public lands administered by BLM. The final rule will not affect BLM's multiple use mandate. In fact, one of the major areas of focus of the grazing regulations revisions is protecting the health of the rangelands by making temporary nonuse a more flexible option, by requiring a BLM finding that additional forage is available for livestock use as opposed to other uses before authorizing livestock grazing use of it on a temporary or sustained-yield basis, and by emphasizing monitoring as a basis for BLM decisions on grazing management, including any increases in active use as well as decreases.

Comments opposing the rule asserted that grazing has degraded wildlife habitat, soils, cultural sites, native plant communities, and riparian resources, leading to increased erosion, loss of range productivity, invasion by exotic plants, and will result in desertification and increased listing of species as threatened or endangered. Other comments stated that the proposed rule would do little to promote recovery of streamside vegetation and would cause short-term damage to rangeland and wildlife habitat. Comments urged BLM to take actions to restore these lands, not weaken the grazing regulations, stating that the impacts of overgrazing on western rangeland streams, rivers, and fisheries have been documented. A comment said that BLM should allow the land to rest to heal from overgrazing.

These comments are largely directed at the grazing program itself, and are beyond the scope of this rule, which is focused on improving administration. The elimination of grazing from the public lands has not been considered here. This level of analysis was undertaken for the comprehensive changes made in the grazing regulations in 1995. Here, the changes are administrative in nature. Uses other than grazing can contribute to the problems discussed in the comments. Within its resource capabilities, BLM, in cooperation with users and the public, manages grazing and other uses in a manner that recognizes and addresses the potential for these impacts so that, ideally, they are avoided or mitigated. Under subpart 4180 of the grazing regulations, BLM must manage grazing, which includes rest from grazing where appropriate, in a manner that achieves, or makes progress towards achieving, standards for rangeland health. These standards have been developed on a regional basis and address watershed function, nutrient cycling and energy flow, water quality, habitat for endangered, threatened, proposed, candidate, or other special status species. The final rule will strengthen BLM's ability to implement grazing strategies that provide for maintenance or achievement of healthy rangelands.

A comment asserted that stocking levels are too high, and forage production is only 1/5 of its potential, resulting in conflict with rangeland health standards. Another comment stated that light stocking levels would provide the highest long-term financial return. A third comment stated that BLM should not allow utilization levels based on the take half/leave half principle.

These comments appear to suggest that stocking and utilization levels should be determined through a rulemaking process. What the rule is doing, on the other hand, is to make mainly procedural changes to improve administration of the grazing program as a result of experience implementing the 1995 rule. Stocking levels are better addressed during the land use and activity planning processes where the wide variety of relevant factors, such as climate, competing forage use, and other multiple use needs, can be addressed. The rule provides that monitoring data must be used to support a determination that livestock grazing is a significant cause for not achieving one or more rangeland health standards. Typically, utilization measurements or estimates are among the kinds of monitoring studies BLM conducts to inform analysis about the effects of stocking rates on land conditions at the local level.

A comment stated that BLM should not place western grazing rights above those in other areas of the country, and that the government provides competitive advantages to public land grazing permittees and lessees.

The comment raises fee and subsidy issues, which were not part of this rulemaking. The grazing fee formula was established in the Public Rangelands Improvement Act (PRIA) of 1978 (43 U.S.C. 1901, 1905) through 1985. The applicability of the formula was extended by Executive Order 12548 on February 19, 1986 (51 FR 5985). The regulatory provision implementing PRIA and the Executive Order appears at 43 CFR 4130.8–1. The formula is not affected by the costs of grazing in other parts of the country outside of the 11 western states of Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California. Fee and subsidy issues were examined in BLM's EIS for Rangeland Reform '94. This proposed

action addresses refinements of Rangeland Reform '94, including, among other things, inefficiencies in the current regulations.

A comment stated that BLM ''subverted'' the NEPA process by not adopting language contained in a preliminary internal administrative review copy of the draft EIS (DEIS) obtained by the commenting organization and submitted as an attachment to its comment. The draft document contained descriptions of significant adverse effects on wildlife, biodiversity, and special status species. The comment stated further that not using this document prevented BLM from taking a ''hard look'' at environmental consequences of the proposed rule, and resulted in an unlawful post-hoc rationalization.

BLM did not ''subvert'' the NEPA process by editing the administrative review copy of the DEIS. As is BLM's usual practice, staff scientists and analysts prepared preliminary drafts of portions of the DEIS, then circulated their preliminary drafts among their colleagues. We circulate such documents for internal review in an effort to produce a factually accurate, scientifically sound, and well-reasoned DEIS. The administrative review copy represents a ''snapshot'' of an early stage of BLM's deliberative internal review process. The text identified in the comment was revised as a result of further internal review for the reasons explained below.

Some of the revisions updated the draft document to reflect the actual contents of the proposed rule. For example, the administrative review copy stated that upland and riparian habitats would continue to decline because the proposed rule would worsen an ''already burdensome appeals process'' and decrease BLM's ''ability to control illegal activities on public lands.'' In fact, the rule did not propose to amend the ''appeals process,'' but remove provisions from the grazing regulations that were redundant to regulations of the Office of Hearings and Appeals in 43 CFR part 4. With respect to illegal activities on public lands, the rule proposed specific prohibited acts on grazing allotments that would constitute violations of the grazing regulations, with penalties including possible forfeiture of the grazing permit. However, the rule does not prevent BLM from enforcing other regulatory or statutory provisions on allotments or any other public lands.

The administrative review copy also concluded that the proposed rule would ''greatly [diminish] the ability of the BLM to regulate grazing,'' to the detriment of wildlife, because it would defer to state water law. Deference to state water law is an element of the existing provision on water rights (43 CFR 4120.3–9), and was not new in the proposed rule. BLM retains regulatory authority over grazing use on public lands regardless of ownership of water rights on public lands. A state water right does not confer an attendant right to graze livestock on public lands. Moreover, BLM may hold water rights for other beneficial uses, such as for wildlife, wildlife habitats, and recreation, even if it is precluded from holding water rights for watering livestock, which is currently the case in some states.

The administrative review copy was also further edited to cite legal requirements more precisely. In some cases, the conclusion based on the legal requirement was changed to reflect the agency's assessment of the effects of the rule. For example, the administrative review copy stated that ''the increasing and burdensome administrative procedural requirements for assessment and for acquisition of monitoring data '' abrogate our responsibility for management of water quality as codified in Section 313 of the Water Quality Act of 1987 (Pub. L. 100–4); and further, committed to by [sic] designation by most [sic] as a 'Designated Management Agency.' Delaying modification of grazing prescriptions when an[d] where warranted and/or mitigation of damages created by failure to implement a Best Management Practices (BMP's) iterative process will continue to stress western watersheds.''

Section 313 of the Water Quality Act of 1987 amended various civil penalty provisions of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1251 *et seq.*) that are not administered by BLM and are not relevant to federally-permitted grazing. BLM is, however, subject to requirements pertaining to nonpoint source pollution that may result from livestock grazing, and the appropriate citation is Section 313 of the FWPCA, 33 U.S.C. 1323, rather than Section 313 of the Water Quality Act of 1987.

Section 313 of the FWPCA requires Federal agencies to ''comply with * * * all state * * * and local requirements * * * in the same manner and to the same extent as any nongovernmental entity.'' 33 U.S.C. 1323(a)(1). BLM does not believe that delay in modifying grazing prescriptions or implementing BMPs would necessarily lead to violations of state and local water quality requirements, and that delay may be warranted in order to gather data that would lead to better-supported or more effective prescriptions and/or BMPs.

The BLM has also revised the assessment of the effects of changes made to subparts 4110 and 4180, which were initially characterized as ''delaying tactics [and] could result in a protracted 7-year period for full implementation and change and this would result in a long-term adverse impact upon wildlife and biological diversity, including threatened and endangered and special status species * * *. Present BLM funding and staffing levels do not provide adequate resources for even minimal monitoring and the additional monitoring requirement will further burden the grazing decision process.''

BLM does not believe that long-term adverse impacts to wildlife and biological diversity would occur as a result of these changes, because both this rule and the existing regulations provide BLM discretion to begin changing active use, or to close a grazing allotment, when necessary for the protection of natural resources. BLM funding and staffing levels are issues that arise in annual budget development, and we plan to work to ensure that collecting data through rangeland monitoring remains a priority. While BLM agrees that the time frame for making decisions may increase due to the changes in subpart 4180, BLM anticipates that taking additional time to formulate, propose, and analyze an appropriate action will improve decision making, thus improving rangeland health in the long term.

We expect these aspects of the rule to have slight environmental effects because reliance on monitoring data is not new to the grazing program. At present, changes in grazing use may be supported by ''monitoring, field observations, ecological site inventory, or other data acceptable to the authorized officer.'' 43 CFR 4110.3. Decreases in grazing use must be supported by monitoring or field observation. 43 CFR 4110.3–2. Allotment management plans and resource activity plans ''shall'' provide for monitoring. 43 CFR 4120.2. Thus, monitoring is already an acceptable method of collecting data under the existing grazing regulations. To the extent that authorized officers already collect monitoring data to reach determinations under section 4180.2, the rule should have no environmental effect. To the extent that authorized officers currently rely on faster methods of data collection, the final rule could slow down the process of making determinations and thus potentially cause adverse environmental effects in

the short term. However, these effects would be mitigated to the extent that existing monitoring data may be sufficient to support determinations, and to the extent that better data result in more effective and more appropriate action.

The administrative review copy raised concerns pertaining to the definition in the rule of ''interested public,'' to provisions that no longer require the participation of the interested public in routine decisions such as permit renewals, and to provisions requiring cooperation with Tribal, state, county, or local grazing boards. The administrative review copy stated that these proposals would ''limit the ability of environmental groups to participate in the appeals process in the interest of wildlife * * *. This should result in long-term adverse impacts to wildlife and special status species.'' With respect to grazing boards, the administrative review copy stated that the rule would ''give greater emphasis to local entities that favor extraction of forage and water resources at the expense of wildlife and biological diversity [and] give local entities greater influence over decision making than national interests who are excluded from this venue.''

The DEIS did not reflect these concerns because the rule does not prevent or limit the ability of an environmental group, or any other interested public entity, to ''participate in the appeals process.'' Under 43 CFR 4160.1, BLM would continue to provide copies of proposed and final grazing decisions to all members of the interested public. They would then have an opportunity to seek administrative remedies. With respect to grazing boards, BLM believes that cooperating with Tribal, state, or local-government established grazing boards in reviewing range improvements and allotment management plans on public lands would provide valuable input regarding these matters. Moreover, under section 4120.5–1, BLM would continue to cooperate with institutions, organizations (such as environmental groups), corporations, associations, and individuals to achieve the objectives of the grazing regulations. BLM notes that, often, national groups have local chapters and representatives that serve as a conduit for their views at the local level. BLM accepts input from all sources, regardless of affiliation. BLM believes that while some reduced input may result from changes in the rule, that this would not result in significant effects on wildlife because the interested public would be able to provide input into many grazing decisions and documents, such as range improvement plans, range development programs, Allotment Management Plans, Resource Management Plans (RMPs) and RMP amendments that govern these routine decisions.

The amendments of the administrative review copy were made before the DEIS was finalized, and they preceded the issuance of a final rule. The administrative review copy was amended to reflect the input from other reviewers regarding the likely effects of the rule and correct some factual errors.

D. Purpose and Need for Rulemaking

We received numerous comments regarding our reasons for this rule, including many form letters and form e-mails.

Several comments, although they supported the purpose of the proposed rule, stated that, with regard to the proposed provisions on grazing preference and removal of the term ''permitted use,'' active use phase-in, and title to range improvements, the rulemaking record lacks concrete examples of problems with the current regulations that warrant the proposed changes. The comments stated that this may cause problems because BLM is effectively rescinding the 1995 grazing regulations as to these particular matters and restoring the pre-existing status quo. The comments went on to say that an agency rescinding a rule must ''explain why the old regulation is no longer desirable,'' citing *Action on Smoking and Health* v. *C.A.B.,* 699 F.2d 1209, 1216 (D.C. Cir. 1983). The comments concluded that, in the 1995 final rule, BLM rejected the concerns expressed in many of the comments on the 1994 proposed rule, and now needs to explain what has changed, including recognition that the concerns stated in those comments on the 1994 proposed rule have proven to be valid.

We believe the changes made in this final rule are consistent with the standard announced in *Motor Vehicle Manufacturers Ass'n of the United States, Inc.* v. *State Farm Mutual Automobile Insurance Co.,* 463 U.S. 29 (1983): ''An agency's view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis.'' *Id.* at 57. We have supplied the requisite reasoned analysis for the changes in the Record of Decision and in the respective section-by-section discussions in this preamble.

Some comments stated that the current rules are consistent with the TGA because they have been tested in court, and that BLM should comply with Supreme Court rulings.

The changes being made in this final rule are based on years of experience implementing the 1995 regulations, and on comments received on the proposed rule and DEIS. In some instances, we found that provisions of those regulations were impairing our ability to protect and enhance rangeland health. For example, providing for sole United States ownership in range improvements led to a reduction in range improvement applications throughout the time that the regulations have been in effect. Also, requiring BLM to take action by the start of the next grazing year after determining that existing grazing management practices or levels of grazing use were significant factors in failing to achieve standards of rangeland health has been seen to be an impracticable decision because it sets a deadline that is impossible to meet in most instances. Further, it is counterproductive because BLM has had to divert resources from rangeland management and monitoring to deal with legal challenges that arise when we fail to meet the unreasonable deadlines. In one of those legal challenges, a Federal appellate court interpreted existing section 4180.2(c) ''to require the BLM not merely to begin the procedures set forth in 43 CFR §§ (sic) 4110, 4120, 4130, and 4160, but rather to complete them and issue its final decision by the start of the next grazing year.'' *Idaho Watersheds Project* v. *Hahn,* 187 F.3rd 1035, 1037 (9th Cir. 1999). BLM had to divert resources from other locations to comply with the court's ruling. We will discuss these and other problems with the 1995 regulations in more detail when we address comments on the relevant provisions of the proposed rule.

The Supreme Court did not require BLM to retain its existing regulations. It found that the 1995 grazing regulations that it reviewed did not exceed the authority granted to the Secretary under the TGA. BLM does not dispute that the regulations being changed today were in compliance with the TGA and within the Secretary's statutory authority. Changes being made today also are in compliance with the TGA and are within the Secretary's statutory authority.

Some comments on the proposed rule suggested that BLM consider making changes through policy instead of through regulation changes.

BLM very often does make changes through policy rather than rulemaking. However, if regulations in place need to be modified to achieve improved management, we can only change those regulations through rulemaking.

A comment stated that BLM should not enact excessive regulations because they make it uneconomic for traditional ranching families to pursue their business.

Excessive regulation can increase costs to user groups. We believe the changes made in the final rule will make grazing on public land more efficient without negatively affecting the health of the public rangelands.

Many of the comments on the proposed rule stated that the regulation changes seem to be driven by only one small faction: Grazing permittees and lessees. They went on to say that the regulations should balance the requirements of consultation, cooperation, and coordination (CCC), and no emphasis should be placed on a single user group. The comments stated that this will not result in increases in cooperation with interested publics as stated because the proposed regulations diminish the levels of CCC with other interested publics and emphasize CCC with a single commercial user of public resources. Other comments stated that improving efficiency would be detrimental to public participation.

The rule provides a mechanism for persons and organizations to attain and maintain ''interested public'' status for purposes of participating in management decisions as to specific allotments. At the same time, the rule provides a way to remove from the list of interested publics those individuals, groups, or organizations that have been on the list indefinitely without ever commenting on or otherwise providing input in the decision process. These regulations will provide numerous opportunities for the interested public input into resource management allocation decisions.

BLM believes that in-depth involvement of the public in day-to-day management decisions is neither warranted nor administratively efficient and can in fact delay BLM remedial response actions necessitated by resource conditions. Day-to-day management decisions implement land use planning decisions in which the public has already had full opportunity to participate. Also, such in-depth public involvement can delay routine management responses, such as minor adjustments in livestock numbers or use periods to respond to dynamic on-the-ground conditions. For example, a decision to delay turn-out, increasing number of livestock and shortening the season of use in response to delayed vegetative growth resulting from a cool, moist spring may not be possible if a large number of interested parties need to be consulted first. While this type of adjustment makes good management sense from a resource perspective, the time taken to meet the current administrative requirements may preclude being able to take this action. Cooperation with permittees and lessees, on the other hand, usually results in more expeditious steps to address resource conditions and can help avoid lengthy administrative appeals.

Some comments supporting the purposes of the proposed rule, agreed that there is a need for improving working relationships with users. One comment pointed out that cooperation with ranchers would minimize incompatible uses of interspersed private lands, such as subdivisions, and another said that it would provide better care for the land.

BLM recognizes that ranchers who are committed to the health of the land are valuable partners. These regulatory changes are designed, among other things, to ensure sufficient oversight of public land grazers, and to facilitate better cooperation between BLM and the ranching community, while protecting the land.

Comments opposing the rule stated that the emphasis on certain considerations, such as the social, economic, and cultural effects of agency actions that change levels of grazing preference, would have adverse impacts on natural resources, leading to degradation of the public lands. Comments stated that improving working relationships with grazing permittees and lessees would tend to weaken the ability of BLM to manage rangelands in a timely fashion by adding considerable time before action can be taken. One comment stated that BLM should have working relationships with the public, not just ranchers. Another accused BLM of appeasing ranchers and increasing the level of environmental damage.

BLM retains the discretion to determine how much time is warranted in coordinating with grazing permittees and lessees. Considering the social, economic, and cultural effects of actions that change grazing use levels contemporaneously with considering the environmental effects should not appreciably increase this time or the time consumed in implementing decisions. We have not materially changed current policy in this regard in this rule, and therefore anticipate few if any additional delays in the authorization or implementation of grazing management actions on public lands.

BLM does have a working relationship with many publics and encourages public participation in the management of public lands. However, with respect to day-to-day management actions involving livestock, close coordination by BLM with those responsible for the ''hands on'' management of the livestock, in other words, the permittees and lessees, is essential to ensure that livestock use impacts on resources do not prevent achieving other multiple use management objectives.

Many comments stated that the proposed rule will slow down or diminish any progress made by the 1995 rule.

The Rangeland Reform effort of 1994–95 made numerous significant changes directed at restoring rangeland health. The changes in this rule preserve the regulatory framework of Rangeland Reform and make its implementation more practicable. In this rule, some time frames for developing appropriate management decisions and, in some cases, implementing changes in the amount of forage authorized for grazing use have been lengthened. We expect that having more time to develop practical alternatives and make decisions will lead to better decisions, supported by reliable data gathered through monitoring, and result in achieving long-term management goals and rangeland health. These new regulatory changes do not change the resource protection values of Rangeland Reform, but they do provide additional time for developing appropriate actions to effect grazing changes.

A comment stated that the final rule should reflect the legal requirements for cooperation with the public, other agencies, and users, in various laws, including FLPMA, the Fish and Wildlife Coordination Act, the Migratory Bird Treaty Act, the Public Rangelands Improvement Act (PRIA), the Sikes Act, and the TGA.

We are complying with all relevant laws. However, attempting to list various requirements of multiple Federal laws in the grazing regulations would be unwieldy and would require amendment of the regulations to reflect future changes in these laws or the addition of new laws. Rather, BLM utilizes manuals, handbooks, and other guidance to ensure compliance with relevant laws.

One comment stated that the proposed rule failed to consider the definition of ''principal or major uses'' in Section 103 of FLPMA, which ''includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, and timber production.''

The rule addresses domestic livestock grazing, which is one of the principal uses of the public lands under FLPMA. Regulations on other principal uses of public lands managed by BLM are found elsewhere in Title 43 of the CFR.

One comment stated that politicians should be barred from direct intervention in matters related to public lands grazing.

Presumably, the comment is referring to congressional contacts or oversight associated with livestock grazing. BLM manages the public land, and takes into consideration the views of all interested parties when it is appropriate to do so. This may include the views of public officials, including Members of Congress.

Many comments expressed the concern that the proposed rule would lead to impairment of the health of the rangelands. They phrased this concern in a variety of ways. Comments stated that the proposed rule would do little to promote riparian recovery or prevent decline of plants or animals. Others stated that the rule would cause additional resource damage to specific geographical areas, such as the Northern Rockies. Comments stated that granting greater discretion to permittees and lessees and to BLM managers may result in more resource impairment. One comment stated that the proposed changes would reduce cooperation in achieving rangeland health objectives. One comment urged that the rule should provide for rangeland management to avoid resource depletion and to conserve resources for the future. Comments disagreed with our view that the changes in the rule were largely administrative in nature with little direct effect on the environment. Comments urged that the rule should be amended to avoid the short-term adverse effects on the environment predicted in the Environmental Impact Statement. Comments stated that the objectives of the regulations should be revised to recognize the real purpose of the proposed rule: to keep ranching operations viable, with rangeland health as a secondary objective. Some comments urged that BLM consider that healthy lands improve local economies.

BLM has not changed the regulatory text in response to these comments. Many provisions in the proposed rule, including increasing the requirements for monitoring, removing the 3-year limit on temporary nonuse, sharing title to range improvements, and others, are designed to protect and enhance the long-term health of the land. The anticipated environmental impacts of the changes are set forth in detail in Section 4.3 of the EIS and in the Addendum. We believe that the changes will improve working relationships with permittees and lessees, protect and improve the health of the public rangelands, and improve administrative efficiency.

Many comments stated that the monitoring requirements in the proposed rule would cause increased workloads for BLM field managers and personnel.

We acknowledge that the monitoring requirements in the rule will likely increase the workload of BLM field range managers and specialists somewhat, but we anticipate that the increases in monitoring will be accompanied by the benefits of improved management and saved time in the end, as we explain later in this preamble in our discussions of changes in sections 4110.3–3 and 4180.2. Further, the change in section 4180.2(c) in the final rule, imposing the monitoring requirement only if a standards assessment indicates that the allotment is failing to achieve standards or that grazing management practices do not conform to the guidelines, rather than requiring existing or new monitoring data to support every standards attainment determination, will minimize the workload increase. Any workload increase that arises will require BLM to reprioritize work or to find alternative means of collecting the monitoring data we need, or some combination of these, to the extent that additional monitoring is required. This may include cooperation with the grazing permittees and lessees themselves and with local citizen volunteers. BLM believes the changes in the regulations associated with monitoring will help achieve sustainable management objectives.

One comment stated that BLM has indicated the necessity of making permit administration more efficient, but that these regulatory changes are motivated by a determination to exclude the interested public from the decision process. It went on to say that if BLM claims to have processed over 10,000 permits and issued over 13,000 permits, the agency should break down these numbers to show what percent of permits were renewed each year, how many were renewed under Appropriations Act ''riders'', and how many were appealed. The comment said that this would help establish a quantitative assessment of the need for change.

BLM does not believe a quantitative assessment of permit renewals is necessary to explain the need for efficiency changes to the overall administration of the grazing program. Efficient use of public resources, including Federal funding and management, are always proper goals of agency management. However, BLM has revised Section 3.4.1 in the EIS in an effort to address the concerns expressed in the comment. Section 3.4.1 in the EIS now provides additional information which further quantifies and explains the permit renewal process.

The comment also states that our motive in making these regulatory changes was to exclude the interested public from the decision process. In fact, the final rule requires consultation with the interested public where such input is of the greatest value, such as when deciding vegetation management objectives in an allotment management plan, or preparing reports evaluating range conditions. BLM retains the discretion to determine and implement the most appropriate on-the-ground management actions to achieve the objectives and/or respond to range conditions. BLM values productive consultation with the interested public. However, we must retain flexibility in order to take responsive, timely, and efficient management action. We believe that a more efficient consultation process will help facilitate efficient management of the rangelands while still providing for significant input from interested parties.

Many comments stated that BLM should increase funding to improve working relations with permittees and lessees and promote conservation of public lands, and that even small funding increases could greatly contribute to the mutual goals of continued grazing and healthy rangelands, if they are applied in an innovative and collaborative manner to facilitate improved on-the-ground livestock management practices.

BLM manages its Congressional appropriations in light of its varied and diverse statutory missions and responsibilities, and seeks opportunities to leverage its funding by engaging in partnerships wherever possible. Funding of BLM programs is not within the scope of this rulemaking. However, BLM intends that this rule will broaden opportunities for partnerships.

One comment stated that BLM should establish policy and subsequent regulations with procedures for optimizing habitat quantity and quality for the variety of multiple uses and those species that are considered biologically dependent on their respective ecosystems.

BLM manages for multiple uses under the guidance found in BLM land use plans. BLM land use planning regulations, and policy and procedure

are found in 43 CFR subparts 1601 and 1610, BLM Manual 1601—*Land Use Planning,* and BLM Handbook H–1601–1—*Land Use Planning Handbook.* BLM policy and procedures regarding management of wildlife and their habitats, sensitive species and the introduction, transplant and augmentation of fish, wildlife, and plants are found in BLM Manuals *6500—Wildlife and Fisheries Management, 6525—Sikes Act Wildlife Programs, 6840—Special Status Species Management and 1745—Introduction, Transplant, Augmentation, and Reestablishment of Fish, Wildlife and Plants.* Promulgating regulations concerning these subjects is outside the scope of this rule. Species-specific provisions are not appropriate for national regulations, and should be contained in local land use plans issued in accordance with these manual provisions and the planning regulations.

E. Environmental Effects of the Rule

Large numbers of comments addressed environmental effects of the proposed rule, mostly in opposition to the rule. Many of these comments also addressed the DEIS; these comments are discussed under VI. Procedural Matters later in the preamble.

One comment, however, stated that BLM has overstated the adverse impacts of the proposed rule, and that we should say that the short term impacts of regulatory changes would be so minuscule as to be not worth mentioning. It went on to agree that, in the long term, changes under the proposed rule can be expected to improve range conditions.

Many comments expressed concern that the combination of changes in the regulations would lead to multiple-year deferment of appropriate actions. The concern was that requiring monitoring data to make a determination, allowing up to 24 months for appropriate agreement or to develop and analyze an appropriate action, and generally allowing up to 5 years to implement changes of more than 10 percent in level of use, could lead to as much as 9 years of delay in changes being made on allotments that most needed the adjustment in grazing management. Impacts on wildlife and habitat, threatened and endangered species, invasive weed infestations, recreational uses, and BLM workload and funding were all issues of concern.

First of all, we anticipate the possibility of short term adverse effects occurring in those limited instances where vegetation recovery is delayed by the extended implementation deadline. Based on evaluations of land health from 1998 through 2003, this may be an issue on fewer than 16 percent of all allotments. In addition, BLM has the authority under section 4110.3–2 and section 4110.3–3 of the rule to decrease use or suspend use without a phase-in period if resource conditions demand. Only in those instances where longer term reductions are requested and rangeland health is not imperiled would the recovery of vegetation be somewhat delayed.

Furthermore, the time frames provided for each of the actions listed are limits. BLM, from its experience to date, expects that in most cases, the maximum amount of time allowed for each of the 3 steps (monitoring, appropriate action development, and implementing forage allocation changes of more than 10 percent) will likely not be needed. At the end of Fiscal Year 2002, only about 16 percent of the 7,437 high priority allotments assessed for land health status were not achieving standards because of existing livestock grazing management. Assessments of the remaining 84 percent indicated that standards were met, or that there was a reason other than existing livestock grazing for not meeting standards. Most of the adjustments on these allotments that failed to meet standards due to existing livestock management have been made in the season of use, or movement and control of livestock, rather than in levels of active use. An unknown portion of these adjustments were changes of more than 10 percent in active use. We do know from conversations with State Office range program leaders, and from information gathered during range program evaluations and field office visits that reductions in active use in excess of 10 percent are rare. In fact, in 2003 the forage actually consumed, as documented by billings, was 6.7 million AUMs, while the amount authorized by term permits was 12.6 million AUMs. This reduced amount of actual grazing was largely due to drought, plus other reasons, such as fire. However, it reflects the fact that grazers are already taking temporary nonuse or being suspended, either voluntarily or by agreement, due to the current range and weather conditions.

As stated in section 4.3.7 of the EIS, there may be limited short term negative impacts if the full 24 months or more is needed, once we have sufficient data through assessment or monitoring or both, to develop an appropriate action and complete the required coordination and consultation. Based on determinations made since 1998, only about 16 percent of allotments need adjustment in livestock management or levels of use to make progress toward achieving land health standards. The negative impacts of taking the full 24 months to develop an appropriate action can be expected to be limited to about 16 percent of allotments. However, the extra time taken to develop a meaningful action is expected to provide greater long term benefits to other resources. For example, merely reducing the level of use in a riparian area is not likely to improve the riparian area condition, because adjustments in season, frequency, and duration of use are much more effective management strategies for restoring riparian functionality. Taking the additional time to develop an appropriate action may actually decrease the amount of time taken to implement the decision, particularly if the decision is not appealed as a result of the additional time spent in consulting with permittees and formulating and analyzing options. Implementing decisions can be delayed by 18 to 36 months if appealed and if a stay is granted.

Under the preferred alternative, using existing or new monitoring data will not be necessary on every allotment in order to make a determination, but only on those allotments that fail to meet standards due to levels of grazing use or management practices. The number of allotments where all 3 action issues (monitoring, 24 months to develop remedial action, and 5-year phase in of adjustments) are needed is expected to be small. Monitoring is necessary only for those allotments as to which a BLM status assessment indicates that rangeland is failing to achieve standards or that existing grazing management practices do not conform with guidelines. Then BLM will use existing or new monitoring data to determine whether management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines. The extended phase-in period will apply only when conditions require forage allocation changes of 10 percent or greater. Furthermore, the final rule provides for exceptions to the phase-in period in section 4110.3–3(a). Finally, the final rule provides the authorized officer authority to close an allotment or portions thereof immediately if continued grazing use poses an imminent likelihood of significant resource damage. As a result, BLM retains the discretion to address resource problems on a timely basis.

One comment that opposed the rule stated that BLM should not adopt grazing regulations that will hurt the land in the short term while betting that long term studies will lead to better land

conditions at some indefinite time in the future.

BLM believes that adoption of the proposed rule will lead to improved land conditions in the long-term as indicated in the analysis in section 4.5 of the Addendum to the EIS. That analysis explains that some adverse impacts are unavoidable, but in the long-term more comprehensive and sustainable decisions would be developed by relying on data and information collected through monitoring.

One comment stated that BLM should acknowledge that western rangelands are in decline due to improper grazing strategies, and lack of appropriate measures or changes to deal with drought, fire, exotic weeds, and excessive horse populations.

In the Rangeland Reform rule we recognized a need to prioritize our improvement of rangeland health. As of the end of 2002, we had completed evaluations on 7,437 higher priority allotments. We determined approximately 16 percent of those allotments not to be meeting land health standards because of current livestock grazing management. We conclude from this that generally most public rangelands are not in decline, or at least not to levels that we deem to have failed to achieve the standards and conform with the guidelines. To the extent that more than 16 percent of allotments may have so failed, we have found that grazing is not a significant cause. We have begun actions to address the problems we identified. Whenever a grazing decision is appealed, changes in grazing management may be delayed. Responding to appeals, preparing for hearings, and responding to requests for data associated with the appeals also requires dedication of personnel and funds that would otherwise be used to implement effective changes to achieve improvement in condition of resources on the very allotments that need to have changes made. The changes made in this rule will improve our ability to implement effective corrective measures—taking time to gather more data, if necessary, and engage knowledgeable and affected parties will improve the likelihood of an effective solution, and participation by the affected operator in determining the solution will increase his likelihood of complying with the corrective measures, and make BLM decisions less susceptible to appeal. This rule also improves BLM's ability to focus fiscal resources on those areas not meeting standards because of current livestock management, and to develop appropriate actions that will result in more collaboration and cooperation with permittees and lessees in addressing problems. We believe that we have adequate measures in place in the grazing regulations to deal with emergency situations such as drought and fires, or where continued grazing use poses an imminent likelihood of significant resource damage (section 4110.3.3(b)). The long term goal of this final rule, as was the case in 1995, is to reverse declines in western rangeland health, in those areas where there are declines, through improved consultation and cooperation with ranchers, and interested state and local authorities, as well as the interested public, in devising means to restore degraded areas and maintain currently healthy areas.

The number of appeals has increased from 48 in 1998 to 139 in 2002, diverting resources from making on the ground improvements in rangeland health. By developing cooperative instead of adversarial roles, the fiscal resources being spent on appeals could be made available for making appropriate management changes and on the ground improvements.

Comments stated that BLM should not adopt the new regulations because they will weaken wildlife protections. One comment stated that BLM's analysis shows that the regulatory changes would not mitigate declines in populations of mule deer, sage-grouse (*Centrocercus urophasianus*), and many other species, except when ranchers agree not to graze for 3 years. Another comment asked BLM to show by allotment the current status and population trends of greater sage-grouse and analyze the cumulative effects of the regulatory changes. One comment asked BLM to discuss the agency's capacity, in terms of budget and personnel, to assess and monitor the status of sage-grouse, and how its capacity would be affected by the regulatory changes. Another comment along the same lines asked that we consider the potential impacts of implementing the proposed rule on our ability to implement the National Sage-Grouse Habitat Conservation Strategy. Other comments urged BLM to add specific sage-grouse conservation measures to the regulations. A comment stated that BLM should consider the effects of the rule on non-game bird species that are likely candidates for listing as threatened or endangered species. Another said that BLM should consider values of wildlife displaced by livestock on public lands in order to address the loss of wildlife associated recreation which has occurred under current management. One comment disagreed with the DEIS's statement that the proposed rule would have little or no effect on wildlife, stating that the proposed rule would fundamentally change the way BLM manages rangelands and have ''profound'' impacts on wildlife. One stated that the changes in the proposed rule may in some circumstances constrain biologists and range conservationists from recommending and implementing management changes in response to conditions that compromise the long-term health and sustainability of rangeland resources. The comment stated that these aspects of the rule would have the potential to be detrimental to fish and wildlife resources.

The final rule does not alter BLM's mission of managing the public lands under the multiple use and sustained yield standard as provided in FLPMA. Grazing is just one of the many multiple uses for the public lands. The final rule will not prevent specialists from recommending and implementing management changes in response to conditions that may compromise the long-term health and sustainability of rangeland resources. BLM has flexibility to effect changes in grazing management to address rangeland health, including:

- The use of permit/lease terms and conditions to achieve resource objectives (section 4130.3);
- Modification of terms and conditions when active use or related management practices are not meeting plan objectives or standards and guidelines (section 4130.3–3);
- Suspension of active use in whole or in part due to the reasons set forth in section 4130.3–3 based on monitoring, field observations, ecological site inventory or other acceptable methods (section 4110.3–2); and
- Issuance of immediate full force and effect decisions to close areas to grazing when the authorized officer concludes that soil, vegetation, or other resources require immediate protection because continued grazing use poses an imminent likelihood of significant resource damage.

The comments appear to assume that the proposed changes make significant revisions in the existing regulations. This is not the case. The changes are largely administrative in nature, and are designed to ensure a more balanced approach to rangeland management, to improve working relationships with permittees and lessees, to protect rangeland health, and to improve efficiency and effectiveness, including bringing the regulations into compliance with court decisions. The proposed rule would not fundamentally change the

way BLM manages land and would not have a ''profound'' effect on wildlife. The proposed revisions do not alter BLM's responsibilities under existing statutes, including the Migratory Bird Treaty Act, the Endangered Species Act, the Sikes Act, and applicable Executive Orders. In addition, the standards and guidelines under section 4180.2 remain intact. As we have stated, BLM acknowledges that some of the changes in implementation may have short-term impacts on wildlife on a small portion of BLM allotments. Any short-term impacts should be outweighed by long-term rangeland health benefits. In short, we have not changed our view that most of the changes in the final rule will have little or no detrimental effect on wildlife.

Land use plans and site-specific analyses are the proper vehicles for considering the site-specific effects of grazing on wildlife. General impacts on wildlife are addressed in the EIS. Allowing adjustments in active use in excess of 10 percent to be implemented over a 5-year period could have short term adverse effects on plants and wildlife. Specific impacts would be determined on a case by case basis in site-specific NEPA analyses and would identify possible mitigation measures. Changes in active grazing use in excess of 10 percent are infrequent. Also, the provision for phased in changes in use would not apply if it conflicted with an applicable law, e.g., if immediate implementation was a condition of a biological opinion under the ESA. The 5-year phase-in provision for reductions in stocking rates that exceed 10 percent of current stocking may affect Special Status Species not listed as threatened or endangered under the ESA. Any adverse effects on such species, however, should be limited to very few grazing allotments. BLM range assessments through fiscal year 2002 indicate that existing livestock grazing was a significant factor in not meeting land health standards on about 16 percent of the allotments that had been assessed and evaluated. Of that 16 percent, a lesser number of allotments required stocking rate reductions exceeding 10 percent. Many grazing system changes involved management of livestock rather than stocking rates, such as by limiting livestock access to certain portions of the allotments. Furthermore, under section 4110.3–3(b), if BLM determines that resources require immediate protection or continued grazing use poses an imminent likelihood of significant resource damage, we can immediately close allotments or portions of allotments or modify grazing use to protect the resources in question.

Providing BLM up to 24 months to propose and analyze appropriate action to address failure to meet rangeland health standards may adversely affect wildlife in the short term, possibly including Special Status Species not listed as threatened or endangered, but will benefit wildlife in the long term. Based on the evaluations completed by the end of FY2002, this provision would affect less than 16 percent of allotments. The provision that allows BLM to extend the timeframe beyond the 24 months would only be invoked if failure to comply with legal requirements was outside of BLM's control, i.e., the responsibility of another agency. The most likely occurrence of that nature would be if there was a delay due to the requirements of the ESA not being fully met. Concerns and issues regarding specific species such as sage-grouse and any specific threatened, endangered, or other special status species are fully addressed in land use or activity planning or permit or lease issuance or renewal environmental analyses. Specific detailed analysis for individual species is beyond the scope of this rule. In developing these regulations, BLM ensured that it had the mechanisms in place to take appropriate action to protect, as necessary, wildlife resources. The EIS and Addendum discuss the sage-grouse conservation strategy at the end of Chapter 1, and address the impacts of this rule on the sage-grouse strategy in the cumulative impacts analysis in Chapter 4. Effects on wildlife in general are discussed are analyzed in Sections 4.3.7 through 4.3.9 of the EIS and Addendum.

Finally, these changes are based on our experience implementing the regulations adopted in 1995. The changes here do not significantly alter those provisions adopted in 1995 that were examined in the accompanying EIS for that rule. As discussed in that EIS, the changes adopted at that time were expected to improve rangeland health, including habitat for sage-grouse. The timing and phase-in provisions adopted here are not expected to have significant effects on the improvements in rangeland health derived from the 1995 regulatory changes. BLM's National Sage-Grouse Habitat Conservation Strategy (2004) reflects the combined Federal and state response to the sage-grouse situation, and outlines how BLM intends to achieve its goal of managing public lands to maintain, enhance, and restore sage-grouse habitats while providing for sustainable uses and development of public lands. The commitments made in the strategy are unaffected by the final grazing rule.

One comment stated that procedures followed by BLM in the management of public rangelands contribute to petitions for Federal listings under the ESA, and ultimately to more restricted and costly management of Federal lands. The result of this management is rangeland with reduced capacity to support native big game and upland game species, which has an adverse effect on western cultural, social, and economic values.

This rule focuses primarily on improving the efficiency of administrating livestock grazing on public lands. During each step of the land use planning process, BLM considers and analyzes the potential effects on wildlife. This consideration begins at the broad land use planning phase, and continues through allotment management planning, activity planning, and during development of terms and conditions of a grazing permit or lease. We recognize that recreation and tourism, including the viewing or hunting of animals, have increased in their relative contribution to many local and regional economies. The rule adopted today does not alter the way BLM considers potential effects on wildlife. Therefore, this rule is not expected to have an observable direct impact on the ability of the public to enjoy wildlife, and will not adversely affect the economic values associated with wildlife. Specific impacts on local or visiting wildlife enthusiasts would be more appropriately addressed in any subsequent land use plan or allotment management plan analysis. Finally, as stated above, these changes are based on our experience implementing the regulations adopted in 1995. The changes here do not significantly alter those provisions adopted in 1995 that were examined in the accompanying EIS for that rule. The provisions adopted here are not expected to have significant effects on the improvements in rangeland health derived from the 1995 regulatory changes.

Several comments raised a number of other environmental factors that BLM should discuss, and stated that grazing has adverse effects on them: air quality, wild horses and burros, the prevalence of invasive weed species. Comments stated that the proposed rule would encourage the spread of invasive species, threatening shrub-steppe habitat, and damaging riparian and wet areas.

These issues are discussed in detail in the EIS in sections 4.3.6, 4.3.9, and 4.3.2, respectively. To the extent that the fundamentals of rangeland health

and the standards and guidelines for grazing administration address these issues in subpart 4180, the final rule makes no substantive changes in the fundamentals or standards themselves. Addressing more specific impacts on wild horses and burros is outside the scope of the rule. Specific impacts on wild horses and burros are more appropriately addressed in subsequent land use plans, landscape-level analyses, or undertaking-specific analyses.

Comments also asked BLM to impose various levels of restriction on grazing in the rule, including eliminating public land grazing altogether on the grounds that domestic livestock are exotic to the western range. Some urged us not to increase grazing in arid lands. Another comment suggested that BLM should require permittees and lessees to fence all riparian areas to eliminate livestock as a cause of degraded riparian areas. Others advocated eliminating grazing in riparian areas.

The final rule does not directly result in a change in levels of active use on arid lands or anywhere else. The rule continues to allow BLM to manage the public rangelands to address adverse impacts. For example, the rule retains BLM's authority to close allotments or portions of allotments to grazing by any kind of livestock or to modify authorized grazing use when we determine and document that continued grazing use poses an imminent likelihood of significant resource damage. Thus, if a riparian area is threatened with significant damage, we can have it fenced to exclude livestock. The rule also retains the fundamentals and standards and guidelines provisions of the rule to address rangeland health.

Although fencing of riparian areas to improve grazing management is appropriate under certain circumstances, a requirement to fence all riparian areas would be impractical due to potential conflicts the fences might pose with other multiple uses such as recreation and wildlife habitat, and because of the expense of construction and ongoing maintenance. Therefore, we have not included such a requirement in the final rule.

F. Alternatives Considered

Three general objectives for the changes to the regulations were identified in the Draft EIS (Section 1.2.2): (1) Improving working relationships with permittees and lessees; (2) protecting the health of the rangelands; and (3) increasing administrative efficiency and effectiveness of the process of managing livestock grazing on the public lands, including a means for resolving legal issues. The preceding section of this Preamble under Purpose and Need shows which objective primarily impels each change in the regulations.

The regulatory changes in this final rule are relatively narrow in scope, both individually and cumulatively. Most changes respond to a specific concern that arose through experience implementing the 1995 regulations. The changes clarify or improve specific elements of the 1995 regulations. The changes were combined in a single rulemaking, including public participation and the NEPA process, because it was the most efficient way to amend those portions of the regulations. The changes in the regulations and alternatives to them do not fit into themes commonly used for the range of alternatives in an EIS concerning public land management, e.g., various levels of resource protection or resource use. Therefore, those categories were not used to frame the alternatives in the EIS.

The sections of the 1995 regulations for each of the changes to the regulations are discussed in Section 2.1 of the Draft and Final EIS (No Action). The changes are discussed in Section 2.2 (Proposed Action). Table 2.5 compares the three alternatives evaluated in detail. Some regulatory changes are primarily editorial. Some changes are more controversial than others.

Additional alternatives, in the form of different combinations of changes, were not developed for the EIS because each of the regulation changes is relatively independent of the others. Thus, there are many combinations of the 18 elements that could be changed or not changed and combined into an alternative. Such alternatives would not provide a clear basis of choice because the differences between them would be small. The broad comments regarding alternatives fall into several subject areas, which are addressed below.

Some comments recommended major changes to the grazing program. Some comments asked BLM not to permit grazing on arid lands. Others advocated eliminating grazing in riparian areas. Other comments recommended use of long-term rest to help achieve standards. One comment recommended reducing stocking rates by 25 percent on allotments not meeting standards of rangeland health. Some comments recommended that the alternatives considered address the relationship between livestock grazing and other uses of the public lands. Some comments recommended that BLM develop alternatives to address a number of specific aspects of grazing management, such as: (1) Determining the capacity of the land to support wildlife, watershed function, and livestock; (2) determining livestock stocking rates; and (3) requiring allotments to demonstrate statistically significant improvement.

In light of the broad sweep of the changes in the regulations in 1995 and the accompanying analysis in the EIS at that time, and based on the years of experience in implementing those regulatory changes, we have determined that meeting our purposes and needs—the health of the public rangelands, improved working relationships with permittees and lessees, and improved administrative efficiency—does not require major changes in the grazing program.

The matters identified in these comments generally are best considered in land use planning or otherwise on a site-specific basis, not in a rule related to overall regulatory provisions. The relationship between livestock grazing and other uses of the public lands, and the capacity of the land to support wildlife, watershed function, and livestock, are questions of multiple use management, *i.e.*, how public lands and their various resources ''are utilized in the combination that will best meet the present and future needs of the American people.'' 43 U.S.C. 1702(c) (definition of ''multiple use''). Pursuant to Section 202 of FLPMA (43 U.S.C. 1712), BLM prepares resource management plans (RMPs) to consider and balance the multiple uses that may be appropriate for tracts of public lands. Decisions determining or adjusting livestock stocking rates, or determining how to measure an allotment's improvement in rangeland health, ordinarily require site-specific information that can most efficiently be obtained by developing an allotment management plan (AMP) or a grazing decision.

Some comments suggested that the EIS should have included an alternative more directed at conservation interests and the recommendations of environmental advocates, such as one that includes sage-grouse conservation measures. They believed that the regulation changes are biased toward the interests of the livestock industry and that the livestock industry would benefit at the expense of other users and the environment. One comment urged BLM to add specific sage-grouse consideration measures to the alternatives considered.

BLM does not believe that these changes will benefit the livestock industry at the expense of other users and the environment. The rules

continue to promote consultation and coordination with other users, with other agencies and governments, and with tribes (4120.5). The long-term objective of requiring livestock grazing operations to meet standards for rangeland health has not been changed from the 1995 regulations. As discussed in the Draft and Final EIS for Rangeland Reform '94, the overall changes adopted in that rulemaking were anticipated to have a number of positive environmental impacts, including positive impacts for sage-grouse. The rule now under consideration is designed to make refinements in the existing regulations and is not a significant departure from the regulations as revised in 1995. We believe that standards for rangeland health can be achieved without the major changes that may have been included under a substantially different ''conservation alternative'' suggested by some of the comments. Such an alternative was considered in the EIS for Rangeland Reform '94 and the anticipated effects on many livestock operators who are dependent on public rangelands for their livelihood were displayed in that document. The changes to the regulations adopted here were never intended to be either a comprehensive restructuring of the grazing program or a replacement of the 1995 grazing regulations. We do not believe that a broad ''conservation alternative'' which makes major changes to the livestock grazing program falls within a reasonable range of alternatives that meet the purpose and need of the action under consideration in the current EIS. Measures to protect sage-grouse and their habitat are appropriately considered in the Bureau's sage-grouse conservation strategy, and at the land use plan and/or permit issuance levels. We addressed the sage-grouse conservation strategy generally in Chapter 1 and Chapter 4 of the EIS.

Some comments suggested that the alternatives analyzed in detail in the EIS do not provide a clear basis for choice. Some comments focused on a concern that the alternatives in the EIS do not represent a reasonable range of alternatives because they are too similar. Some comments stated that BLM should prepare an EIS that thoroughly analyzes the cumulative impacts of a range of alternative actions that will truly enable the agency to manage grazing lands under its jurisdiction responsibly. Some comments suggested an alternative that would provide for the development of baseline data on the grazing capacity of public lands. Some comments said that BLM cannot so narrowly define the scope of a project that it forecloses a reasonable consideration of alternatives. (*Colorado Environmental Coalition* v. *Dombeck,* (185 F.3d 1162, 1174 (10th Cir. 1999)). Many comments recommended that BLM should examine alternatives that would make major changes in the grazing program or in the relationship between livestock grazing and other uses of the public lands.

The broad-ranging analysis suggested by these comments was addressed in Rangeland Reform in 1994 and the accompanying EIS for the 1995 regulatory changes. As explained in the EIS for this rulemaking under ''The Purpose of and Need for the Proposed Action,'' some of these revisions to the grazing regulations were developed as a means of achieving BLM's rangeland management objectives, including meeting the standards for rangeland health. It is not BLM's intent to revise major aspects of multiple use management or the livestock grazing program in this rule. BLM's intent is to bring efficiencies to the existing livestock grazing program, thus improving rangeland health on all allotments. The regulatory changes are narrow in scope, and include no changes in grazing fees, the fundamentals of rangeland health, or the standards and guidelines for grazing administration. They leave the majority of the 1995 regulatory changes in place. The changes are driven by specific issues and concerns that BLM has recognized, either based on our own experience or from input by stakeholders. Additional, markedly different, alternatives would not meet the purpose of and need for the action. While there may be conflicts among resource uses on specific sites that may point to a need to change the way in which livestock grazing occurs on an allotment, such conflicts are more appropriately resolved on an allotment-specific basis, rather than in the grazing regulations. We believe the three alternatives analyzed in detail in the EIS provide a reasonable range of alternatives that best provides a meaningful comparison for achieving the purpose and need described in the EIS.

Some comments expressed concern over the relative lack of quantification of impacts in the EIS. They contended that this limits BLM's ability to compare alternatives.

At the rulemaking tier of decision, such as in the case of developing this rule, meaningful quantification is generally not appropriate. Quantification is more appropriate at site-specific levels of decision, where on-the-ground issues are analyzed and resolved. To provide perspective on how the regulation changes may affect all allotments, the EIS provides relevant information (see Sections 4.3 and 5.4.5) on the number of allotments where assessments have been completed, and the percentage of those that meet standards for rangeland health. Of those that do not meet the standards, we also provide the percentage of allotments where standards are not met because of livestock grazing on the allotment, and where active use may need to be changed by more than 10 percent. BLM will make grazing decisions to change management practices or levels of grazing on all allotments that do not meet standards, if we find that failure to achieve the standards is due in significant part to existing grazing management practices or levels of grazing use. The time frames amended under this final rule may also affect those allotments. The numbers of allotments where assessments have been completed, and the percentage of those that meet standards and guidelines for rangeland health, provide a perspective on the proportion of allotments where this final rule, e.g., in section 4110.3, may apply. Because this final rule does not make any of the site-specific decisions on where livestock grazing occurs and how, BLM's ability to present and analyze quantifiable estimates in the EIS is limited.

Some comments recommended the No Action alternative, or at least the No Action alternative with regard to one or more of the changes. The No Action alternative considers that each of the changes would not occur. Some comments stated they preferred the No Action alternative because they believed that the proposed changes were designed to undermine the amendments made in the regulations in 1995. Some comments believed the regulatory changes could open the door to potentially adverse environmental consequences.

The changes in the regulations were designed to accomplish one or more of the three objectives stated at the beginning of this section of the preamble and in Section 1.2.2 of the EIS, Purpose and Need by Topic. As in 1995, one of the overall objectives of this final rule is to amend the regulations to assist BLM in managing the grazing program in a way that makes progress toward achieving the standards for rangeland health on all allotments. As experience has shown, some provisions in the 1995 rule have impaired BLM's flexibility to meet this goal. These have included the 1995

provisions regarding the relatively short timeframe (before the start of the next grazing year) within which BLM must develop and implement an appropriate remedial action after BLM determines that current livestock grazing practices significantly contribute to the non-achievement of one or more standards or do not conform with guidelines, the requirement that the United States must hold 100 percent of the title to permanent structural range improvements constructed under a Cooperative Range Improvement Agreement, the requirement the United States must hold, to the extent authorized by state law, the right to use water on public land for the purpose of livestock watering on public land and the requirement that authorized nonuse of a grazing permit is limited to no longer than 3 consecutive years. The latter arose from the Federal Court invalidation of the provision for conservation use permits, which created a need for more flexibility in authorizing temporary nonuse to promote rangeland recovery.

The most useful comparison for the changes in the regulations is to compare the changes (Proposed Action) to the 1995 regulations (No Action). Most of the regulation changes do not lend themselves to being implemented in stages or degrees of implementation in a way that would materially affect environmental impacts or rangeland health. Those that do are addressed in the section-by-section analysis of comments.

Many comments expressed concern that alternatives should have been considered for several of the changes in specific sections of the regulations. These specific provisions include the 24-month period after a determination on an allotment that livestock grazing is a significant factor failing to achieve the standards for rangeland health under section 4180.2(c), and the 5-year period for phasing in reductions in active use of more than 10 percent, under section 4110.3–3(a).

We examined what we believe to be an appropriate range of alternatives in the draft EIS, and have not added additional ones in the final EIS. When considering time limitations, an infinite array of options is theoretically possible. The alternatives considered here were reasonable, given the nature of the rule, and sufficiently distinct to allow for meaningful comparisons in the analysis.

Currently, section 4180.2(c) requires that BLM take appropriate action as soon as practicable but no later than the start of the next grazing year, after we determine that grazing is a significant factor in the failure to achieve a rangeland health standard or conform with a guideline. Similarly, section 4180.1 requires appropriate action no later than the start of the next grazing year, after BLM determines that grazing management needs to be modified to ensure that the conditions described by the fundamentals of rangeland health exist. While BLM prefers to take appropriate action as quickly as possible, recent experience has demonstrated that complex circumstances can sometimes require extended periods to form effective long-term solutions. The lack of standards attainment in rangelands, and the concomitant inability to achieve and provide the physical and biological conditions described by the fundamentals of rangeland health, often is a result of gradual deterioration over many years due to the interaction of many factors, including inappropriate livestock grazing. The process to develop action plans to determine and implement appropriate corrective appropriate action can be complex. Factors complicating the formulation of action plans include the legal requirements of NEPA, the National Historic Preservation Act (NHPA), and ESA; water rights adjudications; and the presence of multiple permittees on an allotment. We determined the proposed action timeframe of 24 months to be the shortest reasonable timeframe that would accommodate the vast majority of corrective actions. The final rule added language to recognize that, in some instances, even more time may be required due to delays outside the control of BLM. We initially considered other deadlines, such as 12 or 18 months, but we viewed them as inadequate to deal with the more complicated situations. We considered removing all timeframe guidance, but determined that a reasonable deadline would be useful to help ensure that BLM actions were not inadvertently delayed. We have removed the action timeframe requirement in section 4180.1 for the reasons stated in section V of this rulemaking and in the Addendum to the EIS.

BLM examined two alternatives for active use changes greater than 10 percent in the EIS, in addition to the current regulations. Scoping indicated that permittees and lessees supported a 5-year option to address the financial shocks that can come in the rare instances when large decreases are made in active use. Scoping did not indicate strong support for longer or shorter timeframes. BLM addressed the impacts associated with mandatory or discretionary phase-in systems. This was a reasonable range of alternatives for this issue.

Comments that address specific sections of the regulations and BLM's responses are addressed under the section-by-section analysis and response to comments.

G. Cross-cutting Issue-related Comments: Interested Public; Planning; Monitoring; and Enforcement

Many comments addressed issues that pertain to the grazing program as a whole or to multiple sections of the regulations. We will respond to these comments in this section of the preamble on the role of the interested public, planning, monitoring, and enforcement.

1. Role of the Interested Public

Numerous comments addressed the role of the interested public in grazing management. The proposed rule contained a definition change for the term and also modified the special involvement opportunities for those with interested public status. BLM has considered the comments but has decided not to make major changes in the rule. The final rule represents what BLM believes to be the proper balance between public participation and the need for flexibility in day-to-day grazing management operations.

Under the previous regulations, one could obtain interested public status by (1) making a written request to be treated as the interested public, or (2) by submitting comments regarding grazing management on a specific allotment during formal public comment periods. Under the final rule, submitting a written request is sufficient to obtain interested public status initially, but this alone is no longer sufficient to maintain that status. Instead, subsequent comment or other participation in the decisionmaking process is necessary. This requirement is designed to avoid an inefficient use of Federal resources on clerical duties associated with persons and entities that have no longer expressed an active interest in the issue. Submitting comments during formal public comment periods, however, is still enough to qualify as a member of the interested public. In short, those who request the status must follow up with later actions, while those who initially demonstrate their interest via comments automatically qualify as the interested public for that decision process. Any member of the general public may initially achieve interested public status through these means, and former members of the interested public may

also regain that status through these same means at any time.

Many were concerned that this definition change would unduly limit participation by the public. On the other hand, some comments on the proposed rule expressed the opinion that the term was still too broadly defined, and more requirements should be implemented before one qualifies as a member of the interested public. It is important to remember that the consultation opportunities available to the ''interested public'' under the grazing regulations are not the full extent of public involvement in BLM grazing and rangeland management matters. In addition to pursuing the opportunities afforded under the grazing regulations, any member of the public may attend meetings of Resource Advisory Councils, and may provide input and comments regarding general grazing policy, meet with BLM managers and/or staff upon request, and participate in the land use planning and NEPA analysis and decision-making processes that concern rangelands. By modifying the definition, though, BLM hopes to avoid the sometimes inefficient use of Federal resources that has been associated with the interested public system, while still maintaining a valuable outlet for public participation. The comments relating to the definition of interested public are addressed in more detail in the Section-by-Section Analysis portion of the preamble at section 4100.0–5.

The proposed rule also included changes in the role of the interested public. Special consultation requirements were reduced in situations involving day-to-day management activities but retained for broader level planning decisions that guide daily activities. For example, BLM is required to consult, cooperate, and coordinate with the interested public when planning range improvement projects, developing allotment management plans, and apportioning additional forage. The interested public is also provided, to the extent practical, an opportunity to review and provide input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use or to change terms and conditions of a permit or lease. Such reports include monitoring reports, evaluations of standards and guidelines, BAs or BEs, and any other formal evaluation reports that are used in the decisionmaking process. Additionally, there are multiple opportunities for public involvement when land use plans are amended or revised. Under the final rule, though, BLM will no longer formally consult with the interested public when undertaking routine management tasks such as renewing individual grazing permits, actually modifying a term in a grazing permit (as opposed to reviewing reports on monitoring and supporting data), or issuing temporary nonrenewable grazing permits.

Many comments opposed these reductions in consultation with the interested public. Some recreationists and other non-grazing public land users were particularly opposed to having opportunities for the interested public limited in any way. These comments emphasized the view that multiple use public lands are best managed when multiple interests are involved with both planning level and implementation level decisions. Some stated that while the system may lead to some inefficiency, when viewed from a grazing economics perspective, democratic principles favored more public involvement on public lands.

Numerous comments supported the changes and expressed the view that the interested public consultation system has led to decisionmaking gridlock. Many of these comments noted the important role public input plays at the planning level but argued that the involvement in routine decisions is counterproductive for all involved. Some expressed the view that only those with an economic interest should participate in allotment-level decisions.

We have retained the proposed changes in the final rule. BLM is confident that consultation with the interested public on the larger scale planning decisions will continue to provide ample opportunity for public input. These broader scale decisions then guide the day-to-day management. The changes will, in turn, allow these daily decisions to be made in a more timely and efficient manner. The changes are addressed in more detail later in this section of the preamble at sections 4110.2–4 (allotment boundary adjustments), 4110.3–3 (reductions of permitted use), 4130.2 (issuance and renewal of grazing permits and leases), 4130.3–3 (modifications to permits or leases), and 4130.6–2 (nonrenewable permits and leases).

2. Land Use and Allotment Management Planning

BLM received numerous comments addressing the types of uses that are generally allowed on public lands. They suggested eliminating some uses or dedicating lands to a single use. The comments included eliminating livestock grazing on areas with wild horses and burros, establishing rules to optimize wildlife habitat, phasing out livestock grazing completely, selling public lands, not allowing any commodity uses, and dedication of land for water conservation.

BLM manages public lands in accordance with numerous laws passed by Congress, including FLPMA, which requires these lands to be managed for multiple use and sustained yield. FLPMA defines ''multiple use'' as ''the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of land for some or all of these resources or related services over acreages large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some of the land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.'' 43 U.S.C. 1702(c).

BLM cooperatively develops local land use plans in order to determine balanced, appropriate, and sustainable land uses, following processes defined by various laws, regulations, and policies. These grazing regulations govern management of grazing on lands that have been determined through land use planning to be appropriate for livestock grazing. BLM's land use planning processes are governed by regulations in 43 CFR part 1600, and are not addressed in this rule. The sale of BLM lands, while permitted by FLPMA, is outside the scope of this rule.

Comments stated that BLM should determine the forage capacity of its land using scientific livestock utilization rates and re-set permitted use or preference to reflect that condition. The comments went on to say that the fact that AUMs are in suspension demonstrates that the range cannot support those levels of grazing.

This issue is outside the scope of this rule. BLM makes the determinations referred to in the comment during the planning process. AUMs are in

suspension due to current conditions that may not be permanent, such as, for example, drought conditions. Forage availability may also change in the future as a result of range improvements or improved health of the rangelands.

We received several comments that addressed our land use planning processes, suggesting that better control of motorized vehicle use and access would improve rangeland conditions. Others suggested that BLM should lease lands for recreation, wildlife, and water conservation rather than assign grazing as a sole use. Still others urged BLM not to recommend or provide interim protection for more Wilderness Study Areas or Wild and Scenic Rivers, stating that their management overtaxes BLM's capability.

BLM develops local land use plans to address land use activities such as off-road vehicle and other recreational uses, wildlife, and water conservation uses. Local land use planning allocations are beyond the scope of this rule. BLM will not recommend or designate any additional Wilderness Study Areas under the Utah Wilderness Settlement and its application, by policy, to BLM lands outside of Utah. IM No. 2003–274 and IM No. 2003–275. The regulations governing management of Wilderness Areas and Wild and Scenic Rivers are in 43 CFR part 6300 and 43 CFR 8351.2, respectively. Those regulations are beyond the scope of this rule.

A comment stated that Federal rangeland health standards demand that BLM's rule focus decisionmaking on management objectives stated in land use plans, activity plans, and grazing decisions.

The rule provides that its objectives will be realized in a manner consistent with land use plans. The regulations also provide that active use is based on the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer. The regulations allow BLM to make changes in the grazing preference as needed to conform to land use plans or activity plans, to apportion additional forage to qualified applicants for livestock grazing use consistent with multiple-use management objectives specified in the applicable land use plan. BLM may modify terms and conditions of permit and leases when the active use or related management practices do not meet management objectives specified in the land use plan, allotment management plan or other activity plan, or an applicable decision.

A comment stated that BLM has not effectively addressed resolution of multiple use conflicts that lead to demands for livestock-free lands.

FLPMA requires BLM to manage lands for multiple uses. We resolve conflicts among competing uses on individual tracts of public land through land use planning, with participation by the interested public and by or on behalf of the proponents of the competing uses.

One comment stated that either BLM should establish regulations that provide for making land use planning-level determinations regarding whether public lands are ''chiefly valuable for grazing'' as described in the October 2002 Solicitor's Memorandum, or the Secretary should withdraw that memorandum and provide for grazing permit ''retirement'' within its land use planning process or through its permit issuance or renewal processes.

The comment alludes to an ''M-Opinion'' issued on October 4, 2002. M-Opinions (i.e., ''major'' opinions) usually are responses to requests by agencies of the Department of the Interior regarding the interpretation of statutes administered by the Department. M-Opinions are signed by the Solicitor or his designee, may receive the concurrence of the Secretary, and are binding on all agencies of the Department. BLM believes we have sufficient guidance to consider the issue of ''grazing retirement,'' and so does not need a regulatory provision to address this topic.

Grazing retirement and the TGA's ''chiefly valuable'' standard have been discussed in two recent Solicitor's memoranda, as well as the 2002 M-Opinion. In one memorandum, Solicitor Leshy concluded that Congress, at 43 U.S.C. 1752(c) and 1903(c), specifically provided for the possibility of retiring public lands from livestock grazing, but that BLM must make such a decision in a land use plan or an amendment to a land use plan. Memorandum to the Director of BLM from the Solicitor (January 19, 2001).

While the later M-Opinion supersedes the 2001 Solicitor's memorandum, it agrees that land use planning is an appropriate process for considering retirement of grazing, and that whenever the Secretary retires public lands from grazing, she must determine that such lands are no longer ''chiefly valuable for grazing and raising forage crops,'' within the meaning of Section 1 of the TGA, 43 U.S.C. 315. In addition, the M-Opinion concludes that a decision to cease livestock grazing is not permanent. Memorandum to the Secretary from the Solicitor, M–37008 (October 4, 2002). The M-Opinion was later clarified in a memorandum stating that whenever the Secretary considers retiring grazing permits in a grazing district she must determine whether such lands remain chiefly valuable for grazing if any such retirement may ultimately result in the modification of the district's boundaries. Memorandum to the Assistant Secretary for Policy, Management and Budget, Assistant Secretary for Land and Minerals Management, and the Director of BLM from the Solicitor (May 13, 2003).

One comment stated that BLM should provide for permit or lease retirement with compensation to the permittee.

The suggestion that permittees and lessees be compensated for grazing retirement is not adopted. BLM lacks statutory authority to provide for such compensation.

One comment stated that, if BLM considers itself obligated to preserve public land ranching in the West in the face of competing economic pressures for use of ranches and ranchland, then we should reconsider previous policy proposals that were dropped, such as conservation easements and acquisition of ranches, because these may be creative ways to sustain viable operations without inducing further damage to the land.

Under FLPMA, BLM is obligated to manage the public lands on the basis of multiple use and sustained yield unless otherwise specified by law. FLPMA includes livestock grazing as one of the principal or major uses of the public lands, along with fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production. BLM never proposed acquisition of ranches as a policy proposal. BLM dropped consideration of exchanging public lands for conservation easements on private lands after comments received in the spring of 2003 indicated general public opposition to this policy proposal.

One comment urged BLM to update our allotment management plans.

BLM usually determines which allotments require allotment management plans (AMPs) in land use plans. The timing, development, and updating of AMPs is determined through BLM's budgeting and planning processes, not in the grazing regulations. Therefore, this issue is outside the scope of this rulemaking.

3. Monitoring

Many comments addressed monitoring on public lands, and suggested ways that BLM could use monitoring to improve public land management. Comments stated that BLM should not authorize grazing on areas where it lacks adequate data to

determine that standards are met or to ensure that resource damage is avoided. They recommended that BLM set up exclosures as control sites representing various major ecological types of land in order to establish benchmarks for assessing grazing management. Discussions of other comments on monitoring directed at specific regulations appear elsewhere in this preamble under the appropriate section.

BLM authorizes livestock grazing on areas that have been determined through the land use planning process to be available for grazing. BLM determines whether lands are available for livestock grazing through the land use planning process in compliance with FLPMA and 43 CFR part 1600. The process involves public participation, assessment, decisionmaking, implementation, plan monitoring and evaluation, as well as adjustments through plan maintenance, amendment, and revision. This planning process adheres to the principles of multiple use and sustained yield and uses an interdisciplinary approach to integrate physical, biological, economic and other sciences. BLM is required to take appropriate action if we determine that existing grazing management practices or levels of grazing use are significant factors in failing to achieve the standards and conform to the guidelines for grazing administration. This final rule emphasizes the importance of using monitoring data by adding a requirement for its use when determining whether existing grazing management is a significant factor in failing to achieve the standards and conform with the guidelines under section 4180.2(c). In the final rule, we have clarified the proposed rule by providing for the use of monitoring data if a standards assessment indicates to the authorized officer that the rangeland is failing to achieve standards or that management practices do not conform to the guidelines. BLM endorses the use of exclosures to determine the compared effects of grazing and its absence on various ecological types of land, and discusses their use in several BLM and interagency rangeland monitoring technical references.

Comments suggested that monitoring was so critical to determining whether multiple use objectives are being met on grazing allotments that it should be specifically required in all allotments, along with other methodologies, in the regulations.

BLM agrees that monitoring is important in measuring progress toward meeting objectives in grazing allotments and elsewhere on public land. Allotment-level monitoring is generally a component of allotment management plans, and is sometimes addressed in land use plans. Current allotment management planning includes monitoring on the maximum possible number of priority areas, limited only by budget and workforce. We currently administer grazing on about 21,535 allotments (2005). BLM has established monitoring sites in nearly 11,500 allotments, and currently collects monitoring data to some degree on about 3,500 of those allotments each year. These monitoring sites are used primarily to evaluate achievement of land use plan objectives, to ascertain changes in condition, and to determine trend (toward or away from a desired condition). Information is collected at some of the monitoring sites more often than at others, depending on priority and purpose. Specific methods of data collection are better addressed in handbooks and technical references, which are much more readily updated. However, it is not always necessary to monitor to find that rangeland is achieving standards and that management practices conform to the guidelines. Under the final rule, if a standards assessment indicates that the rangeland is failing to achieve the standards or that grazing management practices do not conform to the guidelines, we will use monitoring data to support our determination regarding the significant contributing factors for failing to achieve the standards or to conform to the guidelines.

One comment stated that BLM should clearly show its long-term budget strategy that outlines the monitoring programs, funding, and personnel that will be added to the agency's capacity to carry out the implied monitoring. The comment asserted that BLM does not have sufficient funding, personnel, and management support for adequate monitoring of vegetation, Special Status Species, and Birds of Conservation Concern, let alone other resources.

Funding is provided by annual congressional appropriation. We will prioritize allocation of our discretionary monitoring funding to address resource needs and provide a foundation for management adjustments. BLM agrees that generally, monitoring is a critical component providing data for evaluation and adjustments of terms and conditions of grazing authorizations, unless the need for the change in authorization terms and conditions is immediate and obvious, such as when conditions described at 43 CFR 4110.3–1(b) are encountered (e.g., wildfire burns available forage, necessitating temporary suspension of grazing use). We will continue to prioritize funding to meet the monitoring needs required by this rule. The change in the final rule that limits the monitoring requirement to those cases where a standards assessment indicates that the rangeland is failing to meet standards or that management practices do not conform to the guidelines does not result in a negative budgetary impact.

4. Enforcement

Some comments suggested that BLM should enforce all of its current regulations or strengthen them to prevent environmental damage caused by livestock grazing or coal bed methane development. Another comment stated that BLM should allow permittees and lessees to ''manage'' recreation on public lands.

BLM agrees that it should enforce all of its public land regulations and does so with the resources and authority provided to it by Congress. We believe that the final grazing regulations provide adequate authority for BLM to take action when necessary to arrest and reverse environmental damage attributable to livestock grazing on public lands. Regulations governing coal bed methane development are found in 43 CFR part 3100 and are not addressed in this rule. BLM cannot grant management authority for one user group, as such, to ''manage'' another user group. However, any qualified individual or business entity may obtain a permit under BLM regulations to carry on specific activities on public lands. For example, a rancher can obtain a special recreation permit under 43 CFR part 2930 and operate as an outfitter or guide. However, the rancher cannot obtain authority to bar casual recreational use of the allotment he uses, as the comment seems to suggest would be desirable.

H. Other Recommendations

Several comment letters offered additional recommendations for BLM actions that were not specific to any particular regulatory section.

1. Advisory Councils and Grazing Advisory Boards

BLM received comments regarding advisory council membership and function. A comment stated that we should re-establish Multiple Use Advisory Councils (MUAC) to resolve local issues, contending that the RACs that superceded MUACs and Grazing Advisory Boards in 1995 in many cases cover too large an area to respond adequately to local issues. Such MUACs reorganized on a District or Field Office basis, according to the comment, could be a positive force for problem solving,

conflict resolution, and vetting land management issues far beyond grazing management matters. Another comment suggested that RAC membership be made up of 50 percent conservationists, 10 percent community interests, and 30 percent independent biologists and not be dominated by ranchers who represent their narrow special interest. One comment stated that BLM should drop reference to RACs as public oversight bodies because they are ineffective at arriving at a decision.

The suggestion to re-establish MUACs is outside the scope of this rule. To the extent there is concern that RACs cover too large an area to address local issues adequately, the regulations pertaining to RACs at 43 CFR subpart 1784 provide for the formation of RAC subgroups to gather local level input on specific issues. If you believe a particular issue should be addressed on a smaller subgroup scale by the RAC with which you are associated, you, as a member of the public, may suggest such an action to the RAC. The comment implies that RACs only consider grazing management matters. However, the regulations at 43 CFR subpart 1784 provide that RACs can address all facets of public land management. Regarding RAC composition, regulations at section 1784.6–1(c) and (d) require that the Secretary provide for balanced and broad representation from commercial, environmental, scientific, and aesthetic interests, as well as the public, Tribes, and state and local governments. This balanced composition of the RAC comports with the statutory requirements of Section 309 of FLPMA. We have not adopted these suggestions in the final rule.

Some comments expressed disappointment that BLM chose not to propose reestablishment of Grazing Advisory Boards as suggested during the public scoping process on the ANPR and the notice of intent to prepare an environmental impact statement. They further expressed disappointment in the justification for not pursing regulations that would allow board establishment that was presented in the DEIS section 2.4.

The RACs that were established following the 1995 grazing regulation amendments have generally assumed the role played by the Grazing Advisory Boards, whose authority ''sunset'' on December 31, 1985. RACs provide an evenly balanced advisory board to cooperate with BLM, and are available to represent local interests on all facets of public land management. The regulations governing board functions at 43 CFR subpart 1784 also provide for the formation of RAC subgroups to gather local level input on specific issues. The suggestion to redefine the role of RACs is outside the scope of this rulemaking. Moreover, we disagree that they are ineffective as public oversight bodies. The RACs represent a balance of views among various interests concerned with the management and use of the public lands. Furthermore, the Councils are advisory in nature and have given the public an effective forum for participating in the management of the public lands, as well as giving land managers direct public insight into proposed programs and policies. BLM has included in this final rule a provision that BLM cooperate with Tribal, state, county, or locally established grazing boards when reviewing range improvement projects and allotment management plans on public lands. We feel that these existing and proposed provisions adequately address the need for a forum for cooperation and coordination on both local and regional issues affecting livestock grazing on public lands.

2. Wild Horses and Burros

One comment objected to the ''unfair treatment BLM has given to wild horses, using them as scapegoats for the abuses of livestock and plotting to eliminate them along with the vested interest livestock community.''

BLM manages rangelands for multiple use and sustained yield, and follows all laws and regulations governing the management of public lands, including the Wild and Free Roaming Horse and Burro Act of 1971. Management considerations for and analysis of impacts on wild horse and burro populations are described in EIS chapters 3.12, 4.2.9, 4.3.9, and 4.4.9. BLM consults with the Wild Horse Advisory Board to coordinate an efficient management program in accordance with statutory direction and at a level commensurate with funding appropriated by Congress.

3. Reserve Common Allotments

We received several comments on the concept referred to as ''Reserve Common Allotments'' (RCA), which was discussed in the ANPR. We decided not to pursue the possibility of creating RCAs in the proposed rule following a generally unenthusiastic reception during the public scoping process. Comments that opposed this concept speculated that it would foster abuse and excessive grazing on the one hand, or could lead to a loss of preference AUMs on public lands on the other. Some comments supported designation of RCAs on a temporary basis only, not permanent designation that would eliminate those AUMs from term permit availability. Comments that supported the RCA concept expressed disappointment that we did not propose them because they recognized the RCA as a potential solution to environmental and economic challenges confronting modern-day ranching. Another comment suggested that RCAs could provide an outlet for producers whose allotments are unusable due to weather, fire, or scheduled range improvements such as prescribed burning or stream restoration. This comment also suggested implementing the concept on a pilot basis and monitoring performance on a set of administrative and ecological criteria.

BLM recognizes that these thoughtful comments demonstrate cautious interest and qualified support of the RCA concept. It is also obvious that the proposal rolled out in the ANPR was insufficiently defined and inadequately developed to gain full public support. We will continue to examine the concept of establishing temporary or permanent forage reserves, or alternative management scenarios, through future policymaking processes. Due to the keen interest in this subject, we will communicate with the public during any policy development process on RCAs.

4. Incentives for Good Stewardship

Some comments stated that rangeland conditions would improve if BLM regulations established various incentives for ranchers who implement good management practices, or allowed ''considerations'' for permittees who voluntarily reduce livestock numbers or build wildlife projects, or provided for purchasing willow whips from private landowners for planting on public lands. One comment suggested adopting conservation easement tax laws currently in effect in Colorado, New Mexico, and other states.

In past decades, BLM, in consultation with user groups and the public, has examined various programs (e.g. Incentive Based Grazing Fees—1993; Cooperative Management Agreements—1984) intended to provide incentive for rancher stewardship of public lands for multiple uses, including wildlife habitat. Ultimately, consensus could not be achieved and these efforts were set aside. More recently, in early 2003, BLM's Sustaining Working Landscapes (SWL) policy development initiative explored possible incentives for ranchers to engage in partnerships to achieve conservation ends, while encouraging and enabling good stewardship. In mid-2003, BLM decided to focus its grazing program resources

on this rulemaking effort, rather than attempt simultaneously to accomplish SWL policy development and a rule. Upon completion of this rule, BLM intends to revisit SWL policy concepts and focus on updating grazing manuals and technical procedures needed to implement the grazing rules.

While BLM supports the use of conservation easements for protection of watershed and habitat values on private lands, we do not have authority to change the tax laws of individual states.

5. Encouraging Flexible Management

One comment expressed concern that proposed changes in the regulations would limit adaptive management options, and urged BLM to increase opportunities for adaptive management for unforeseen circumstances such as drought.

The proposed rule is designed to improve working relations with permittees and lessees. Better working relationships should result in more frequent communication and greater willingness to consider additional management alternatives.

6. Determining Appropriate Technical Procedures

One comment stated that BLM should incorporate the scientific and economic principles expressed in Catlin *et al.* (2003) and Stevens *et al.* (2002) into its analysis and permit renewal processes, so that appropriate changes are made to ensure that native diversity and productivity are restored to grazed BLM lands. (The comment refers to Catlin, James, Jaro Walker, Allison Jones, John Carter, and Joe Feller, 2003: *Multiple use grazing management in the Grand Staircase National Monument. A tool provided to the Monument range staff by the Southern Utah Land Restoration Project* and Stevens, Laurence E., Peter Stacey, Don Duff, Chad Gourley, and James C. Catlin, 2002: *Riparian ecosystem evaluation: a review and test of BLM's proper functioning condition assessment guidelines*.)

Employment of the technical procedures and principles described by these documents is appropriately addressed in policy, manuals, and guidance rather than in a rule. When revising policy, manuals, and other guidance, BLM reviews all available technical materials, and will review the Catlin and Stevens articles before the next revision.

One comment stated that BLM policy should require that grazing decisions always be based on appropriate scientific data because it is required by the Data Quality Act.

Some comments maintained that BLM is required to prove, on administrative appeal, that the terms and conditions of grazing permits are consistent with the Data Quality Act (DQA), Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554).

As discussed above, BLM is not required to launch an affirmative defense of grazing permits in response to an administrative appeal to OHA. BLM may come forward with a rebuttal, but the appellant bears the ultimate burden of persuasion.

OHA may not be the forum of choice for raising questions with respect to BLM's compliance with the DQA's standards (i.e., ''the quality, objectivity, utility, and integrity of information''). As required by the DQA, BLM has issued guidelines that provide an administrative mechanism for raising such questions directly with BLM (Bureau of Land Management Information Quality Guidelines, published October 1, 2002).

Another comment stated that utilization studies sanctioned by BLM should include methodology for determining which species consumed the forage to ensure that measures taken to correct over-utilization are effective.

Methodologies for utilization studies are better addressed in reference manuals, guidance, and policy.

One comment stated that BLM should require data used to support changes in grazing preference to be acceptable to the permittee or lessee, as well as to the BLM authorized officer.

Congress entrusted the Secretary of the Interior with the responsibility to manage the public lands. The Secretary, in turn, has delegated this responsibility to BLM. We understand that permittees and lessees are more likely to accept decisions and act cooperatively if the data we use to support changes in grazing preference are acceptable both to BLM and the affected permittees or lessees. However, if the data BLM uses to support changes in grazing preference are not acceptable to a permittee or lessee, BLM is still obligated to make its management decision in light of its statutory management responsibilities.

7. Access to Public Lands

One comment stated that BLM should require other users of the public lands to get permission to be on public land from BLM, and that BLM should inform the permittee when other users and/or BLM staff will be out on the permittee's allotment.

Determining whether and under what circumstances public land users other than livestock permittees need approval to use public lands is outside the scope of this rule. Casual recreationists normally do not need permits to visit public lands, so there is no way BLM can inform grazers in advance of such visitation. Whenever feasible, in the spirit of consultation, cooperation, and coordination, BLM will inform the livestock operators in advance about BLM field operations or public uses under permit, lease, or license that affect grazing management of allotments where they have permits or leases. However, a provision requiring advance notification would be impractical to implement and detract from efficient management of the public lands. BLM declines to adopt this suggestion.

One comment asserted that a rancher does not have to have a grazing permit to access his vested rights, and that the rancher's ownership of water rights, forage rights, and improvements are issues that are not appealable, and cited several court decisions.

Under the TGA (sections 3 and 15), ranchers must hold a BLM permit or lease in order to graze livestock on public lands. The current regulations, as well as the proposed regulations, reiterate this requirement, at 40 CFR subparts 4130 and 4140, which has been upheld by decisions of Federal courts. *See, e.g., Osborne* v. *United States,* 145 F.2d 892, 896 (9th Cir. 1944) (livestock grazing on public lands is ''under the original tacit consent or*. * * under regulation through the permit system * * * a privilege which is withdrawable at any time for any use by the sovereign.'') Although the Court of Federal Claims ruled in 2002 that a holder of ditch right-of-way established under the Act of 1866 also has an appurtenant right for livestock to forage 50 feet on each side of the ditch, this matter is still in litigation and no final decision has been rendered by the court. *Hage* v. *United States,* 51 Fed. Cl. 570, 580–84 (2002).

8. Judicial Matters

A comment stated that BLM should add a provision to the grazing regulations requiring BLM to notify permittees when BLM has received a Notice of Intent to sue or has been sued under ESA, Clean Water ACT (CWA) or other environmental law, when the outcome of the lawsuit may affect the permittee's allotments or grazing privileges. This advance notification would allow the permittee to take whatever action he deems necessary to protect his interests.

Notification procedures for potential challenges under various federal laws are more appropriately handled through policy rather than regulation. This is

because as statutory or regulatory provisions change BLM may have to undertake a regulatory change, which is time consuming. BLM does not have rulemaking authority to implement CWA or ESA as to citizen-suit provisions or notice of intent provisions. The CWA provides that notice ''shall be given in such manner as the Administrator [of the Environmental Protection Agency] shall prescribe by regulation.'' 33 U.S.C. 1365(b). The FWS and NOAA Fisheries may promulgate regulations for the enforcement of the ESA, by citizen suit and by other means. 16 U.S.C. 1540(f). BLM will defer to the rulemaking authorities of these agencies. As a matter of policy and customer service, however, BLM routinely informs grazing operators of such eventualities as lawsuits that may affect their allotments.

9. Interagency Cooperation

One comment stated that BLM should collaborate with other agencies like FWS, and another stated that state wildlife agencies should be fully engaged, because BLM decisions can easily affect these other agencies and their work, because BLM decisions can affect species of concern, and because effective wildlife management requires coordination with uses related to grazing management.

BLM routinely consults with FWS and NOAA Fisheries in accordance with the requirements of the ESA and BLM Manual 6840 on Special Status Species Management. This consultation ensures that actions requiring authorization or approval by BLM are consistent with the conservation needs of species of concern and do not exacerbate the need to list additional species. As for state agencies, current regulations require cooperation with them. This rule does not change this. Section 4120.5–2 states, ''The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Tribal and local governmental entities, institutions, organizations, corporations, associations, and individuals.'' Many specific provisions also call for cooperation and consideration with the staff having lands or managing resources in the area affected by proposed BLM grazing management decisions.

For more commentary regarding interagency cooperation, see the discussion of *section 4120.5–2, Cooperation with Tribal, state, county, and Federal agencies, in Part V of this preamble.*

V. Section-by-Section Analysis and Response to Comments

In the following paragraphs of the preamble, we discuss briefly the sections of the regulations that appeared in the proposed rule, how the proposed rule changed each section, whether and how we further amended each section in the final rule, the comments we received addressing each section, and how we respond to those comments.

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

Section 4100.0–2 Objectives

In the proposed rule we made technical and editorial corrections to this section to remove reference to regulatory provisions that no longer exist and to acknowledge that the Public Rangelands Improvement Act (PRIA) contributes to the objectives of the regulations. Several comments urged BLM to adopt section 4100.0–2 as proposed.

One comment addressed this section, stating that BLM should remove the statement ''to accelerate restoration and improvement of public rangelands to properly functioning conditions' and change the words ''consistent with'' to ''that is in conformance with,'' for several reasons. First, removal of this objective would ensure that the public is not distracted from the real objectives of grazing management, which are expressed in the applicable land use plans. These plans may or may not require the ''restoration and improvement of public rangelands to properly functioning conditions' upon every acre of the public lands. Second, removal of the objective would make it clear that the applicable land use plan and relevant laws guide management.

We have not amended the objectives section in response to this comment. ''[T]o accelerate restoration and improvement of public rangelands to properly functioning conditions'' is a proper objective for these regulations, and consistent with Section 2 of the TGA (''The Secretary * * * shall make provision for the protection * * * and improvement of * *) grazing districts and do any and all things necessary to insure the objects of such grazing districts, [including] * * * to preserve the land and its resources from destruction or unnecessary injury [and] to provide for*. * * improvement of the range; and the Secretary * * * is authorized to * * * perform such work as may be necessary amply to protect and rehabilitate the areas subject to the provisions of this Act * * *''). To ensure clarity regarding the role of land use plans and grazing management, section 4100.0–8 of the regulations, which is not changed by this final rule, continues to state unequivocally that ''* * * [l]ivestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0–5(b).''

Rangeland Standards and Guidelines (43 CFR part 4180) have been or are required to be developed statewide and/or regionally in consultation with RACs. Once standards and guidelines were developed for a particular area, BLM reviewed the relevant land use plans to ensure that their provisions were consistent with achieving standards and conforming with guidelines. In some cases, it was necessary to amend land use plans to make their provisions consistent with achieving standards and conforming with guidelines. Restoration and improvement of rangelands to properly functioning conditions are objectives of the grazing regulations and are implemented in a manner that conforms with applicable land use plan decisions.

BLM planning regulations define ''conformity'' or ''conformance'' as meaning that a resource management action is specifically provided for in the land use plan or, if not specifically mentioned, clearly consistent with the terms, conditions, and decisions of the plan (43 CFR 1610.0–5(b)). The planning regulations define ''consistent'' as meaning that plans will adhere to the terms, conditions, and decisions of resource related plans, or in their absence with policies and programs (43 CFR 1610.0–5(c)). We cannot anticipate in land use plans the specific circumstances involved in subsequent grazing decisions. Therefore, the specific term chosen for use in this rule, either ''conformance'' or ''consistent,'' would not alter the intent of the objective described in this rule. Finally, all individual records of decision issued when BLM adopted land health standards pursuant to section 4180.2 amended applicable land use plans to include those land health standards.

Section 4100.0–3 Authority

The proposed rule made 3 editorial corrections in this section. One comment stated that the proposed rule lacked reference to, and consideration of, 43 U.S.C. 315a and 1732(b), and 48 Stat. 1269, on management of use, occupancy, and development of public lands. These provisions are included in this section, either expressly or implicitly. We make no changes in this section of the final rule.

Section 4100.0–5 Definitions—''Active Use''

We amended the definition of ''active use'' to make it clear that the term refers to a forage amount based on the carrying capacity of, and resource conditions in, an allotment.

''Active use'': In this definition, we have substituted the word ''livestock'' for ''rangeland'' in the reference to carrying capacity. The change makes the definition consistent with all other references to ''carrying capacity'' in the rule.

BLM received several comments that suggested alternative definitions for the term ''active use.'' Some comments suggested that active use should be based on ''forage available on a sustained yield basis.'' The comments also suggested that we define the term ''forage available on a sustained yield basis.'' Other comments suggested that the definition of active use should include reference to monitoring data and documented resource conditions in an allotment. One comment suggested that ''active use'' should include both ''authorized use'' and ''nonuse.''

We have made no change to the definition of ''active use'' in the final rule in response to these comments. In the final rule the term ''active use'' is the amount of forage that is available for grazing use under a permit or lease. Active use is based upon resource conditions within an allotment. When permittees or lessees apply not to use all or a portion of their active use in any particular year, they are applying for ''nonuse.'' If BLM finds it necessary to reduce the level of grazing use permitted either temporarily or indefinitely, we will suspend ''active use.'' At that point, active use is reduced and suspended use is created or increased, either temporarily or indefinitely. ''Active use'' is a grazing-program-specific administrative term and does not include all forage available on a sustained yield basis within an allotment, because other forage, or potential forage, within the allotment is allocated under the auspices of the applicable land use plan to watershed protection, plant maintenance and reproduction, to wildlife habitat and, where wild horses or burros are present, to forage for those animals.

Section 4100.0–5 Definitions—''Conservation Use''

We removed the definition of the term ''conservation use,'' and removed the term itself everywhere it appears in the existing regulations, in keeping with the 10th Circuit Court decision discussed earlier in this preamble.

Several comments opposed removing the concept of conservation use permits from the regulations. One comment expressed the need for a mechanism to rest rangelands for extended periods of time when necessary to recover plant composition and forage production or protect important habitats. Others stated that the regulations should not make it difficult or a lower priority for a conservation group to buy grazing permits. They pointed out that if BLM collects its fees from a conservation group, from a revenue perspective it makes no difference if the conservation group decides not to graze livestock, and that such non-grazing would have minimal impact on western economies. The comment also said that such groups are often able to pay willing sellers higher prices for permits, and that such transactions result in healthier rangelands. Another comment said that BLM should convene a forum of permittees, conservationists, and agency representatives to explore regulatory options for facilitating ''willing seller—willing buyer'' grazing permit retirement. One comment acknowledged that changes in allotment use for conservation purposes is no longer permitted, because conservation use was set aside in the 10th Circuit Court of Appeals decision in *Public Lands Council* v. *Babbitt*, but encouraged BLM to continue to work within applicable laws and regulations to allocate rangeland uses that achieve multiple-use goals, such as providing important wildlife habitat and contributing to water quality and soil retention, while providing compensation to the public commensurate with what other range users provide.

The amendment in the final rule of the temporary nonuse section of the regulations removes the 3-year limit on nonuse by a grazing permittee. This proposed rule will achieve the goals set forth in this comment. BLM is able to designate areas as not available for grazing by decision, based upon the land use plan's multiple use objectives, or to withdraw areas from grazing under Section 204 of FLPMA. BLM can also make changes in grazing management such as adjusting, reducing, or eliminating grazing use based on a determination that existing livestock grazing management or levels of use are a significant factor in not achieving or making progress toward achieving land health standards.

One comment that supported removal of reference to ''conservation use permits'' stated that not grazing can result in fuel build-up and catastrophic fires.

The removal of the term ''conservation use'' from the regulations is required by Federal court decision (*Public Lands Council* v. *Babbitt, supra*). The final rule provides adequate options to achieve the purposes expressed in the comment supporting the need for a rest mechanism. Section 4130.4 provides the authorized officer the ability to authorize nonuse as needed to provide for resource conservation, enhancement, or protection. Even though the nonuse will be reviewed and approved on an annual basis, the rule provides the mechanism to accommodate nonuse for the time needed to achieve plant composition, forage production, or habitat improvement objectives.

Regional RACs may be one forum for permittees and/or conservationists to discuss options for grazing permit retirement. However, creating and administering ''willing seller—willing buyer'' grazing permit retirement opportunities is beyond the scope of the rule. At regional RAC meetings, it may be appropriate to discuss conservation buy-outs, but, as noted earlier, BLM does not have authority at the present time to ''buy out'' permits.

Many comments urged BLM to provide means and methods for reducing or eliminating grazing in specific areas, such as by appealing and challenging the court's ruling against conservation use permits or allowing conservation buy-outs as a provision of the regulations, giving a number of reasons:

a. Some areas require long-term or permanent protection for rangeland environmental health.

b. The proposed rule will not promote sustainable grazing.

c. The elimination of conservation use also eliminates the opportunity for a conservation easement.

d. Such arrangements can have substantial economic and other benefits for all concerned.

e. Most people consider conservation to be a legitimate use of the land.

BLM is able to designate areas as not available for grazing by decision based upon the land use plan's multiple use objectives, or to withdraw areas from grazing under Section 204 of FLPMA. The Bureau is also able to make changes in grazing management, such as reducing or eliminating grazing use, based upon a determination that livestock grazing is a factor in not meeting the standards for rangeland health.

One comment stated that BLM and Congress should consider amending the TGA to allow for conservation use, because that might be the only legal way

to protect resources from livestock grazing.

Amending laws, such as the TGA, FLPMA, and PRIA, is not within the scope of the proposed rule or the authority of BLM.

Section 4100.0–5 Definitions—''District''

We have amended the definition for the term ''District'' to update the regulations as to the organization of BLM field offices. The term is not to be confused with ''grazing district.'' The latter term either is used in its full form—''grazing district''—or appears in context so that its meaning is clear.

Section 4100.0–5 Definitions—''Ephemeral Rangelands''

We have revised the definition for this term as well, as suggested in comments. This definition was not in the proposed rule, but the change suggested in the comments was more of a clarification than a change, removing the notion that production of sufficient forage by ephemeral range was necessarily unusual. Therefore, we removed the phrase ''may briefly produce unusual volumes of forage'' and added in its place the phrase ''from time to time produce sufficient forage.''

Section 4100.0–5 Definitions—''Grazing Lease/Grazing Permit''

We amended the definitions of ''grazing lease'' and ''grazing permit'' for purposes of clarification, to make it clear that BLM issues grazing leases to authorize grazing on lands that are not within grazing districts established under the TGA, and permits to authorize grazing within grazing districts.

One comment from a state game and fish agency stated that we should not amend the definitions of ''grazing lease'' and ''grazing permit,'' because inclusion of preference in the text of a grazing lease leads to the lease establishing the stocking rate. The comment contended that a grazing lease is not the appropriate vehicle for establishing a stocking baseline.

We have not adopted this recommendation. Changes in the definitions are required in order to remove conservation use from the regulations, based on the 1999 Tenth Circuit Court of Appeals decision. Grazing preference, as well as other allowable uses on all BLM lands, is established in land use plans. Grazing permits and leases are the instruments that authorize grazing use, based on land use planning allocations. Under section 4110.3, BLM will periodically review the grazing preference specified in a grazing permit or lease, and make changes in the grazing preference as needed to help achieve management objectives and to attain rangeland health.

Comments stated that the definitions should not provide that the grazing permit or lease is the document that authorizes grazing on public lands, because this unnecessarily triggers the need to document NEPA compliance.

The TGA directs BLM to authorize livestock grazing through a permit or lease. NEPA provides requirements for Federal actions including the issuance of grazing permits and leases. BLM must comply with provisions of both laws.

Comments urged BLM to amend the definition of a grazing permit to require that landowners be engaged in the livestock business in order to acquire a Federal grazing permit. They stated that this requirement is based on a provision of the TGA.

The TGA does not require a permit or lease holder to be in the livestock business. Section 3 of the Act states, ''Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business.'' Therefore, being in the livestock business is not a requirement, only a point of priority for receipt of a forage allocation.

Other comments cited legislation pending in Congress that would allow the voluntary buyout of grazing permits, and stated that the proposed definition of ''grazing permit'' would complicate the potential for such voluntary buyouts.

BLM has not changed the final rule in response to this comment. Pending legislation is not authority for regulation. If the legislation were to pass both houses of Congress and be signed by the President, BLM would, if necessary, amend the regulations to implement the new legislation.

Section 4100.0–5 Definitions—''Interested Public''

Under the definition of ''interested public'' in the 1995 regulations, an individual, group, or organization could obtain interested public status by (1) submitting a written request for involvement in the decisionmaking process associated with specific allotments, or (2) by submitting written comments during a formal public comment period associated with a decision within a specific allotment.

In the proposed rule, we revised the definition of ''interested public'' to refer to an entity that has done one of two things: (1) Submitted a written request to BLM to be provided an opportunity to be involved in the process leading to a BLM decision on the management of livestock grazing on public lands, and followed up that request by commenting on or otherwise participating in the decisionmaking process as to the management of a specific allotment if there has been an opportunity for such participation, or (2) submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment. Thus, a person, group, or organization still would qualify as a member of the interested public simply by commenting on grazing management in a specific allotment during an announced public comment period.

In the final rule, we have further amended the definition to require a written request to cover individual allotments. Under current wording, a potential interested public could write one letter requesting interested public status as to all ''public lands.'' Each of BLM's 162 field offices would then be obligated to send this entity information, for purposes of local consultation/commenting opportunities, and then ''weed out'' the interested public from their local lists if the potential interested public does not specifically respond or take advantage of the consultation opportunity. Keeping the definition's focus on management of a specific allotment will keep the process more orderly and efficient.

Use of the term ''grazing management'' when speaking of allotments is redundant, given the definition of ''allotment'' elsewhere in the regulations. Therefore, there is no need to include it in the ''interested public'' definition—since the ''interested public'' definition uses the term ''allotment.''

We received many comments regarding this definition. Many of the comments on the topic were concerned that this change could unduly exclude public input from the grazing management decision process. Some comments stated that this change could lead to secretive decision making by BLM. Others stated that the new qualification criteria posed an unreasonable barrier to participation. Contrarily, a significant number of comments stated that more requirements should be imposed to avoid what they saw as unnecessary delays and frivolous protests and administrative appeals. Suggestions for additional requirements included an annual application process or other time limit on interested public status. Creating a substantive standard for the participation requirement was also

suggested. Some comments suggested that the interested public be narrowed to include only grazing lessees and permittees and local users of the land. Finally, a significant number of comments supported the changes as proposed.

BLM seeks to balance the legitimate need for public involvement in the management of public lands with the public interest in the cost-effective administration of the public participation process. Since the definition of interested public was last changed in 1995, BLM has devoted substantial resources to the public participation process. Some of these resources have been devoted to tasks such as maintaining lists that include individuals and groups that have not participated in allotment management activities in years. These uninvolved members of ''interested public'' still receive periodic mailings at taxpayer expense.

BLM recognizes the importance of public participation and desires to provide an opportunity for all those who demonstrate an ongoing interest in an allotment to participate. Requiring some follow-up activity is not unreasonable, but allows the individual or group to demonstrate true continuing interest in the activities on the allotment. BLM has not adopted any further qualification requirements, in order to maintain an open process available to all of the public. Annual applications or minimum criteria standards would create additional paperwork requirements, and could run counter to the administrative efficiency goal. Also note that the change to the interested public definition does not in any way affect the public notice and public participation opportunities available when potential grazing decisions are analyzed under NEPA.

One comment stated that, to enhance BLM's working relationship with the permittee and to bring cohesive management into the decisionmaking process, monitoring should be conducted only by the permittee and BLM, omitting the interested public.

Section 202(f) of FLPMA makes clear that it is the direction of Congress that BLM must allow for public involvement and allow the public to comment upon and participate in the formulation of plans and programs relating to the management of public lands. An important element of our plans is the establishment of resource management objectives, which then must be monitored. The grazing regulations do not address who should or should not be involved in monitoring. It is BLM's policy to encourage partnerships with appropriate interests to accomplish our work. When the interested public joins in conducting monitoring studies with BLM, they bring their perspective to the management of resources, which often is different from the perspective of BLM or the permittee. BLM benefits from this perspective by receiving more diverse information upon which to base its decisions. BLM retains discretion to reject monitoring information that does not meet agency standards, regardless of who collects it.

One comment stated that removing some requirements to consult with the ''interested public'' while adopting a requirement to cooperate with state, county, or locally-established grazing advisory boards provides preferential treatment to one group over another. The comment questioned whether this change ensures ''a consistent community-based decision-making process.''

The final rule retains requirements for consultation, cooperation, and coordination with the interested public for:

- Apportioning additional forage on BLM-managed lands;
- Developing or modifying an allotment management plan or grazing activity plan; and
- Planning range development or improvement programs. For example, the final rule provides for continued participation by the interested public at the same level as the state, county, or locally-established grazing advisory boards. The rule also retains requirements to
- Allow the interested public to review and comment on grazing management evaluation reports; and
- Notify the interested public of proposed and final grazing decisions.

The final rule provides the interested public with ample opportunities to participate and provide input to BLM on its management of public lands, even though the rule limits the interested public's role in day-to-day operational aspects of the grazing program. BLM's experience under the existing regulations is that this form of public participation is often inefficient and unproductive. The final rule allows the authorized officer discretion to determine appropriate on-the-ground management actions to achieve plan objectives and respond to various resource conditions.

Two related comments questioned BLM's proposal to restrict interested public participation to plan-level or program-level decisions. The comments stated that information and decisions presented at this level are often too broad and general to allow specific and meaningful evaluations or comments, and site-specific actions have the greatest potential to impact fish and wildlife, including species listed under the Endangered Species Act. The comment asserted that it is therefore important to retain public consultation requirements for site-specific resource decisions.

An important element of BLM land use planning is the establishment of resource management objectives. These are designed to prompt managers to achieve standards and implement guidelines under pertinent state and Federal laws in order to improve the condition of the land resource. Most if not all of the site-specific actions that would affect fish and wildlife are included in the development or modification of an allotment management plan and the planning of range improvements. Both allotment management and range improvement planning continue to require consultation, cooperation, and coordination with the interested public under the final rule. BLM is seeking to balance the need for public involvement in the management of public lands with the public interest in the cost-effective management of those lands.

Still another comment expressed concern that members of the public (other than the grazing permittee) should be given the opportunity to submit comments regarding a grazing permit environmental assessment (EA). The comment stated that, because grazing management affects many resources on which fish and wildlife depend, it would be valuable to allow predecisional comments from all interested parties to be introduced into the public record. The comment stated that the opportunity for review under NEPA may not allow for timely and site-specific public input. The comment stated that efforts to simplify and streamline the NEPA process could result in the agencies and the public being informed only about those projects that warrant an EIS, when most proposals for changes in rangeland management are evaluated in EAs.

The final rule does not change relevant requirements pertaining to public involvement in the NEPA process. While BLM has proposed CXs that would pertain to grazing decisions (71 FR 4159, January 25, 2006), at present BLM consults with the public and provides notice regarding NEPA activities to the public, pursuant to CEQ's regulations at 40 CFR 1501.4(b) and 40 CFR 1506.6(b). Grazing EAs are made available for public review if the manager responsible for authorizing the action believes it necessary. Public

participation might also occur as part of determining the scope of the assessment.

Under the final rule, the interested public will still be provided a copy of the proposed decision and associated NEPA documents or notified of the availability of the NEPA document, may protest proposed decisions under section 4160.2, and may seek appeal of a final decision under section 4160.4.

Also, section 4130.3–3(b) provides the interested public opportunity to review and provide input to reports that lead to decisions to modify grazing use.

There are several opportunities for public involvement in the process of issuing grazing permits. The interested public may comment on or otherwise provide input in the development of reports leading to adjustments in terms and conditions, the development of allotment management plans (section 4120.2(a), (c), and (e)), which include terms and conditions that would be incorporated in the grazing permit, and in the permit decision process. At the authorized officer's discretion, the interested public may be, but is not required to be, consulted in the development of the terms and conditions of the permit.) BLM also consults Resource Advisory Councils during the preparation of Resource Management Plans (land use plans) and allotment management plans, providing the public an additional opportunity and means for participating in the land use planning process.

Another comment proposed that public input be sought when there would be a significant change of land use. The comment stated that this may provide for useful public input information for making management decisions, but limit the opportunity for obstruction due to individual entity or public agendas.

The comment seems to advocate a ''significance'' threshold for public participation. BLM declines to adopt such a threshold. BLM removed the requirement (but not the option) to consult with the interested public on actions that involve what BLM considers to be the day-to-day operational aspects of the grazing program, while preserving the requirement to consult with the interested public in apportioning additional forage, developing or modifying a grazing activity plan or range improvement plan, and preparing reports evaluating range conditions. These are actions for which public input would be of the greatest value in deciding management direction for the public land. This final rule does not affect the public's ability to participate when BLM formulates plans and programs for land use.

One comment suggested that, in the definition of ''interested public,'' we should specifically identify that a ''lienholder of record'' is an entity that may be considered an interested public.

We have not adopted this suggestion. A lienholder of record would be an individual, a group, or an organization, and there is no need to mention them specifically in the definition.

Section 4100.0–5 Definitions—''Grazing Preference; Permitted Use''

We revised the definition of ''grazing preference'' to add the quantitative meaning of the term as it was used in the 1978 regulations, as opposed to the 1995 rule, which defined it in terms of priority of use as against other grazers. Under the final rule, preference is the sum of active and suspended use. Related to this change, we removed the definition of ''permitted use,'' and substituted ''preference'' or ''grazing preference,'' as appropriate, for ''permitted use'' in the regulations.

BLM received some comments supporting and some comments opposing the removal of the term ''permitted use'' and expanding the definition of ''grazing preference'' to include a livestock forage allocation. Favorable comments suggested that the term connects a public land livestock forage allocation with base property owned by the preference holder, thus facilitating preference transfer when the property changes hands, thereby providing stability and certainty for grazing operations as well as ranching communities, and eliminating the confusion that use of the term ''permitted use'' generated. Some of the comments in support of the change erroneously suggested that preference was somehow a fixed quantity, not subject to change.

Comments opposing the change stated that the definition of preference has no basis in law, that it weakens BLM's administrative authority, that it will cause confusion unless further clarified, and that it would create expectations that BLM, when choosing among possible public land management actions, would be obligated to minimize livestock forage reductions, ensure they are temporary, and restore historical livestock forage allocations. Other comments opposing the change stated that, since allotments are quantified in terms of acres, further quantification in terms of forage is both unnecessary and unrealistic because the amount of forage produced on a given area is not a fixed quantity. Another comment suggested that the proposed definition of preference should not be adopted because it elevated a livestock forage allocation as first priority above other valid uses of vegetation, such as wildlife habitat and watershed protection. Some comments stated that the present definitions of preference and permitted use were consistent with the TGA. One comment stated that it was inappropriate to change the definition of ''grazing preference'' to include an amount of forage on public lands attached to a rancher's base property without considering other factors, such as species composition and diversity, vegetation structure and maturity, rare or ephemeral species, and soil condition. The comment stated that these factors do not necessarily relate either to livestock forage quantity or to base property attributes, and that using these factors in the definition of ''grazing preference'' gives the operator an inappropriate expectation of what is available for his or her use. The comment suggested that BLM consider other factors in defining ''grazing preference.''

The final rule's modification of the definition of preference and the removal of the term ''permitted use'' will remove administrative inconsistencies from the regulations and provide for improved BLM administration of forage allocations on public lands. The amendment will alleviate confusion in the regulated community that has existed since 1995. The definition of ''preference'' in the rule supports the requirement that livestock forage allocations on public land be made within a multiple use context in accordance with land use plans under section 4110.2–2. When BLM determines that additional forage is available for livestock within a planning area, under this definition the preference holder is ''first in line'' for that portion of the available forage that occurs within his/her allotment(s). The definition does not mean and should not be construed to imply that satisfying a permittee's or lessee's livestock forage allocation (the preference) has the highest priority when BLM employs land use planning or activity planning processes to determine possible uses, or values to be managed for, that depend upon available vegetation. BLM reconciles competing demands for public land resources through its land use planning process.

One comment suggested that the term ''preference'' should be redefined to mean the current livestock carrying capacity following forage allocations to wildlife, watershed protection, and land recovery. Another comment suggested that the definition of preference should

incorporate the concepts of distance from water and the percent slope or steepness of terrain. Another comment suggested that BLM should include in the definition of ''grazing preference'' the concept that forage is allocated according to land use plans, to emphasize the connection between permitted activities and the land use plan.

The final rule includes the definition of ''grazing preference'' or ''preference'' as proposed. As explained in the preamble to the proposed rule, the 1995 rules changes introduced some inconsistencies into the regulations (see the discussion in section III.D.9. of this preamble) by creating the term ''permitted use'' to mean the forage allocation, and narrowing the definition of ''preference'' to mean only a priority position as against other applicants for forage.

''Preference'' or ''grazing preference'' is a grazing-program-specific administrative term that connects an individual entity's allocation of public land forage to property that it owns or controls. It allows BLM to record, in accordance with other applicable grazing regulations, a forage allocation on public lands, expressed in terms of ''active use'' and use that has been suspended, or ''suspended use,'' together constituting ''preference,'' and administratively connect it to privately owned base property. It facilitates both the transfer of preference from one party to another and/or from one property to another, and the making of equitable adjustments of preference in ''common allotments'' (allotments permitted or leased to more than one operator), when needed in the course of land management.

In the 1978 grazing regulations, BLM formally defined ''grazing preference'' to be a forage allocation on public lands, expressed in AUMs, that is apportioned and attached to base property owned or controlled by a permittee or lessee. These regulations also stated that ''grazing preference shall be allocated to qualified applicants following the allocation of the vegetation resources among livestock grazing, wild free-roaming horses and burros, wildlife, and other uses in the land use plans.'' Before 1978, BLM called livestock forage allocations on public lands ''grazing privileges.'' The amount of privileges awarded to individuals and attached to their base property was limited by the ''qualifications'' of the property. Determination of land base property qualifications was based in part upon the forage that was produced on the base property, and was used to help calculate BLM's determination of the property owner's forage allocation on public lands. Determination of water base property qualifications relied upon the forage production that occurred on public lands within the service area of the water that the water base property owner controlled. Adjudication of grazing privileges occurred independently from, and in many cases pre-dated, pre-FLPMA land use planning processes. Grazing privileges on public lands that were awarded in recognition of base property qualifications were informally referred to by ranchers and BLM alike as ''preference AUM's,'' and were distinguished from forage use approved on a temporary and nonrenewable basis and from forage consumed in the exercise of livestock crossing permits.

Following the 1978 rulemaking that formally defined the term ''grazing preference,'' establishment of preference was based on forage allocations that occurred in the course of implementing land use plans under FLPMA. In the majority of cases, these forage allocations mirrored the apportionment of forage that occurred under pre-FLPMA livestock grazing adjudications. In any event, all allocations were supported by resource information, including inventory and monitoring. Allocations that pre-dated FLPMA, and the preference that arose from those allocations in the course of implementing land use plans under FLPMA, do not ''trump'' BLM's multiple use mandate, which was formalized under FLPMA. On the contrary, forage allocations made under the auspices of FLPMA land use plans superseded the forage allocations made by the pre-FLPMA adjudications. All BLM offices with a grazing program are covered by land use plans completed since the enactment of FLPMA.

As discussed below, increasing active preference or activating suspended preference is a valid grazing program goal. However, when considering management opportunities presented by an increase in vegetation available for forage or other uses and values, meeting this goal must be considered in concert with meeting other equally valid goals established by the land use plan.

BLM is aware that an absolute quantity of forage production on public lands is not fixed in time. In accordance with the TGA and FLPMA, the grazing regulations provide for monitoring and assessment to support both temporary and long-term adjustments in grazing use, including the amount of forage that may be removed under a permit or lease, when BLM determines that such adjustments are warranted. It has been BLM policy for two decades that changes in the amount of forage allowed for grazing use under a term permit or lease (regardless of whether it is called ''active use'' or ''active preference'') must be supported by monitoring, or, since 1995, other resource information that indicates a need for adjustment, such as when the authorized livestock grazing significantly contributes to not meeting rangeland health standards (and excepting, of course, adjustments that are based on significant changes in management circumstances, such as land disposals rendering less land available for grazing use). However, although livestock grazing capacity can and does fluctuate in response both to natural events and to management inputs, BLM also seeks to provide reasonable stability to permittees and lessees who rely on public land forage authorized by their permit or lease. Therefore, BLM established a preference for removal of a specific amount of forage. There is no need to include a requirement for consideration of physical factors such as distance from water and steepness of terrain in the definition of preference. The appropriate place for including this type of guidance is in technical references and handbooks that address how to establish livestock grazing capacity. As indicated in the final rule at section 4110.3, BLM may adjust preference for several reasons, including the need to conform the livestock grazing use program to the provisions of applicable land use plans. BLM may also cancel preference outright when circumstances warrant, such as to impose a penalty for regulatory violations, or when public land is transferred to private hands or devoted to another public purpose that precludes livestock grazing.

The regulatory provisions to place preference in ''suspension'' indefinitely apply when BLM adjusts allowable livestock forage removal based on a determination that grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing is causing unacceptable utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory, or other acceptable methods, or for other purposes consistent with legal and regulatory requirements. The assumption behind indefinitely suspending preference is that, should management inputs result in restoring acceptable patterns or levels of utilization, or increased production of forage available to livestock, then BLM may reinstate the suspended use under section 4110.3–1(b). BLM believes it

appropriate to encourage management input by ranchers who hold preference by providing that when management inputs result in increased forage for livestock available on a sustained yield basis, they can expect that this forage will be made available to them without having to compete for it with other potential applicants. We view the reinstatement of suspended preference as an appropriate livestock grazing program goal that provides incentive to preference holders for improved livestock grazing management. Attaching the suspended preference to base property results in a record that transcends any one entity's or individual's tenure of ownership or control of that base property. In the event, perhaps decades later, that BLM determines that increased forage for livestock is available within a specified area, this record allows BLM to make fair and appropriate distribution of the increased livestock forage first to those with preference for grazing use in the area in question.

To conclude, the definition of grazing preference contained in the final rule is consistent with its longstanding meaning—a meaning that was in formal usage for 17 years before it was changed by the 1995 grazing regulations, and consistent with how the term ''preference AUM's'' was informally used before 1978.

Section 4100.0–5 Definitions—*Suspension*

We amended the definition of ''suspension'' to remove the qualifier ''temporary,'' which is redundant.

Several comments stated that the definition of ''suspension'' could cause problems because it allows for withholding of active use ''by agreement.'' These comments urged that we remove the phrase ''or by agreement'' from the definition, so that the definition would read: ''*Suspension* means the withholding from active use, through a decision issued by the authorized officer, of part or all of the grazing preference specified in a grazing permit or lease.'' They stated that allowing suspensions by agreement could allow the creation of *de facto* conservation use permits, contrary to the decision of the Federal Court, and would short circuit the grazing decision process under subpart 4160.

We have not adopted the recommendation to change the definition of ''suspension'' in the proposed regulation. The phrase ''or by agreement'' was in the definition prior to the 1995 revision of the regulations. It is in the definition partly to recognize that the permittee may not wish to contest the suspension. The definition also supports our goal of using cooperation with permittees and lessees to achieve rangeland management objectives. When an action that meets the objective of achieving rangeland management objectives is implemented through agreement with affected permittees or lessees, the action carries no less weight than when it is implemented through decision. The implementation of an action to place active use in suspension, for example, still requires sound rationale, whether implemented through agreement or decision, and may be appealed by parties with standing to appeal.

Another comment stated that BLM should implement a process to ensure that suspended use is reinstated to active use. It stated that the current regulations deprive permittees of this credit, unjustifiably eliminating base property qualifications that are kept on the books in suspended status at the time of permit renewal based on an allotment evaluation. The comment went on to suggest that, as range conditions improve, BLM should reinstate the active use that is presently in suspended use.

BLM agrees that it is important to keep track of grazing use that has been reduced, and the final rule provides at section 4110.3–2(b) that BLM will place such reductions in suspension. If range conditions improve in the future and BLM finds there is additional forage for livestock on a sustained yield basis, under the final rule at section 4110.3–1(b), such additional forage will be applied first to reduce or eliminate any suspensions. There is no need to change the final rule in response to this comment.

Some comments stated that BLM should not change the definition of suspended use, but rather retain the one in the 1995 regulations. BLM has not adopted the recommendation to retain the 1995 definition of ''suspension.'' The proposed and final rules change the definition to be consistent with the restored definition of ''preference.''

Section 4100.0–5 Definitions—''Temporary Nonuse''

We amended the definition of ''temporary nonuse'' to mean that portion of active use that BLM allows a permittee or lessee not to use.

Several comments expressed general support for the changes in the temporary nonuse provisions. Various other comments suggested amendments for the definition of ''temporary nonuse:'

(1) To include nonuse that is required by BLM in response to fire, drought, or in other cases where range restoration or improvement is necessary;

(2) To provide that BLM will manage decreases in livestock numbers by temporary nonuse rather than suspension; and

(3) To require permittees and lessees to apply for temporary nonuse on an annual basis, in order to make the definition consistent with section 4130.4(d)(1).

The first two suggestions are related. Some grazing permittees and lessees do not want to have authorizations suspended for drought, fire, and range restoration. Although no reason is given in the comments, apparently these grazing operators consider a suspension tantamount to a penalty. However, there is no stigma associated with this kind of suspension. Nonuse to allow fire rehabilitation or drought recovery at the request of BLM is properly achieved by suspension. Also, having a suspension imposed by BLM in this situation eliminates the paperwork burden associated with applying for temporary nonuse.

BLM cannot adopt the third suggestion. Definitions are in the regulations to describe what a term means. The definition is not the proper place to describe how to implement it. Section 4130.4 gives sufficient information about the implementation of temporary nonuse; it is unnecessary to repeat it in the definition.

One comment from a state fish and game agency opposed the definition of temporary nonuse, relating it to its opposition to the proposed definition of ''preference.'' The agency opposed institutionalizing a stocking number in grazing permits. Instead, the comment supported the definition in the current regulations, stating that forage allocations should be based on available forage.

We have not adopted the comment in the final rule. Changes in the definition of ''temporary nonuse'' proposed in the rule are necessary to implement the ruling of the 10th Circuit Court in *Public Lands Council* v. *Babbitt*, *supra*, on conservation use. The interpretation in the comment of the relationship between temporary nonuse and grazing preference is incorrect. The proposed rule defines ''grazing preference'' or ''preference'' as the total number of AUMs on public lands apportioned and attached to base property owned or controlled by a permittee, lessee, or an applicant for a permit or lease. A permit or lease is a long-term (up to 10 years) authorization to graze livestock on public land and is based on available forage. BLM may authorize temporary nonuse, on the other hand, for a short

term, one year, when applied for by a permittee or lessee, for a variety of reasons.

One comment stated that BLM should amend the rule with regard to temporary nonuse to make the negative effects on grazing permittees as predicted in the DEIS positive.

We believe the long-term effects of the rule will be favorable to the health of the range. BLM is free to disapprove nonuse if resource conditions do not warrant approval of temporary nonuse for conservation reasons, and to allow temporary use by other operators if the nonuse is for personal or business reasons. The regulations contain checks and balances to minimize adverse effects.

Section 4100.0–5 Other Comments and Recommendations on Definitions

Some comments urged BLM to clarify the regulations by changing the term ''actual use'' to ''actual livestock use,'' and ''actual use report'' to ''actual livestock use report,'' because the terms relate only to use by livestock.

The definitions of ''actual use'' and ''actual use report'' in the final regulation remain unchanged. The current definition states that actual use relates to livestock use. Incorporating the suggestion would require adjusting the regulations in a number of areas in the regulations. We believe that such changes would not add clarity to the regulations.

One comment stated that BLM should revise the grazing rules to make consistent the concepts of active use, monitoring, rangeland studies, livestock carrying capacity and the term ''forage available on a sustained yield basis.'' The comment contended that currently they lack consistency among themselves and throughout the existing rules and the proposed rules.

We believe that these terms are used consistently with one another in the grazing regulations.

Many comments suggested that we define the term ''affected interest.'' Some provided suggested language: ''Affected interest means a permittee, lessee, allotment owner, or property owner who is directly and materially affected by BLM action related to livestock grazing plans or actions related to those plans' and stated that under Section 8 of PRIA, BLM has responsibility to directly consult, coordinate, and cooperate with any allottee, lessee, and landowner in a situation where they would be directly and materially affected by a BLM action or proposed action. Another comment asked BLM to define the term ''affected person, interest, or party'' and clearly limit those who are considered ''affected'' to people who would directly suffer economic and cultural loss. The comment said that this would prevent those who would use legal processes to impair or stop prudent land management from having standing to bring suit. Another said that such a definition would be consistent with the difference between a member of the public who enjoys certain opportunities for public involvement in BLM land use plans as part of the NEPA process, and the permittee, lessee, or landowner who is assured of ''careful and considered consultation, cooperation, and coordination''.

One comment stated that the term ''affected interest'' was too vague and could be misused, and suggested that BLM should refer instead specifically to the permittee or the landowner, as the case might be.

The terms ''affected person,'' ''affected interest,'' and ''affected party'' do not appear in part 4100. There are references to ''affected applicant, permittee or lessee, and any agent and lienholder of record,'' ''affected permittees or lessees, and the State having lands or responsibility for managing resources within the area'' and other references to affected parties such as ''landowners.'' In these cases, the definition of the word ''affected'' is clearly evident, as pertaining to those persons whose interest is directly affected by the provision of the regulation. There is therefore no need to provide a separate definition for the term ''affected interest'' or any of its variants.

We have not adopted the recommendation to replace the term ''interested public'' in the regulations with the term ''affected interest'' and to restrict its definition to include only an allotment owner, lessee, or landowner that is directly and materially affected by a BLM action related to livestock grazing plans or actions related to those plans. Although the sections of PRIA that address consultation and coordination (sections 5 and 8) list those entities that BLM should include in the decision process on allocation of range improvement funds and in the formulation of allotment management plans, they do not limit public involvement during the process leading to such BLM decisions. To involve all those who may be interested in participating in the decision process is not in conflict with the portions of PRIA that address consultation and coordination. As noted elsewhere, the final rule does affect the role of the interested public and removes the consultation requirement from several day-to-day management level decisions. The effect of these changes is that the interested public, permittees, and lessees all have opportunities to participate under Section 202 of FLPMA (43 U.S.C. 1712) in decisions on land use plans and allotment management plans that form part of the basis for grazing management decisions, while some day-to-day management decisions require consultation opportunities for permittees and lessees but not with the interested public. BLM believes that this best balances the legitimate need for wide public participation in the management of public lands with the need for efficiency in day-to-day matters that directly affect permittees and lessees.

One comment urged BLM to revise the definition of ''animal unit month,'' stating that the existing definition is outdated and causes confusion. It suggested that the definition should be based on livestock size and class, since these vary.

We have not adopted this comment in the final rule. The suggestion to define an AUM in terms of livestock size and class would make implementation of the regulation prohibitively complex and costly.

One comment stated that BLM should define the term ''authorized use'' as it was defined by the Interior Board of Land Appeals in *New Burlington Group Grazing Association*, IBLA 2003–324: ''The level of AUMs granted in the permittee's grazing permit.'' According to the comment, this would make it clear that authorized use is not the previous year's actual use, an interpretation rejected by IBLA in , and would avoid confusion as to what use is authorized.

We have not adopted the recommendation in the comment, since the term does not appear in this form in these regulations. Terms similar to ''authorized use'' that appear in these regulations include ''preference'' or ''grazing preference'' and ''active use,'' all of which are defined in section 4100.0–5. These definitions and the use of these terms in the regulations address the concern in the comment that the regulations should have a term pertaining to the number of AUMs authorized by a permit or lease.

One comment asked BLM to define the terms ''authorization'' and ''authorized'' to ensure clarity of application of these terms in the regulations. Another comment stated that, to end current confusion and ambiguity regarding meaning of the terms ''authorization'' and ''authorized'' in the grazing regulations, BLM should include a definition of ''authorized'' in

the regulations as ''the level of AUMs granted by the permittee's term grazing permit,'' or, as ''all AUM's included within the permittee's term grazing permit.''

BLM does not agree that it should define the terms ''authorization'' and ''authorized'' as the comment suggested. In the absence of a definition in the regulations, we apply the common dictionary definition and meaning. This is true for terms like ''authorization'' and ''authorized,'' whose dictionary definition is sufficient. The term is used throughout the regulations in the sense of to ''allow'' or ''grant permission,'' and in areas that do not directly relate to forage amounts, such as when BLM authorizes construction of a range improvement through a cooperative range improvement agreement. Moreover, BLM is not limited to authorizing grazing through the use of term permits and leases. We may also authorize grazing on a temporary and nonrenewable basis where the applicant is not a preference holder.

The final rule states unambiguously at § 4130.2(a) and through the definitions of ''grazing permit'' and ''grazing lease'' at § 4100.0–5 that the grazing permit or lease is the document that authorizes grazing use on the public lands and other BLM-administered lands that are designated in land use plans as available for livestock grazing. Consistent with statutory language in Sections 3 and 15 of the TGA, and with the use of the term ''permit or lease'' in Section 402 of FLPMA, BLM intends that the grazing permit or lease, which specifies the terms and conditions of grazing use allowed by the permit or lease during its term, be relied upon as the document that authorizes grazing use.

In the proposed rule, we removed the term ''annual grazing authorization'' from section 4140.1(b)(1)(i) (which had prohibited grazing without a permit or lease and an ''annual grazing authorization''). We found that this term was confusing because it implied that there was some other document besides a permit or lease (or in limited circumstances, an exchange of use agreement) that authorizes public lands grazing.

The grazing regulations provide some flexibility to make minor adjustments in the grazing use within the terms and conditions of the permit or lease. The amount of forage consumed in any one year need not exactly reflect the amount of forage that could be allowed to be consumed as shown on the authorizing permit or lease. Such flexibility is necessary to be responsive to forage conditions that can vary from year to year due to weather conditions or as a result of emergencies such as wildfire, or to be responsive to personal or business needs of the livestock operator.

BLM collects fees for use authorized by the grazing permit or lease, as may be adjusted. The use shown on the grazing fee billing becomes a part of the permit or lease for the period of grazing use that is specified by the grazing fee billing.

One comment urged BLM to define ''livestock carrying capacity'' in terms that address and meet ecological needs, including plant productivity, soil nutrient cycles, ground cover, plant community composition, wildlife habitat function, and habitat resilience.

The current definition of ''livestock carrying capacity'' found in the BLM grazing regulations accords with the commonly accepted definition of this term and reads: ''*Livestock carrying capacity* means the maximum stocking rate possible without inducing damage to vegetation or related resources. It may vary from year to year on the same area due to fluctuating forage production.'' ''Related resources'' include the ecological needs of rangelands.

One comment urged BLM to clarify the regulations by adding a definition of ''forage available on a sustained yield basis,'' as follows: ''Forage available on a sustained yield basis means the average ''livestock carrying capacity'' as determined by monitoring over time.''

We considered the definition suggested in the comment and determined that it would not add clarity to the regulations. This definition would equate an amount of forage with livestock carrying capacity. ''Livestock carrying capacity'' is defined by the regulations in terms of a ''stocking rate.'' ''Stocking rate'' is a standard term describing a number of animals, over time, per unit area. Ultimately, were the suggestion to be adopted, the result would be to make an amount of forage the equivalent of a number of animals over time per unit area. To put it simply, ''forage available on a sustained yield basis'' is not the same thing as a number of animals per unit area per time period. Also, adopting this suggestion would create an internal conflict with section 4100.0–8, which states that land use plans establish allowable resource uses and program constraints. In other words, BLM may consider factors other than the results of monitoring in determining livestock carrying capacity.

Comments suggested that BLM should include in the definitions of ''monitoring'' and ''rangeland studies'' the requirement to apply BLM-approved analytical methodology. One comment criticized BLM's current practice of providing guidance for monitoring through manuals and handbooks, and not through regulations. Another comment asked for clarification that monitoring is not mere observation but must occur through rangeland studies set forth in approved BLM manuals. It concluded that this monitoring should include data collected on actual use, utilization, climatic conditions, special events, and trend. Others urged that the rule ensure that monitoring will occur through rangeland studies, as set forth in approved BLM Manuals, and not by the ''whims'' of the authorized officer.

We have not changed the regulations in response to these comments. The BLM Manual, handbooks, and other BLM internal instruction materials provide adequate opportunity for guidance on monitoring and rangeland studies, and these materials are more easily updated than regulations. For example, subsequent to implementation of the 1995 rules, BLM has been part of an interagency team that has developed and improved a method for assessing indicators of rangeland health. After 4 years of use, this Technical Reference has been modified to incorporate quantitative measures with the qualitative techniques. We have also been developing techniques for monitoring macro-invertebrates as indicators of water quality and have been researching the relationship between upland range condition and macro-invertebrate populations. The comments generally agree with this approach, and mainly discuss how we should address monitoring in our internal guidance. We will consider these comments when we review our Manual provisions and other internal guidance.

Comments stated that BLM should restrict monitoring to rangeland studies. They suggested that ''monitoring'' should be defined as ''the orderly collection of rangeland studies data to evaluate ''* * *,'' stating that this would contrast monitoring with observations and indicate that only the collection of ''rangeland studies'' will be considered valid monitoring. Further, they stated, ''rangeland studies'' should be defined as ''any study methods as set forth in approved BLM manuals for collecting data on actual use, utilization, climatic conditions, other special events, and trend to determine if management objectives are being met.'' The comment's position was that this will ensure that management decisions are based on sound information.

We considered the suggested definitions. However, we determined that BLM needs flexibility to use site-

specific methods in addition to those monitoring methods set forth in Manual guidance. This flexibility will allow BLM to employ techniques that meet local needs and that we can develop in cooperation with other agencies and partners.

One comment stated that BLM should define the term ''multiple use'' to include outdoor recreational activities, such as hiking, hunting, fishing, and other outdoor activities, because FLPMA provides authority for managing lands on the basis of multiple use.

Although the comment correctly interprets outdoor recreation activities to be included in any definition of multiple use, we have not adopted the recommendation to define the term ''multiple use'' in the regulations on livestock grazing. The term ''multiple use'' is defined in FLPMA and the BLM planning regulations (43 CFR 1600.0–5) and needs no further definition in these regulations.

One comment suggested that BLM should define the following: ''Affiliate,'' ''terms and conditions,'' ''cooperator,'' ''qualified applicant,'' ''community-based decision making,'' and ''court of competent jurisdiction.''

BLM does not believe this is needed. The term ''affiliate'' is defined in the current regulations and remains unchanged. Qualifications for holding a grazing permit or lease are set forth at subpart 4110 of the grazing regulations, and the proposed amendments simply reorder the mandatory qualifications provision found at section 4110.1. The meanings of the other terms, ''terms and conditions,'' ''cooperator,'' ''community-based decision making,'' and ''court of competent jurisdiction'' are clear from their usage and the context in which they appear.

Section 4100.0–9 Information Collection

This section is in the regulations for information purposes. It recites the fact that the Office of Management and Budget has approved BLM's collection of information to enable the authorized officer to determine whether to approve an application to use public lands for grazing or other purposes. No public comments addressed this section, and we have made no changes in the final rule.

Subpart 4110—Qualifications and Preference

Section 4110.1 Mandatory Qualifications

We amended this section by moving the provisions containing BLM's procedures for determining whether an applicant has a satisfactory record of performance to section 4130.1–1, which addresses filing applications, and adding a cross-reference to that section. No public comments addressed this rearrangement. We will discuss the comments that addressed the procedures themselves when we discuss section 4130.1–1.

Comments urged BLM to add a requirement that permittees ''must be engaged in the livestock business,'' stating that this requirement is in the TGA, but not in the regulations. The comment went on to say that addition of that statutory requirement would ensure that a permittee has an economic motive to graze livestock on the permitted allotment and is not merely acquiring a permit in order to retire it.

We have not adopted this comment in the final rule. Although those engaged in the livestock business are preferred recipients of permits, being engaged in the livestock business is not a statutory prerequisite for permit eligibility. Section 3 of the TGA states that grazing permits shall be issued only to U.S. citizens or those who have filed a valid declaration to become a U.S. citizen, or to corporations, groups, or associations authorized to conduct business under the laws of the states within which the grazing district is located. Section 3 of the Act also states that ''[p]reference shall be given in the issuance of grazing permits to those within or near a [grazing] district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water or water rights owned, occupied or leased by them * * *.'' For lands outside grazing districts, Section 15 of the TGA provides that the Secretary may issue leases for grazing purposes to nearby landowners and does not require that before they can receive a lease, they must be engaged in the livestock business. BLM requires that to receive and retain preference for a term grazing permit or lease, one must own or lease land or water that serves or is capable of serving as a base for livestock operations and either be a citizen or have filed a valid petition to become a citizen, or be a group or corporation authorized to conduct business in the state where the permit or lease is sought, and must have a satisfactory record of performance as defined by the regulations.

One comment urged that the regulations should require that to hold a grazing permit or lease, one must own livestock, stating that this is a clear requirement of the Taylor Grazing Act as most recently clarified by the Supreme Court in *Public Lands Council* v. *Babbitt*, *supra*.

We have not adopted this suggestion in the final rule. The Supreme Court upheld the deletion of the phrase ''engaged in the livestock business'' from the regulation enumerating ''mandatory qualifications'' for permittees and lessees. Our approach is consistent with the TGA, which directs that ''[p]reference shall be given to landowners engaged in the livestock business'' (43 U.S.C. 315b). Adopting the comment could unduly interfere with a permittee's or lessee's ability to pasture leased livestock on the BLM allotment where they are permitted to graze. BLM has long allowed a permittee or lessee to ''control,'' rather than own, the livestock grazing under their permit or lease. It also is common in the livestock industry that livestock are routinely bought and resold during the course of a year, and it may happen during a typical year that a permittee may not, in fact, own livestock on a particular date. It would be impractical for BLM to track, much less enforce, a requirement that, to maintain status as a BLM permittee or lessee, one must maintain ownership of at least one cow, sheep, goat, horse, or burro throughout the entire year.

In *Public Lands Council* v. *Babbitt, supra,* where the plaintiff objected to BLM's 1995 removal from the grazing regulations the requirement that one must be ''engaged in the livestock business'' to qualify for a grazing permit or lease, the Supreme Court found that the TGA continues to limit the Secretary's authorization to issue grazing permits to bona fide settlers, residents, and other stock owners and that BLM need not repeat that requirement in their regulations for it to remain a valid requirement. However, the Court also looked behind the issue at the plaintiff's concern that with the removal of the requirement that an applicant must be ''engaged in the livestock business,'' entities could acquire permits specifically to not make use of them (ostensibly for conservation or speculative purposes), thereby excluding others who could make use of the range. The Court pointed out that, under the regulations, a permit holder is expected to make substantial use of the permitted use set forth in the grazing permit. These provisions remain in the final rule and provide that permittees or lessees may lose their grazing privileges if they fail to make substantial use of them, as authorized, for two consecutive fee years. The phrase, ''as authorized,'' is included to make clear that BLM-approved (i.e. authorized) nonuse of grazing privileges, or privileges that

BLM has suspended, are not at risk of loss for failure to use.

One comment urged BLM to address the concept of grazing associations, explain what they are, and examine if all members of an association must own base property.

A grazing association is a group of ranchers organized into an association for the common benefit and welfare of the members. Grazing associations are organized under the laws of the state where they are located. Under section 4110.1(a)(2), a grazing association may apply and qualify for grazing use on public lands if all members of the association own or control land or water base property.

One comment stated that BLM should not allow large corporations to acquire grazing permits but instead reserve permits for local families who have a tradition of farming and ranching in the area.

It is not within BLM's authority to adopt this suggestion. The TGA authorizes the Secretary to issue grazing permits to ''corporations authorized to conduct business under the laws of the State in which the grazing district is located.'' The TGA does not place limits on which corporations may be issued permits based on their size.

One comment asked BLM to clarify whether state government agencies are qualified to hold public land grazing permits.

Section 4110.1 on mandatory qualifications states that to qualify for grazing use on public lands, one must own land or water base property and must be a citizen or have filed a declaration of intention to become a citizen or petition for naturalization, or be a group or association authorized to conduct business in the state where the grazing use is sought, all members of which are citizens or have filed petitions for citizenship or naturalization, or be a corporation authorized to conduct business in the state in which the grazing use is sought. Although state agencies may acquire base property, they are not a citizen, group, association, or corporation authorized to conduct business in the state in which the grazing use is sought. Therefore, state agencies are not qualified under the grazing regulations for grazing use on public lands. Thus, unless the exception for base property acquisition by an ''unqualified transferee'' in the circumstances described at section 4110.2–2(e) applies (which provides for issuing a permit or lease to an unqualified transferee for up to two years when they acquire base property by ''operation of law or testamentary disposition''), state agencies may not be granted a grazing permit or lease.

BLM recognizes that at times a state agency, typically the state wildlife agency, will acquire base property for various purposes, may apply for the associated grazing preference on public lands, and may express their wishes that the grazing preference be reallocated to wildlife, or express an interest to limit use of the grazing preference and permit to grazing treatments that are, for example, necessary for maintenance or improvement of habitat for wildlife. BLM will cooperate with state agencies wherever possible to pursue common goals. However, BLM land use plans set forth management goals and objectives and the ways and means available for achieving those objectives. Where state agencies have acquired base property and do not wish to use the public land grazing preference associated with that property in conformance to the governing land use plan, BLM may work with the state agency, affected permittees or lessees, and any interested public to consider options regarding the management of affected public lands. This could include reallocating the forage to another permittee or lessee. It is not within BLM's authority to issue term grazing permits to state agencies, even if they own livestock, because they do not meet mandatory requirements to qualify for grazing use on public lands. This, however, does not preclude other arrangements such as where the state agency may form a separate corporation chartered by the state for purposes of holding and managing a public lands grazing permit.

One comment suggested that we amend section 4130.1–1 to require that BLM offer permittees and lessees a new permit or lease 150 days in advance of their permit or lease expiration date, and suggested that we amend section 4110.1(b) to refer to this proposed requirement.

We have not adopted this comment in the final rule. Permit renewal time frames are best addressed in BLM's policy guidance and the BLM Manual rather than in regulations. Also, section 4110.1 deals only with qualifications of applicants, and the only necessary cross-reference is to provisions in section 4130.1–1 on determining satisfactory performance, which is a mandatory qualification. Other procedural matters are not relevant to section 4110.1.

Finally, one comment urged BLM to prohibit the transfer of preference to groups seeking to eliminate grazing.

BLM has not changed its regulations in response to this comment. In order to qualify for grazing use on public lands, one must still meet the requirements of section 4110.1. Other regulatory provisions allow BLM to cancel preference should a permittee or lessee fail to make grazing use as authorized.

Section 4110.2–1 Base Property

In this section, we proposed an editorial change, dividing paragraph (c) of the existing regulations into two parts, designated (c) and (d), since the paragraph addressed two subjects: the requirement to provide a legal description of the base property, and the sufficiency of water as base property. No public comments addressed this section, and we have made no changes in the final rule.

Section 4110.2–2 Specifying Grazing Preference

We amended this section in the proposed rule to replace the term ''permitted use'' with the term ''grazing preference'' or ''preference.'' We discuss comments on the change in terminology under the definitions section. No comments addressed this section as such, and we have made no changes in the final rule.

One comment on this section urged BLM to give preference to buffalo ranchers in issuing grazing permits because use by buffalo pre-dates use by cattle on the range, and they therefore have right by history to receive first consideration for grazing use. Another comment stated that BLM should let ranchers decide how many livestock should be grazed and adjusted based on their judgment because most ranchers are good stewards of the land. Another comment urged BLM not to make changes in preference solely on the basis of forage allocations in land use plans, stating that monitoring must be used to justify changes in authorized levels of grazing use.

We have not changed the final rule in response to these comments. BLM has no authority to give priority to buffalo ranchers when issuing grazing permits or leases. The TGA requires that when issuing grazing permits, the Secretary must give preference to landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. (Grazing permits authorize grazing use on lands within grazing districts established under Section 1 of the Act.) The Act also requires that when issuing grazing leases, the Secretary must give preference to owners, homesteaders, lessees, or other lawful occupants of lands contiguous to the public lands

available for lease, to the extent necessary to permit proper use of such contiguous lands, with certain exceptions. (Grazing leases authorize grazing on public lands outside grazing districts.) Therefore, under the TGA, the kind of animal an applicant for a permit or lease wishes to graze on public lands has no bearing on whether the applicant has or will be granted preference for a grazing permit or lease. BLM may issue permits to graze privately owned or controlled buffalo under the regulations that provide for ''Special Grazing Permits or Leases'' for indigenous animals (section 4130.6–4), so long as the use is consistent with multiple use objectives expressed in land use plans.

Both Sections 3 and 15 of the TGA and Sections 402(d) and (e) of FLPMA entrust to the Secretary of Interior the responsibility for determining and adjusting livestock numbers on public lands. The Secretary has delegated this responsibility to BLM. BLM may not delegate this responsibility to the ranchers. BLM works cooperatively with ranchers, the state having lands or responsibility for managing resources, and the interested public in determining terms and conditions of grazing permits and leases, including the number of livestock to be grazed. Permits and leases contain terms and conditions to ensure that grazing occurs in conformance to land use plans, which are developed with public involvement.

The regulations at section 4110.2–2 do not provide for the establishment of preference solely on the basis of the forage allocation contained in the land use plan. Rather, they state that, alternatively, preference may be established in an activity plan or by decision of the authorized officer under section 4110.3–3. Some land use plans determined a forage allocation for livestock on an area-wide basis and apportioned that allocation among qualified applicants. Other land use plans simply recognized previous allocations and stated that future adjustments to these allocations would be guided by the multiple use objectives contained in the land use plan, be implemented by grazing decisions, and be supported by monitoring information.

Section 4110.2–3 Transfer of Grazing Preference

The proposed rule made editorial changes to this section to conform the rule to the definition of ''grazing preference.''

A comment on this section suggested that before issuing a permit or lease that arises from transfer of preference, BLM should conduct capacity surveys, condition assessments, evaluate monitoring data, and complete NEPA compliance documentation so that the terms and conditions of the permit or lease that we issue reflects current allotment conditions.

BLM does not control when or for what allotments it will receive applications to transfer grazing preference and issue a permit arising from that transfer. By the end of fiscal year 2003, BLM had assessed about 40 percent of its allotments for achievement of standards of rangeland health. In these areas, BLM reviews the application in light of the existing assessment and NEPA compliance documentation, and issues the permit or lease with appropriate terms and conditions. BLM continues to prioritize its data gathering needs based on known resource management issues. If BLM does not conduct an assessment of rangeland health and otherwise ''fully process'' a permit or lease application that accompanies a preference transfer, it includes terms and conditions on the newly issued permit or lease to ensure achievement of the standards and conformance to appropriate guidelines. These permit or lease terms and conditions include a statement that, if a future assessment results in a determination that changes are necessary in order to comply with the standards and guidelines, BLM will revise the permit or lease terms and conditions to reflect the needed changes.

Section 4110.2–4 Allotments

In the proposed rule, we removed the requirement that BLM consult with the interested public before making an allotment boundary adjustment because it is primarily an administrative matter that we implement by decision or agreement following a NEPA analysis of the action. This means that, under the final rule, allotment boundary changes will no longer trigger required consultation, cooperation, and coordination with the interested public. This change is intended to improve the administrative efficiency of grazing management.

Many comments expressed opposition to any reduction in the role of the interested public, but relatively few comments addressed this particular function. One comment stated that this change would affect the public role in NEPA analysis of boundary changes. That is incorrect. The public role under NEPA is unaffected by this rule change.

One comment stated that boundary adjustments could affect native plant populations and requested continued public involvement. Environmental issues such as impacts on native plants are best addressed through the NEPA process, which is unaffected by this change. BLM has found that much of the required consultation with the interested public is duplicative of these other processes and often delays routine, non-controversial decisions.

In BLM's view, the NEPA process, informal consultations and the ability to protest before a decision is final provide adequate mechanisms to identify legitimate public concerns over boundary changes. Thus, no changes have been made in the final rule.

One comment on this section suggested that BLM should consult with base property lien holders before adjusting allotment boundaries, and should remove its authority to adjust allotment boundaries by decision so that the permittee or lessee has control over allotment boundaries rather than BLM.

We have not adopted these comments in the final rule. Under section 4110.2–4, BLM will consult with affected permittees or lessees before adjusting allotment boundaries. Should permittees or lessees wish to consult regarding boundary adjustment proposals with those holding liens on their base properties, they may do so at their option. It is necessary for BLM to retain authority to adjust allotment boundaries by decision for those situations where all affected parties cannot reach consensus regarding an allotment boundary adjustment.

Section 4110.3 Changes in Grazing Preference

In the proposed rule, we removed the term ''permitted use'' wherever it occurred in this section and replaced it with the term ''grazing preference'' for the reasons explained previously. We also added a third paragraph to provide that our NEPA documentation addressing changes in grazing preference would include consideration of the effects of changes in grazing preference on relevant social, economic, and cultural factors.

Numerous comments addressed both aspects of this section.

One comment stated that BLM should only consider changes in preference when there has been a permanent change in the number of AUMs available for attachment to base property. The comment asserted that, because AUMs of preference were established through formal adjudication, it would be inappropriate for BLM to change grazing preference as needed to manage, maintain, or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform to land use plans

or activity plans, or to comply with the provisions of subpart 4180. Another comment stated that is was important for permittees and lessees to retain preference as to potential AUMs that have been suspended, so that when productivity improves the AUMs are awarded to those who own or control the base property to which the suspended preference is attached. Yet another comment stated that BLM should make clear in this section that any changes to grazing preference must be supported by monitoring that is conducted using BLM-approved Manual procedures.

BLM rejects the contention that because a forage allocation reflected by an existing preference may have at its roots a pre-FLPMA formal adjudication, it would be inappropriate to change it when needed to improve rangeland productivity, restore ecosystems to properly functioning condition, conform to land use plans or activity plans, or comply with the provisions of subpart 4180. As pointed out by the Supreme Court in *Public Lands Council* v. *Babbitt*, *supra*, ''the Secretary [of the Interior] has since 1976 had the authority to use land use plans to determine the amount of permissible grazing, 43 U.S.C. § 1712.'' Further discussion of the role of FLPMA-mandated land use plans with respect to BLM's statutory multiple use mission, including the mission to provide for the orderly administration of livestock grazing on public lands under the TGA and to improve rangeland conditions, is included in the previous section that addresses removing the definition of ''permitted use'' and redefining ''preference'' to include a forage allocation element.

The final regulations in section 4110.3–2(b) provide that, when BLM decreases active use on an allotment, we will put the reduction in suspension and it will remain associated with base property to which the preference for use in the allotment is attached. This will ensure that the preference holder will be given first consideration for use of the additional forage as provided at section 4110.3–1(b)(1). BLM considered the comment that urged requiring that changes in grazing preference be supported by monitoring methods contained in BLM Manuals and determined that that BLM needs flexibility to use site-specific methods in addition to those monitoring methods set forth in Manual guidance. This flexibility will allow BLM to use techniques that meet local needs and that BLM may develop in cooperation with other agencies and partners.

We received several comments that opposed including in this section language providing that before BLM changes grazing preference, we will analyze, and if appropriate, document relevant social, economic, and cultural effects of this action. These comments urged BLM to abandon the provision to include social, economic, and cultural considerations in its grazing decisions. The reasons provided by these comments were: neither NEPA, FLPMA, nor PRIA authorize BLM to adopt rules to protect the ''custom and culture'' of the western cowboy or rancher, protect ways of life, or insulate the public land livestock industry from economic impacts, nor does NEPA authorize BLM to ignore the resource protection requirements of FLPMA and PRIA; BLM should apply an even-handed administration of existing laws and regulations rather than try to preserve a way of life and rural character of ranching communities, which the agency has no authority to do; open space and rural character are best preserved through local zoning and tax policies; BLM field managers have routinely considered social, economic, and cultural effects, despite the fact that NEPA does not require analysis of these considerations except in connection with preparing an EIS, which is why rangeland conditions are still unsatisfactory; it sets the agency up for failure, since no permittee would be willing to share the financial aspects of their operation with BLM; NEPA already allows for consideration of such effects into environmental analyses, so this proposal is duplicative and unnecessary; BLM's policy strategy is based on a skewed interpretation of the law; NEPA does not require that grazing decisions incorporate analyses of social, economic, and cultural impacts when preparing environmental assessments (EA); Federal law directs that the public lands be managed for multiple uses, of which grazing is only one; it would result in management that benefits ranchers over the short term and damages the land over the long term; and public land grazing is not very cost effective to begin with, and this provision would perpetuate that.

We have not adopted the suggestion to abandon the requirement for BLM managers to analyze and, if appropriate, document their consideration of relevant social, economic, and cultural factors before changing grazing preference. BLM is obligated under 40 CFR 1508.8(b) to assess the consequences, i.e., impacts or effects, of BLM actions, authorizations, and undertakings on * * * ''ecological * * * aesthetic, historic, cultural, economic, social, or health * * *.'' aspects of the human environment. CEQ regulations at 40 CFR 1508.9(b) also direct that Environmental Assessments include brief discussions of the impacts of the proposed action and alternatives. The provision at section 4110.3 is consistent with this direction and intent of NEPA. Consideration of these factors in the NEPA context does not result in a particular outcome, but ensures from a procedural perspective that the information is considered and, if appropriate, documented in the associated NEPA analysis.

Other comments urged BLM to include in any future direction, guidance, or regulation formulated with respect to social, economic, or cultural considerations, an emphasis on the requirement for a comprehensive and thorough assessment of the impacts on multiple resource values of the public rangelands, not just grazing impacts, including: The environmental, educational, aesthetic, cultural, recreational, economic and scientific value to the nation of fish and wildlife; the relevant social, economic and cultural effects of livestock overgrazing on recreational users, municipal water users, threatened and endangered species management, the need and cost for erosion control, threatened and endangered species recovery, and restoration and rehabilitation of public lands, watersheds, and wildlife habitat damaged by livestock grazing; the economic, social, and cultural considerations of the vast majority of the people in this country who view public lands as a place to produce wildlife, for recreational enjoyment, clean water, and wild and scenic vistas, and; any economic effects of the subsidy inherent in the grazing program due to the cost of administering the program, undervalued Federal grazing permits, and the benefits of foregone uses.

BLM agrees that some of the considerations and assessment topics listed in the comment may be relevant to specific proposal(s) for changes in grazing preference. Those determinations would be made for each individual proposal on a case-by-case basis. BLM would likely consider other factors listed in the comment, such as ''grazing subsidies'' related to grazing fee issues and/or costs of administering the program, and the value of grazing permits, outside the scope of future site-specific proposals for changes in grazing preference.

Another comment stated that, if BLM adopts the proposal to consider social, economic, and cultural considerations in its grazing decisions, we should be

required to consider the past, present, and future impacts of grazing management decisions on the culture and traditions of Tribal members. This comment asserted that BLM must include in its analysis a full review of the economic costs to the public of livestock grazing on public lands, and the economic, social, and cultural effects that grazing has on Tribal nations and their members due to the effect of grazing activities on the Tribal resources (e.g., fish, wildlife, roots, berries).

With respect to considering impacts of changing grazing preference on Tribal members, the consideration, when appropriate, of social, economic, and cultural factors will not necessarily preserve any particular lifeway associated with the use of public lands. Under NEPA, the American Indian Religious Freedom Act, and the National Historic Preservation Act, however, BLM must specifically consider the impacts of BLM actions and undertakings with respect to the concerns and traditional cultural properties of federally recognized Indian Tribes. The final rule does not subvert this direction.

One comment stated that the analysis did not adequately consider the impacts of grazing, and of the proposed revisions, on American Indian sacred sites. The comment also stated that additional analysis focused on protecting the physical integrity of such sites is necessary. The comment noted particularly the sacredness attributed by Tribes to natural springs and surface waters.

BLM recognizes its responsibility to manage heritage and cultural resources, including sacred sites under the National Historic Preservation Act and other authorities (e.g., Executive Order 13007), ''Indian Sacred Sites''). Inventory, protection, stabilization, and enhancement of cultural resources have become integral parts of BLM management practices and planning initiatives. BLM does not believe any additional analysis is necessary. Beginning on page 4–41, the FEIS discusses the potential impacts of the proposed revisions on heritage resources. For example, the FEIS notes that new project developments will continue to be analyzed for effects on heritage resources on a case-by-case basis. For field office planning efforts and in accordance with BLM Manual 8100—The Foundations for Managing Cultural Resources, BLM will continue to address livestock grazing impacts at the land use or allotment management planning level, and conduct cultural resource surveys before taking management actions that could damage heritage resources. Historic and prehistoric sites found during such surveys would be protected in accordance with the National Historic Preservation Act of 1966 and other laws or executive orders as provided in 36 CFR part 800.

The FEIS also states that Tribal consultation begins as soon as possible in any case where it appears likely that the nature and/or location of the activity could affect Native American interests or concerns. Finally, section 4120.5–2(c) of the final rule provides that BLM will cooperate with Tribal agencies, including Tribal grazing boards, in reviewing range improvements and allotment management plans on public lands. During such Tribal consultation, Tribes may submit information about all sites, including natural features such as springs and surface waters that have cultural or religious significance. BLM will consider all relevant information before making decisions about grazing.

One comment stated that BLM should consider social, economic, and cultural effects only to the extent that agency decisions move toward balance and harmony with the environment, which is the stated purpose of NEPA. Another urged BLM to provide criteria for an ''appropriate analysis,'' because the regulation is not clear as to what analysis would be appropriate and whether any action could be taken until the analysis has been conducted.

NEPA is a procedural statute, and does not direct the outcome of any agency decisionmaking process. The selection of impact topics to be considered in any environmental document is not pre-ordained, and BLM must tailor it to the issues identified for each proposed action, authorization, or undertaking. The commensurate level of impact analyses is tied to these selections. BLM believes the consideration of social, economic, and cultural factors provided for in section 4110.3(c) of the proposed rulemaking—''analyze and, if appropriate, document relevant social, economic, and cultural effects of the proposed action''—is consistent with the intent of NEPA.

BLM has decided not to provide criteria for an ''appropriate analysis'' because the level of analysis considered to be ''appropriate'' will vary with each site-specific proposal and, consequently, specific criteria are unnecessary. As with all proposed actions for which environmental analysis is conducted pursuant to NEPA, the level of analysis must be tailored to the issues identified for each proposal and the level of impacts anticipated. Additionally, as with other Federal actions for which NEPA analysis is required, no action may be taken until a decision by the authorized officer is final. This is no different from any other analysis conducted under NEPA where a decision must be made before taking action.

One comment stated that there are thousands of archaeological, historical, and cultural sites that are eligible or potentially eligible for the National Register of Historic Places that have been and are being damaged by livestock grazing on BLM-administered allotments. The comment also stated that BLM did not adequately consider these impacts, and that case-by-case review of range improvement projects will be insufficient for assessing the effect of grazing within the boundaries of documented historic properties.

BLM adequately evaluated and disclosed the effects of the proposed rule on cultural resources in the FEIS. For example, as noted in the above response, page 4–41 of the FEIS discusses the potential impacts of the proposed revisions to the grazing regulations on heritage resources. New project developments will continue to be analyzed for effects on heritage resources on a case-by-case basis, and BLM will analyze the impacts on such resources from grazing at the land use or allotment management planning level. BLM disagrees with the comment's assertion that review of individual range improvement projects will not be sufficient to assess grazing impacts on historic properties. Before authorizing surface disturbance, BLM must identify cultural properties that are eligible for inclusion in the National Register of Historic Places and consider the effects of the action through the consultation process in Section 106 of the National Historic Preservation Act of 1966.

BLM notes that this final rule does not constitute an ''undertaking'' with the potential to affect historic properties as defined in 36 CFR 800.16, since promulgating the rule is not an on-the-ground activity affecting such resources. Promulgating a rule makes certain activities possible but does not mean that these activities can be tied to specific historic properties in specific places. However, NEPA and FLPMA do apply, and cultural resources were broadly considered in our planning and regulatory activities. This was done at a programmatic level for this rule in the FEIS, where the effects of the proposed rule (generally) were assessed with regard to potential effects on cultural resources (generally). Absent any specific actions it is not possible to identify potential effects on specific historic properties, and the rule does

not become an ''undertaking'' with the potential to affect historic properties as defined in the regulations. The regulations established by the Advisory Council for Historic Preservation make clear that once an agency determines there is no undertaking, or that its undertaking has no potential to affect historic properties, the agency has no further Section 106 obligations.

Other comments stated that emphasis on considerations such as the social, economic, and cultural effects of agency decisions that change levels of grazing preference would have adverse impacts on natural resources, leading to degradation of the public lands. Comments stated that improving working relationships with grazing permittees and lessees would tend to weaken the ability of BLM to manage rangelands in a timely fashion by adding considerable time before action can be taken. One comment stated that BLM should have working relationships with the public, not just ranchers. Another accused BLM of appeasing ranchers and increasing the level of environmental damage.

We have not materially changed current policy with regard to the consideration of social, economic, and cultural impacts of decisions in the grazing program. We currently consider the social, economic, and cultural effects of actions that change grazing use levels, as well as other aspects of grazing operations in the NEPA process. The main difference is that, under these changes to the regulations at section 4110.3(c), BLM will more consistently document these considerations. This change in the regulations will help improve consistency across the Bureau in the analysis of social, economic, and cultural impacts. The consistent documentation of these concerns does not come at the expense of protecting natural resources and maintaining healthy rangelands. Rather, it improves working relationships between BLM and ranchers by ensuring that social, economic and cultural impacts are analyzed and disclosed where appropriate. Since this provision requires no more analysis than current policy does, we anticipate few delays in the authorization and implementation of grazing management actions on public lands attributable to this provision.

One comment urged BLM to include, in addition to the provision as proposed, provisions to require BLM to work closely with local planning departments, to include consultation, cooperation, and coordination with the grazing permittee or lessee, and state and local government in this section, and to give consideration to provision for local, state, and regional governance.

Under 43 U.S.C. 1712(c)(9), 40 CFR 1500.4(n), 1501.2(d)(3), 1501.7(a)(1), 1506.2(b), and Departmental Manual and BLM Handbook 1790, BLM is directed to coordinate to the degree feasible with state and local governments. BLM sees no need to reaffirm existing guidance on this aspect of planning and environmental analysis in this rule.

Section 4110.3–1 Increasing Active Use

In keeping with the changes in the meanings of ''preference'' and ''active use,'' in the proposed rule we amended the heading of this section to refer to active use and removed the term ''permitted use'' throughout. Because the provision affects how we regulate available forage, we asked the public to comment on whether BLM should use the term ''available forage'' instead of ''active use.''

BLM also asked for specific comments on this section to help determine whether there have been situations in which the ability of permittees or lessees to obtain loans was adversely affected by having some of their forage allocation suspended.

We proposed to reorganize this section to describe how we authorize increased grazing use when additional forage is available either temporarily, or on a sustained yield basis. BLM added two new paragraphs to clarify who has priority when we grant additional grazing use because livestock forage has become available on either a nonrenewable basis or a sustained yield basis.

In the final rule we have added language in the introductory text of this section that makes it clear that decisions increasing active use are also based on monitoring or documented field observations, just as decisions decreasing active use must be. Changes in preference, whether increases or decreases, already must be supported by monitoring or documented field observations under section 4110.3.

A number of comments raised issues relating to additional forage temporarily available. Before discussing the comments, we will briefly describe how BLM handles forage that is temporarily available.

In conformance with land use plan multiple-use objectives and decisions, BLM may allocate additional forage that is temporarily available for use by livestock, and authorize its use on a nonrenewable basis. Because it is a temporary forage allocation, the action of authorizing such use does not increase active preference. BLM commonly refers to such temporary forage allocations as ''TNR,'' which stands for ''temporary and nonrenewable'' livestock grazing use. Before authorizing TNR livestock grazing use, either by issuing a nonrenewable grazing permit, or by temporarily modifying the grazing permit or lease of a preference operator, BLM ensures compliance with NEPA analysis requirements and documents that this action conforms to applicable land use planning decisions. BLM completes NEPA-required analysis either in response to a specific circumstance following an application for additional use, or by completing a regionally-based analysis, in anticipation of applications, that specifies natural resource and weather-based criteria or thresholds that must be met or crossed, as well as other conditions that must be met before BLM will authorize TNR livestock grazing use.

We have not changed the regulations in response to these comments, which we discuss below.

BLM received numerous comments asking that a permittee's or lessee's stewardship efforts be included as criteria for determining who is to receive temporary, as well as permanent, increases in grazing use.

Additional forage that is temporarily available most often occurs in years when favorable growing conditions result in above-average forage production. Although stewardship efforts can contribute to additional forage for livestock that is temporarily available, BLM believes that in most cases, it would be difficult to ascertain the role of stewardship versus the role of good growing conditions in contributing to the increase. Therefore, requiring BLM to consider and reward this role would be impractical.

One comment asserted that only existing permittees and lessees should be eligible for grants of additional forage for livestock when BLM finds that it is available under section 4110.3–1(b).

Section 4110.3–1 provides that if BLM determines that there is additional forage available for livestock within an allotment, it will first be apportioned to remove any suspensions of that allotment's permittees or lessees, then to those permittees or lessees in proportion to their contributions to stewardship efforts that led to the increased forage production, then to those permittees and lessees in proportion to the amount of their grazing preference, then to other qualified applicants. The comment urges BLM to remove ''other qualified applicants'' from the list of possible

recipients of the forage increase. BLM believes that it would be a rare occasion when there would be an increase in forage available for livestock that would be made available, following satisfaction of the other requirements of this regulation, to ''other qualified applicants.'' Nonetheless, BLM sees no need for undue restrictions on who may receive this public benefit.

One comment advocated that BLM should determine if additional forage is temporarily available only upon application by a qualified applicant. If, the comment went on, following such application, BLM finds additional forage to be temporarily available, we should be obliged to approve its use by the applicant, following consultation, cooperation, and coordination with the preference permittee or lessee.

BLM generally responds to, rather than solicits, applications for TNR use. It is unnecessary to make it a regulatory provision that BLM can determine additional forage to be available only if a qualified applicant applies for it first. Most commonly, BLM receives applications for TNR use from the permittee or lessee with preference for use in the allotments where the forage is available. The regulations provide also that a person other than the preference permittee or lessee may apply for TNR use.

One comment urged us to provide in this section that BLM must consult with wildlife agencies before temporarily, as well as permanently, increasing grazing use, so that they can effectively manage wildlife whose populations can be affected by grazing.

As provided by section 4130.6–2, BLM is required to consult, cooperate, and coordinate with the preference permittee or lessee and the state having lands or responsibility for managing resources in the area prior to authorizing TNR use. Thus the state agencies responsible for managing wildlife resources will be consulted prior to a proposed decision for increases or decreases in active use as well as for TNR use. In addition, BLM will consult with state wildlife agencies as part of the process to develop the NEPA compliance documentation.

One comment asked BLM to clarify in this section that additional forage will be, rather than may be, apportioned to qualified applicants consistent with land use plans.

BLM retained the term ''may,'' rather than ''will,'' as it pertains to apportioning additional forage available for livestock grazing, in order to retain our complete discretion in this matter. The wording in the final rule reflects that in the pre-1995 provision. It means that BLM will not apportion additional forage temporarily available if there is no demand for it. (As to additional forage available on a sustained yield basis, on the other hand, the regulations state that BLM will first use it to end suspensions that were in place due to lack of forage. Any further apportionment of such forage, however, will occur only after consultation with the affected state agencies, permittees, lessees, and the interested public.)

One comment interpreted changes in this section to mean that BLM could designate ephemeral or annual rangelands based on a finding that forage was temporarily available and allow BLM to approve grazing regardless of land use plan decisions and land conditions.

A BLM determination that additional forage for livestock is available on a temporary basis does not serve to designate ephemeral or annual rangelands. BLM makes these determinations in land use plans.

The next group of comments addressed increases generally. BLM made one change to the final regulations in response to these comments.

One comment asked BLM to make it clear that section 4110.3–1(b)(2) refers only to forage available for livestock, so that the regulation is not interpreted to preclude allocations of additional forage available on a sustained yield basis to other uses.

Section 4110.3–1 (b)(2) is within paragraph (b), which we have amended in this final rule by adding the word ''livestock,'' so that it states in part, ''When the authorized officer determines that additional forage is available for livestock use on a sustained yield basis, he will apportion it in the following manner * * *.'' BLM believes that this makes it clear that the forage being referred to is forage allocated to livestock through planning and decision processes, in contrast to, for example, forage that is allocated to wild horses and burros, or forage that is allocated to wildlife, using the same planning and decision processes.

Another comment asked BLM to include assurances or a requirement that increased forage allocation to wildlife will result when wildlife organizations contribute to a project that increases available forage.

The suggestion to provide assurances in this subpart that increased forage resulting from projects funded by wildlife organizations is outside of the scope of this rule. However, before agreeing to fund projects that will increase forage available on public lands, wildlife organizations are free to negotiate the terms under which to make such contributions, and to memorialize these arrangements through cooperative agreements with BLM and other project participants.

Another comment urged BLM to establish criteria that must be met before preference can be increased.

Regulatory criteria for making changes in grazing preference, including increases in preference, appear in section 4110.3(a). They include: to manage, maintain, or improve rangeland productivity; to assist in restoring ecosystems to properly functioning condition; to conform to land use plans or activity plans; or to comply with the provisions of subpart 4180.

One comment urged BLM to provide permittees and lessees the right to ''petition'' for increased grazing use up to the limit of their preference, subject to its availability.

Under previous and current regulations at section 4130.1–1, permittees and lessees have the right to apply for grazing use at whatever level they desire, regardless of preference. BLM's response to the application, however, will be guided by available resource information pertinent to the decision, be consistent with land use plan objectives and decisions, and comply with these grazing regulations.

One comment stated that BLM should develop and demonstrate a process that would allow grazing to increase if monitoring shows that an increase is warranted.

The section discussed in this portion of the preamble already contains, and this rule does not remove, procedures to allow grazing to be increased.

One comment suggested that the interested public should be excluded from consultation, cooperation, and coordination under section 4110.3–1(b)(2).

We have not adopted this suggestion in the final rule. The allocation of additional livestock forage available on a sustained yield basis, after satisfaction of any suspension of preference of the permittee or lessee for the allotment where the additional forage is located, is considered a planning decision by BLM. Therefore, it is appropriate to consult, cooperate, and coordinate with the interested public, as well as affected permittees, lessees, and the state, before issuing a proposed decision allocating that additional livestock forage.

Section 4110.3–2 Decreasing Active Use

Again, in this section we replaced the term ''permitted use'' with the term ''active use'' throughout. We also amended paragraph (a) to provide that BLM will document its observations

that support the need for temporary suspension of active use, and amended paragraph (b) to provide that BLM will place any reductions in active use made under this paragraph into suspension rather than require a permanent reduction.

Several comments on this section stated that BLM should have the option to require that preference reductions made under section 4110.3–2(b) be placed in ''nonuse'' rather than be suspended by BLM.

BLM has not adopted this suggestion in the final rule. Adopting this suggestion would confound, rather than clarify, the management implications of the action of ''suspending'' active preference versus approving the ''nonuse'' of active preference.

Before 1995, the grazing regulations provided that when active use was reduced, the amount reduced could be either ''held [by BLM] in suspension or in nonuse for conservation/protection purposes.'' This pre-1995 terminology created 3 categories of preference: ''active,'' ''suspended'' and ''nonuse for conservation/protection purposes.'' Having three categories of preference made it less clear under what management circumstances it was appropriate for BLM to suspend active use rather than ''hold'' nonuse (of active use) for conservation/protection purposes. Further conceptual blurring was created by BLM policy, as stated in our handbook, that a permittee/lessee could annually apply and receive approval for nonuse of all or a part of his active use for reasons associated with personal or business needs, or for ''conservation and protection of the range,'' but this ''short-term'' nonuse did not affect preference status. Based on the pre-1995 regulations, there currently are some grazing permits and leases that list nonuse that is being ''held'' by BLM and which is included as a part of the total grazing preference. However, this nonuse, i.e., that portion of active use that was ''held in nonuse conservation/protection'' under the pre-1995 regulations, is the practical equivalent of suspended preference as this term is used in this rule.

This final rule intends to establish and clarify a distinction between ''suspended'' preference and ''nonuse'' of preference, thus:

• Suspended preference arises from an action initiated by BLM. BLM suspends preference when necessary to manage resources by decreasing active use under section 4110.3–1 or as a penalty action for grazing regulations violations under section 4170.1–1. In contrast, nonuse arises when BLM approves an application submitted by a grazing permittee or lessee not to use some or all of the active use authorized by a permit or lease under section 4130.4.

• Suspended preference is shown on the grazing permit or lease, and along with active use is part of the total grazing preference of the permittee or lessee. BLM does not issue a grazing permit or lease to authorize nonuse. The ''conservation use permitting'' provisions that allowed for this practice were disallowed by the 10th Circuit Court of Appeals in 1998 and are removed from the grazing regulations by this rule. As explained previously, because of the regulations that were in place before 1995, there is one exception to the statement that we do not issue grazing permits or leases that authorize nonuse. On some permits and leases, BLM still shows nonuse as a part of the total preference because pre-1995 regulations allowed reductions of active preference to be ''held in nonuse for conservation/protection purposes.'' However, this nonuse is the practical equivalent of suspended preference as clarified by this rule.

• BLM may suspend preference on a short-term basis, as may be needed, for example, to allow recovery of vegetation after a fire. BLM also may suspend preference for a longer term or indefinitely, as may be needed, for example, when BLM determines through monitoring that there is not enough livestock forage produced on a sustained yield basis to support the active use authorized by a permit or lease, and that forage production is not expected to be able to support that level of use for the foreseeable future. To receive BLM's approval for nonuse, permittees or lessees must apply for nonuse of some or all of the active use authorized by their permit or lease, prior to the start date of the grazing use period specified on their permit or lease. The BLM authorized officer authorizes the nonuse by approving the application, as indicated by his signature on the application. BLM will not approve of nonuse for longer than one year at a time, and will approve it only if we agree that nonuse is warranted for the reasons provided on the application.

• BLM must issue a grazing decision or be a party to a documented agreement to suspend preference. BLM records suspended preference on permits and leases and in operator case records for recordkeeping purposes, but suspended preference is not available for active use under the permit or lease. BLM need not issue a decision or have a documented agreement to approve nonuse. If BLM approves an application for nonuse for reasons of rangeland conservation, protection, or enhancement, or for personal or business needs, the permittee or lessee is precluded from using the amount of active use that has been approved for nonuse. BLM may subsequently approve a later application to make use of what had been approved as nonuse should circumstances change (e.g., moisture is received later in the season that increases forage production, thereby alleviating the need for nonuse for conservation reasons, or an operator purchases livestock mid-season and because of this can use forage that he previously could not because he did not own enough livestock).

Suspended preference is a recordkeeping convention adopted by BLM. If, after the suspension, BLM determines that there is an increase in the amount forage available for livestock on a sustained yield basis, this record indicates who has priority for its use and in what amount. As explained above, due to the regulations in place before 1995, some permits and leases show ''nonuse'' as a part of the grazing preference. In actuality, this nonuse is equivalent to suspended use as the concept has been clarified by this rule.

One comment requested that BLM not change the regulation and continue to provide that the active use that is reduced under this paragraph be terminated rather than suspended.

We did not adopt this comment in the final rule. It is important to keep record of any reductions in active preference as ''suspended'' preference. It helps BLM to track, by allotment, permittee or lessee, and base property, the original livestock grazing use forage allocation, the attachment of that allocation to base property, and subsequent adjustments arising both from management actions to increase or reduce use, and from administrative actions such as preference transfers. Suspended preference is attached to base property, and is transferred along with active preference. This record facilitates BLM's ability to apply section 4110.3–1 to reinstate active use to permittees and lessees, upon a BLM determination that forage for livestock, in an amount that exceeds active preference, has become available on a sustained yield basis.

Another comment asked that BLM cross-reference this paragraph to section 4110.3–1 in order to make it clear that activation of preference suspended under section 4110.3–2(b) would be governed by that section.

BLM did not adopt this suggestion. BLM does not believe that cross-referencing section 4110.3–1 in section 4110.3–2(b) is needed to ensure that it is understood that activation of

preference suspended under section 4110.3–2(b) is, in fact, governed by section 4110.3–1.

One comment asked BLM to change the criteria that justifies a reduction of active use as described in § 4110.3–2(b) from ''when monitoring or documented field observations show that grazing use or patterns of use are inconsistent with subpart 4180, or that grazing use is otherwise causing an unacceptable level or pattern of use, or that use exceeds livestock carrying capacity,'' to ''when monitoring shows that active use is inconsistent with objectives of the applicable land use plan, activity plan, or decision, or shows that active use exceeds the forage available on a sustained yield basis.'' This comment said that this change would clarify that land use plans governed actions that affected the amount of active use authorized.

We have not adopted the comment in the final rule. BLM believes that these criteria are sufficiently clear to serve the purpose intended by the regulation. These criteria allow for the effects of grazing use to be measured against objectives tailored specifically to a local area, such as a single stretch of a riparian area, or an individual pasture, that may not be addressed in sufficient management detail in a land use plan, activity plan, or decision of the authorized officer. These local objectives would be consistent with the more general management objectives typically found in land use plans and activity plans. Moreover, section 4110.3(a) provides that BLM will change grazing preference as needed to conform to land use plans or activity plans.

Another comment stated that because grazing use or patterns of use are by definition a part of monitoring, including them in § 4110.3–2(b) is redundant.

BLM acknowledges that use of pattern mapping and measurement of utilization are a part of monitoring. The wording in the regulation, however, is not redundant. The regulation requires that when this information shows that grazing use levels or patterns of use are unacceptable, BLM will reduce active use, otherwise modify management practices, or both.

One comment stated that BLM should provide for payment to the permittee or lessee for any cuts in permit numbers at the prevailing appraised rate in order to curtail cutting permits under the pretense of the ESA.

It is not clear from the comment why it concluded that BLM paying a permittee or lessee for reductions in grazing use would curtail reductions made as a result of compliance with the requirements of the ESA. In any event, grazing permits and leases convey no right, title, or interest held by the United States in any lands or resources. Therefore, payment for reduced livestock use would be neither appropriate nor legally supportable.

Finally, one comment stated that BLM should not reduce preference, and suggested that individual monitoring would provide the information needed to make grazing changes that would address management issues without having to reduce preference.

We have not adopted the suggestion that BLM not be allowed to reduce preference. This would unduly restrict the statutory authority of the Secretary to manage grazing use on public lands. Depending on circumstances, there are management solutions to grazing issues that do not involve reducing preference. However, this is not always the case.

One comment urged that, in case of fires in allotments, the allotment should be rested for a minimum of 3 years, and 5 years if any BLM permittee has livestock on a burn area prior to approval, plus a substantial reduction in their grazing permit.

The issue of how much rest from livestock grazing is needed after a fire is a matter for internal guidance, and is outside the scope of this rule. Furthermore, prescribing rest periods for lands through the regulatory process does not allow site-specific analysis and consideration of on-the-ground resource conditions and potential impacts.

Section 4110.3–3 Implementing Changes in Active Use

In the proposed rule, we changed the title of this section to reflect that it pertains to both increases and decreases in grazing use. We also modified how BLM implements changes in active use. The amended section provided that BLM will phase in changes in active use of more than 10 per cent over a 5-year period unless the affected grazer agrees to a shorter period or the changes must be made before the end of 5 years to comply with relevant law. This 5-year phase in period is similar to that in the pre-1995 regulations.

BLM also amended paragraphs (a) and (b) by removing the phrase ''the interested public.'' Changes in active use must be preceded by reports, including NEPA documents, that analyze data BLM uses to support the change. Under section 4130.3–1, BLM provides the interested public the opportunity to comment on these reports. Under section 4160.1, BLM provides a copy of the proposed and final grazing decisions to implement the change to the interested public. BLM will provide the interested public full opportunity for participation and comment on the action prior to actual implementation. For this reason additional consultation with the interested public regarding the actual scheduling of the change is redundant.

Under the final rule, changes in active use levels and emergency closures made due to drought, fire, flood, insect infestation, or when grazing poses an imminent threat to the resource, no longer trigger required consultation, cooperation, and coordination with the interested public. This change is intended to improve the administrative efficiency of grazing management operations.

Many comments opposed any reduction in the role of the interested public, but relatively few comments addressed these particular functions. Some comments supporting the change noted active use changes as an area where efficiency could be improved by removing the interested public consultation requirement.

Note again that the role of the public under NEPA is unaffected by this rule change. Additionally, members of the interested public will have an opportunity to review and provide input on any reports used as a basis for decisions on changes in grazing use. The interested public will still receive the proposed and final decisions for changes in active use, and they could protest the proposed decision if so desired.

In BLM's view, the NEPA process, informal consultations, the opportunity to review and provide input on reports used as a basis for decisions, and the ability to protest before a decision is final, all are adequate mechanisms for identifying legitimate public concerns over active use changes. No protest could be filed against an emergency closure, which is issued as a final decision, but these decisions require management flexibility to allow a quick response to changing circumstances on the ground. These changes make the grazing program similar to other BLM programs in the level of coordination required for actions under various BLM permits and leases. Therefore, we have made no changes in the final rule.

A number of comments supported the proposed provision in section 4110.3–3 for phasing in changes in active use greater than 10 percent over 5 years. These comments stated that the provision would ensure more orderly administration of grazing on BLM administered lands and protect the resource better than the current regulations do. Others agreed that it would improve the ability of local BLM

field managers to use the variety of rangeland management tools available, including range improvements and changes in grazing strategies, to accomplish resource objectives because of the additional time allowed. Most of the supportive comments agreed that permittees should be given the opportunity to make adjustments over a period of time in order to incorporate the reductions into their entire operation/business without unnecessary economic disruption.

Other comments opposed the provision allowing up to 5 years to implement changes in active use greater than 10 percent. Some stated that the provision is inconsistent with the regulatory objective: ''to accelerate restoration and improvement of public rangelands to properly functioning conditions.'' Others reasons given for opposing the provision included concerns that it would allow unhealthy range conditions to persist, delay range recovery, or lead to additional range degradation, especially of riparian and wetland habitats. They said the provision would have negative impacts on natural resources and other uses of the land. Some of these comments stated that the provision showed that BLM is more concerned with private financial well-being of permittees than with managing publicly owned natural resources in the public interest. One comment said that if the condition of the natural resources on a grazing allotment is so bad that a reduction in permitted livestock numbers in excess of 10 percent is necessary, then the situation is probably so bad that delaying implementation of the reductions would be tantamount to criminal neglect. Others said that such delays would lead to continued petitions for listing species under the ESA. One comment opposed this provision because it would contradict the goal of increasing administrative efficiency, negate the requirement for prompt action to address harmful grazing practices, and limit the conditions under which BLM may revoke a grazing permit. Others said that it would tend to weaken the ability of the local BLM field offices to manage rangelands in a timely fashion by adding considerable time before we can take action. Some comments conceded that under some circumstances it may be possible to phase in the needed changes in grazing over a 5-year period without compromising long-term range sustainability, but stated that BLM range professionals needed the ability to respond immediately and to the extent necessary to avoid impacts on range condition or vegetation communities that may take decades to reverse. Other comments expressed concern that the proposed 5-year phase-in period may be inadequate to protect sensitive species and their habitat. One comment requested clarification as to whether the provision allow BLM to adjust livestock numbers over a shorter period of time to protect wildlife and plants that are candidates for listing as threatened or endangered or determined by BLM to be sensitive, and whether the proposed rule was in compliance with the requirements of the Endangered Species Act. (The sensitive species designation is normally used for species that occur on BLM-administered lands, and for which BLM can significantly affect their conservation status through management. See BLM Manual 6840.06E (Release 6–121, 01/19/01)).

We believe the final rule gives BLM sufficient discretion to handle a wide range of circumstances. The rule does not change BLM's ability to cancel a permit in whole or in part if necessary. The rule is flexible enough to provide for immediate, full implementation of a decision to adjust grazing use if continued grazing use poses an imminent likelihood of significant soil, vegetation, or other resource damage. The rule also allows BLM and the permittee to agree to a shorter time frame for implementation. The rule allows BLM to initiate necessary adjustments while giving the permittee an opportunity to make changes in their overall business operation. The provision in the rule allows us to begin reducing active use when necessary, while considering the human aspect of the impacts of the reduction. Our cooperative approach should lead to a decreased likelihood of appeal on the part of the permittee or lessee. In turn, we expect this decreased likelihood of appeal to result in implementing necessary grazing reductions more quickly, thus allowing BLM to remedy resource problems more efficiently. Recent experience (1998–2002) indicates that current livestock grazing or level of use was a significant factor in not meeting land health standards on only 16 percent of the allotments evaluated, requiring adjustments in current livestock management. From 1998 to 2005, 15 percent of the evaluated allotments were determined to be in this category. Most of these adjustments have been made in the season of use, or movement and control of livestock, rather than in levels of active use. An unknown, but likely small, portion of these adjustments were changes of more than 10 percent in active use. Where adjustments are needed to improve riparian or wetland condition, the adjustments are rarely in active use, but are frequently adjustments in season of use, or changes in length of time livestock are allowed access to the riparian area (e.g., grazing might be changed from 6 weeks in the summer to 3 weeks in the spring). The rule contains an exception, in section 4110.3–3(a)(ii), that allows changes in active use in excess of 10 percent to be implemented in less than 5 years to comply with applicable law, such as the Endangered Species Act. BLM also has discretion under section 4110.3–3(b)(l)(i) and (ii) to implement changes in active use immediately to handle a wide range of circumstances. These circumstances may include fire, drought, the need to protect soil, vegetation, or other resources, or if continued grazing use poses an imminent likelihood of significant resource damage.

BLM has the authority to implement grazing decisions immediately if the authorized officer determines that soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, or insect infestation, or if continued livestock grazing poses an imminent likelihood of significant resource damage. BLM's responsibilities under the ESA and BLM special status species policy are not affected by the final rule.

Several comments offered alternatives to the 10 percent threshold and the 5 year implementation period. One comment proposed that the threshold for changes that prompt a delay of 5 years in implementation should be increased from 10 percent to at least 25 percent, reasoning that small adjustments would result in ascertainable changes in resource condition in a season or two. Another comment suggested that the authorized officer implement changes in active use of 5 percent or less in 1 year, 5 to 15 percent equally over 3 years, and in excess of 15 percent equally over 5 years. The comment stated that this formulation would ensure equal, incremental decreases or increases in active use over time, and accelerate decreases or increases in active use when a relatively small change is made.

The 10 percent threshold and 5 year implementation period proved to be a practical combination prior to being changed in the 1995 rules. The lower threshold allows affected permittees to avoid rapid adjustments in such significant numbers. However, the number of permittees and allotments affected by this provision is not likely

to be large, given that over the last 5 years, most adjustments in grazing management resulting from land health assessments have been made in the season of use, or movement and control of livestock, rather than in levels of active use. Again, recent experience (1998–2002) indicates that current livestock grazing or level of use was a significant factor in not meeting land health standards on only 16 percent of the allotments evaluated, requiring adjustments in current livestock management. From 1998 to 2005, 15 percent of the evaluated allotments were determined to be in this category. See Section 4.3.1 of the EIS and page 33 of the EIS Addendum.

Comments expressed concern that annual conditions or fluctuations in weather could require more than 10 percent reductions on an annual basis, particularly in the arid southwest.

In practice, during prolonged drought conditions, ranchers voluntarily reduce their livestock numbers because of the economics of their industry. However, this section of the rules applies to adjustments in the terms of the grazing permit, rather than in temporary adjustments made on an annual basis. When temporary adjustments need to be made because of annual conditions, BLM and the permittee or lessee can respond by:

(1) Resorting to temporary changes in grazing use within the terms and conditions of the permit or lease under section 4130.4(a);

(2) Electing temporary nonuse under section 4130.4(d);

(3) Decreasing active use through suspensions under section 4110.3–2; or

(4) In more extreme cases of drought, fire, flood, or insect infestation, closing or partially closing allotments under section 4110.3–3(b).

One comment stated that implementing stocking rate changes of more than 10 percent over a 5-year period would only be significant for large operators. For most small permit holders such changes would be a nuisance and administrative burden for permit managers to implement (citing an example of a 50 AUM permit). The comment stated that small changes to existing permits should be implemented in 2 years or less, since this would be more efficient for both permittee and public land manager. For larger permits, the comment suggested that the phase-in of changes should be dependent on situational conditions and their relationship to the need for improving rangeland health and permittee interests (up to 5 years).

The final rule is flexible enough to allow BLM and the permittee to agree to a shorter time frame for implementation. The regulations allow BLM to initiate necessary adjustments while giving permittees opportunity to make changes in their overall business operations.

One comment pointed out that BLM has not reviewed many grazing allotments for over a decade. The comment concluded that, considering improvements in our knowledge of range science and of best management practices for rangelands over the past 20 years, it is likely that changes in active use in excess of 10 percent will be required on numerous allotments.

BLM is evaluating current resource conditions in relation to land health standards. By the end of 2003, we had evaluated 40 percent of allotments, and plan to evaluate the remainder by the end of 2008. As we stated earlier, based on results and changes made because of these evaluations, most adjustments in grazing management are being made in the season of use, or movement and control of livestock, rather than in active use.

One comment cited situations when it would be desirable to increase grazing in order to enhance habitat for ''federal trust species.'' The comment also asked whether BLM needs permission from an allotment's existing permittee before it could allow another grazing operator to graze additional livestock on an allotment when desired to enhance habitat for Federal trust species, and asked also whether such an operator would need to meet mandatory qualifications.

It is advantageous at times to increase livestock numbers for weed or vegetation management for purposes of enhancing habitat and reducing brush cover for specific wildlife species (e.g., burrowing owl or mountain plover). In these cases BLM has several options. The BLM would first contact the existing permittee to discuss needs and options feasible to the permittee. If the permittee is unable to increase stocking numbers, BLM may advertise an available opportunity to applicants qualified under section 4110.1, offer a free-use permit, or contract to have vegetation reduced by goats, mechanical thinning, or manual pulling and weeding.

One comment stated that slowing the response to unhealthy rangelands seems to be inconsistent with the current Administration policy of accelerating management responses to fire and the conditions that lead to or exacerbate fires.

This comment is attempting to compare two situations that are not comparable. Fires in the wrong locations threaten life and property, and it is vital to accelerate management efforts to deal with these threats. Rangeland degradation does not normally carry equivalent threats. The regulations are flexible enough to allow accelerated management to address range degradation that cannot wait for the phase-in period provided in section 4110.3–3(a)(1). As stated earlier, the rule at section 4110.3–3(b)(1)(i) allows BLM to remove or modify livestock grazing when immediate protection is needed because of conditions such as drought, fire, flood, or insect infestation. In 1994, BLM amended its grazing regulations to address the health of public rangelands. These changes, including the standards and guidelines for grazing administration, remain in the rule and continue to contribute to improving the health of public rangelands. The changes adopted in this final rule seek to refine, without altering the fundamental structure of, the grazing regulations. In other words, we are adjusting rather than conducting a major overhaul of the grazing regulations.

One comment asked BLM to require that increases in active use be implemented by decision, so that the action could be protested and appealed, and to make it consistent with the requirement at section 4110.3–3(a)(2), which, the comment states, requires that decreases in active use be implemented by decision. Another comment stated that BLM should remove its authority at section 4110.3–3 to implement changes in active use by decision, so that range improvements could be installed in lieu of reducing active use.

This provision in section 4110.3–3 was not proposed for change in the proposed rule. BLM believes that it is important to retain the discretion to change preference by agreement or by decision, depending on management circumstances that can vary greatly from instance to instance, and not require the use of one method or the other. We would use agreements in relatively simple management circumstances, such as with the holder of a small allotment with relatively few management issues. For example, an operator who agrees with the need for a change in his forage allocation, and has no interested public, would be a likely candidate for implementing a change in preference by agreement. In contrast, decisions are more likely to be used in complex management circumstances such as might be encountered, for example, when addressing the needs of a large allotment that has several resource issues, is permitted to several operators, and has several interested publics, some of whom might dispute the need for, or

the appropriate level of, the preference change. Section 4110.3–3(a)(2) does not require that decreases in active use be implemented by decision. This section requires that when a reduction in permitted use is implemented by decision, as opposed to by agreement, the decision must first be issued as a proposed decision, except when immediate land protection is needed because of circumstances such as drought, fire, flood, or insect infestation, or when continued grazing use poses an imminent likelihood of resource damage. There are times when the installation of range improvements is an adequate substitute for indefinite suspension of active use. For example, a new water development may improve grazing distribution enough so that forage not previously available becomes available for livestock use. However, range improvements are not always the appropriate management response. It is in the interest of sound management to provide BLM with the flexibility to modify active use, or authorize range improvements, depending on the circumstances.

One comment suggested rewriting sections 4110.3–2 and 4110.3–3 so that they are clearer and don't cross-reference each other so much.

Each of the two sections specified in the comment contains one cross-reference to the other section. We do not consider this an unreasonable number of cross-references. We have reviewed the two sections and do not see how they could be written more clearly and still provide the information necessary.

One comment suggested making the 5-year phase in of changes in active use greater than 10 percent discretionary with BLM, stating that it would allow BLM to react in a timely manner if resource conditions were in more immediate need of improvement, for whatever reason, and result in greater benefits to wildlife.

The regulations, at section 4110.3–3, already allow BLM to act more quickly to avoid significant resource damage by closing all or portions of an allotment in the circumstances described in the comment.

One comment urged BLM to make adjustments when data indicates livestock numbers are out of balance with the capacity of the land. Estimates of stocking rates in plans do not necessarily reflect BLM's willingness to reduce stocking levels. Another comment stated that Federal rangeland health standards demand that the rule should focus decisionmaking on management objectives stated in land use plans, activity plans, and grazing decisions.

Stocking rates are best determined in the land use planning process. However, as we stated earlier, the regulations contain mechanisms for making changes in grazing use to avoid significant resource damage. As provided in subpart 4180, we will use monitoring and standards assessment to determine whether changes in management practices are necessary.

Several comments suggested modifications of this section 4110.3–2 of the proposed rule. One was that BLM should consult with any base property lienholder before closing allotments to grazing or modifying grazing authorizations due to emergencies or when continued grazing use will result in resource damage. Another was to include consultation with county commissioners where downward adjustments in grazing use levels are being planned, and that the reductions should be justified by reasons that are documented in an allotment evaluation that is conducted before the adjustments occur. A third suggested change was to amend § 4110.3–3(b)(1) and (b)(2) by replacing the term ''authorized grazing use'' with ''active use'' because there is no definition of ''authorized grazing use'' in the regulations.

BLM is not changing the regulations in response to these comments. BLM implements changes in active use by grazing decision or by documented agreement. When changes are implemented by decision, our regulations provide for sending such decisions to any lienholder of record. If such lienholders requested ''interested public'' status, they would also be able to provide input and comment on reports BLM uses as a basis for making decisions to increase or decrease grazing use. Given these opportunities for lienholder input to BLM's decisionmaking process, there is no need for BLM to require itself to consult specifically with lienholders before implementing changes in active use. Further, in the pursuit of sound resource management, it would be inappropriate to allow consideration of whether base property is subject to a lien to affect or change a BLM decision to close allotments to grazing or to modify grazing permits or leases due to emergencies or when continued grazing use will result in resource damage.

The state having lands or responsibility for managing resources in the affected area may choose to include county commissioners' input as part of the state's consultation with BLM. BLM may also consult directly with county commissioners at its option. BLM believes that these two avenues of consultation provide adequate opportunity for county commissioners to make their views known to BLM regarding management issues. BLM makes either downward adjustments in grazing use levels temporarily in response to emergencies or indefinitely after it has determined that livestock forage is insufficient on a sustained yield basis to support grazing at levels that had been previously authorized. In either case, the decision implementing the downward adjustment provides the rationale for the action and is subject to review upon appeal. In most cases of indefinite downward adjustments in grazing use levels, such rationale relies upon analysis found in a documented allotment evaluation.

Paragraphs 4110.3–3(b)(1) and (b)(2) allow BLM to modify authorized grazing use in response to emergencies, including complete closure of an area to grazing when necessary to provide immediate protection because of conditions such as drought, fire, flood and insect infestation. ''Active use'' refers to a number of AUMs of forage. The term ''authorized grazing use'' is more expansive and refers to all the terms and conditions of use authorized by a term permit or lease. These terms and conditions include, at a minimum, the number of livestock authorized, where they may graze, and the season of the year and period that they may graze. Although BLM may modify ''active use'' in response to emergency resource conditions, we may also modify the other parameters of use (such as location, period, and season) in response to these conditions.

One comment suggested removing the provision authorizing BLM to close allotments to grazing or modify authorized grazing use when the authorized officer determines that resources on public land require immediate protection or continued grazing use poses an imminent likelihood of significant resource damage (section 4110.3–3(b)(1)). The comment stated that the provision is too vague and could be used as a catch-all to eliminate grazing at any time.

We have not adopted this suggestion in the final rule. The phrase ''or where continued use poses an imminent likelihood of significant resource damage'' is in fact a prerequisite that must occur or be found to exist before BLM can take action. The phrase covers situations not otherwise specified in the regulation (i.e. ''because of conditions such as drought, fire, flood, or insect infestation''). It would be impractical for BLM to list in the regulations all possible situations where an immediate closure or modification of grazing may be needed. All BLM decisions that close

or modify grazing use are supported by rationale stated in the decision, and decisions may be appealed under subpart 4160 and part 4.

One comment stated that, because of the problems associated with recurrent long term drought, the regulations should require that base property provide forage or other means of sustaining livestock should the necessity arise to remove livestock from the public lands. Furthermore, the comment went on, the base property should be real fee property of the permittee or lessee and not leased property from a state or other private property owner.

In areas where land serves as base property, BLM specifies the length of time that the property must be capable of supporting authorized livestock during the year (see section 4110.2–1(b)), thus including the concept that the base could be used to sustain the livestock should the necessity arise to remove them from public lands. This ''base property requirement'' differs depending on the BLM jurisdiction, but generally ranges from 2 to 5 months. In the desert southwest, where water or water rights can serve as base property, BLM can close allotments or portions of allotments to grazing use immediately to protect resources because of conditions such as drought. BLM sees no need to require that base property must not be leased property.

One comment identified an incorrect reference to 43 CFR 4.21 in 4110.3–3(b)(2). A stay relative to grazing is granted in accordance with 43 CFR 4.472.

The final rule contains the correction.

Section 4110.4–2 Decrease in Land Acreage

In the proposed rule, we removed the term ''permitted use'' from this section and replaced it with the term ''grazing preference'' for the reasons explained previously. No public comments addressed this specific change, and we have made no further changes in the final rule as to this aspect of the proposed rule.

Several comments raised issues that are tied to this provision. One comment suggested that BLM should be able to designate lands as not available for grazing when this is needed to protect critical or sensitive areas. Another comment stated that BLM should develop regulations providing: (a) For the retirement or non-use of grazing permits by conservation organizations; (b) that a voluntary permit relinquishment automatically triggers the immediate permanent closure an allotment to livestock grazing when that closure would benefit conservation purposes; and (c) that at the request of the permittee, BLM will promptly initiate a planning process to determine whether the applicable land-use plan should be amended to provide that all or a portion of an allotment will be made unavailable for grazing authorized by FLPMA and PRIA. The comment stated that ''voluntary retirement'' of grazing permits is sometimes the fastest, simplest, most effective, and most amicable method of resolving disputes over livestock grazing in environmentally-sensitive areas.

FLPMA directs BLM to develop and maintain land use plans to provide for multiple use of the public lands, including livestock grazing use. Land use plans, which are developed at the local office level with the involvement of the general public, identify lands available and not available for livestock use and management. In some land use plans, BLM can and does designate lands as not available for grazing, and assigns them to other uses. This results in reductions in land acreage available for grazing, and BLM acts under section 4110.4–2 to implement the reductions by canceling grazing preference.

BLM amends or revises land use plans under the planning regulations (43 CFR part 1600) and the BLM land use planning handbook. An agreement on voluntary relinquishment of a grazing permit (and preference) for purposes of furthering a proposal to amend a land use plan to provide for the retirement of an area from livestock grazing is not a permanent contractual relationship between the entity relinquishing the permit and BLM. Even if BLM amends the land use plan and effectively retires the area from grazing for the immediate or foreseeable future, this action can be amended or reversed under subsequent BLM planning and decision processes.

One comment stated that, in addition to the permittee or lessee, BLM also should give 2-year notification to any base property lien holder before canceling a permit or lease when the lands under the permit or lease will be devoted to a public purpose that precludes livestock grazing as stated in 4110.4–2(b) because this will ''level the playing field.''

This suggestion is consistent with existing BLM policy to provide as a courtesy, upon request, notification to known base property lien holders of actions that may affect the value of that property. BLM does not believe, however, that it should require itself by regulation to provide lienholder notice in this circumstance. Lenders normally include provisions in their contracts with the borrower requiring the borrower to notify them of actions that will affect the value of their collateral.

Subpart 4120—Grazing Management

Section 4120.2 Allotment Management Plans and Resource Activity Plans

We amended paragraph (c) of this section in the proposed rule to state BLM's internal procedural requirement more straightforwardly. The current rule provides that the decision document following the environmental analysis supporting proposed plans affecting the administration of grazing is considered a proposed decision for purposes of subpart 4160. This implies, but does not specify, that we must issue such decision documents following the procedures of section 4160.1 on proposed decisions. The final rule merely makes it clear that we issue these decisions in accordance with the procedures in section 4160.1.

No public comments addressed the changes in this section, and we have made no changes in the final rule.

Section 4120.3–1 Conditions for Range Improvements

In the proposed rule we revised paragraph (f) for clarity and to correct a citation to NEPA. No public comments addressed this section, and we have made no changes in the final rule.

Section 4120.3–2 Cooperative Range Improvement Agreements

In the proposed rule we amended paragraph (b) to provide that, subject to valid existing rights, cooperators and the United States would prospectively share title to permanent structural range improvements constructed under cooperative range improvement agreements on public lands. Such structural improvements include wells, pipelines, and fences constructed on BLM-managed public lands. BLM and cooperators will share title to range improvements of public lands in proportion to the value of their contributed labor, material, or equipment to make on-the-ground structural improvements, subject to valid existing rights. This returns the provision on how title for improvements constructed under Cooperative Range Improvement Agreements is shared to the regulation in place before 1995. The current regulations provide that the United States has title to new permanent structural range improvements.

Numerous comments opposed the change in section 4120.3–2 providing for shared title to permanent range improvements by BLM and the cooperators. One frequently expressed

concern was that a shared title creates potential ''takings'' issues if the need to change from grazing to some other land use in an allotment arises in the future. Comments asserted that a permittee or lessee with shared title to a permanent structure on public land would demand compensation for the lost value of his or her property if BLM proposed changes in the land use that would reduce or discontinue grazing in an allotment. Comments also stated that BLM would lack the funds needed to compensate the permittee, and would be unable to take the management actions needed to sustain rangeland health. Some comments stated that the provision for the United States to hold title to range improvement structures on public land was consistent with the TGA. One comment stated that sharing title to range improvements may make it more difficult to impose restrictions or modify grazing management because of these issues regarding regulatory takings and access to private property. A similar comment asserted that allowing shared title to range improvements gives away some of the public rights on public lands, making it more difficult for the public to redirect or reallocate the use of public lands as priorities change. The comment stated that public rights should not be ''given away'' and that they would have to be purchased back at a later date as circumstances change. Another comment questioned whether future rights or privileges to access ''titled'' range improvements will be conveyed to those holding the title that would not be extended to the general public. The comment requested that we clarify whether any priority would be conveyed to the ''titled'' holder for any land leases.

BLM is choosing to share title to range improvement projects constructed in the future under Cooperative Range Improvement Agreements to encourage greater private investment in range improvements. This is not inconsistent with the TGA. Under the final rule, permanent structural range improvements will be jointly owned by the United States and permittees in proportion to their respective investments. The final rule provides operators an opportunity to maintain some asset value for their investments in range improvements, and thereby encourages private investments in them. However, an operator's interest in a permanent structural range improvement would not reduce BLM's ability to manage or obtain access to public lands. Sections 4120.3–1(e) and 4120.3–2(d), which are not changed in the final rule, provide that a cooperative range improvement agreement conveys no right, title, or interest in any lands or resources held by the United States, and does not confer upon a cooperator or permittee the exclusive right to use a range improvement or the affected public lands. Under these provisions, cooperative range improvement agreements would continue to include provisions that protect the interests of the United States in its lands and resources, and ensure BLM's management flexibility on public lands.

Title to range improvements has no bearing on whether or to what extent BLM will allow access. Individuals would still have to seek authorization for access to maintain range improvements, whether they hold title to them or not. BLM gives no special privileges to ''titled'' holders of range improvements.

BLM disagrees that a joint title to range improvements creates ''takings'' issues. The full extent to which permittees and lessees may be eligible for compensation is spelled out in the existing regulations. The existing regulations already assure that permittees and lessees are appropriately compensated for their investment in range improvements that can no longer be used because of government action. Section 4120.3–6(c) provides that ''whenever a grazing permit or lease is canceled in order to devote the public lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States reasonable compensation for the adjusted value of their interest in authorized permanent improvements placed or constructed by the permittee or lessee on the public lands covered by the permit or lease.'' The final rule does not change this requirement for compensation. The regulations do not address compensation for other types of cancellations. For example, there is no provision addressing compensation where permits are canceled for noncompliance. In another example, if a permittee or lessee voluntarily sells his property and interest, he may negotiate compensation with the new owner for the permittee's share of a range improvement title. However, BLM would not be a party to that transaction, except to decline to approve the transfer of the preference in the event that the new owner has not agreed to compensate the transferor, as described in section 4120.3–5.

Some comments concluded that the change in section 4120.3–2 gives permittees and lessees exclusive title to new range improvements. Other comments opposed the change because, they asserted, it could create an interest in the land prohibited by the TGA. A related concern expressed by comments was that BLM would be unable to take the management actions needed to sustain rangeland health when range improvements were owned by permittees, and that BLM's authority to manage its grazing allotments would be limited. One comment took the opposite view that the change in the rules was not necessary, because the ranchers already have property rights on public lands.

The rule change does not create an exclusive right, title, or interest in the public land, which is prohibited by the TGA. Section 4120.3–2(b) specifically states that shared title to range improvements is ''[s]ubject to valid and existing rights.'' The regulations are equally clear on the creation or the existence of an interest in the land prohibited by the TGA. Holding a joint title to an improvement does not create a permittee interest in the public land, and will not limit BLM's ability to manage grazing allotments. Section 4120.3–1(e) states, ''A range improvement permit or cooperative range improvement agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.'' Since the United States retains ownership of the land, and shares ownership of the improvements, BLM management actions would not be constrained by a permittee's interest in a range improvement.

One comment asked whether BLM would have independent authority to remove, replace, or modify a structure, or if the cooperator's permission would be required. Another comment expressed concern that ''sharing of titles on permanent structures'' may limit BLM's ability to implement effective conservation measures for sage-grouse, or to remove or modify structures, which may be negatively affecting sage-grouse.

Cooperative range improvement agreements (which allow installation of permanent structural range improvements) include provisions that protect the interest of the United States and its lands and resources. These provisions make it clear that the ownership of improvements does not confer exclusive right to the permittee or cooperator to use the improvement or the land affected by the range improvement work. Section 4120.3–1(a) provides that range improvements are to be installed, used, maintained, and/or modified or removed in a manner consistent with multiple use management. BLM retains authority to

specify the design, construction, and maintenance criteria for the range improvement, and may require permittees or lessees to remove range improvements if they no longer help achieve land use plan or allotment goals and objectives.

Joint title to permanent range improvements will not limit BLM's ability to take measures to protect sage-grouse. The Memorandum of Understanding (MOU) the BLM, Forest Service, and FWS signed with the Western Association of Fish and Wildlife Agencies (WAFWA) to conserve the greater sage-grouse and its habitat states our commitment to protect sage-grouse.

Several comments noted that the changes would be inconsistent with common law or Forest Service regulations.

Nothing in the TGA ''denies the Secretary authority reasonably to decide when or whether to grant title to those who make improvements.'' *Public Lands Council* v. *Babbitt,* 529 U.S. at 750. While we draw parallels between Federal and common law rules in explaining the rationale for existing section 4120.3–2, and note that the Forest Service had a similar policy, BLM is not obligated to accept common law rules or Forest Service statutes or policies in setting the terms for ownership of range improvements on public lands.

One comment objected to joint title to range improvements because it would increase BLM's administrative burden.

BLM disagrees that the proposed change will increase our administrative costs. BLM is currently obligated to record and track the value of contributions that cooperators provide for range improvements, including the imputed value of their labor. This is necessary under the current rules to meet our requirement that we reasonably compensate a cooperator if the permit or lease is canceled to devote public lands to another use or for other purposes. Thus, our administrative responsibilities will exist whether BLM shares the title to the improvement, or holds it solely in the name of the United States. Consequently, the shared title does not result in an additional administrative burden.

One comment expressed concern about how joint title would affect Tribal consultation, cooperation, and coordination requirements and whether BLM is abdicating control of these responsibilities.

BLM is responsible for consultation with the Tribes and will ensure that the required consultation occurs for all appropriate activities on public land. BLM does not believe that shared title with a cooperator for a range improvement is mutually exclusive with consultation. We again refer to section 4120.3–1(e), which states that establishing a range improvement does not convey any right, title, or interest in any lands or resources held by the United States. Under the final rule, BLM retains control of when and where improvements are installed, and other terms and conditions of the development (section 4120.3–1). Also, the cooperators' title and interest are limited to the proportion of structural improvements in which they invested. Considering these factors, cooperative range improvements should have no effect on Tribal consultations, BLM control of the land, or any Indian trust responsibilities.

Several comments observed that evidence is absent or inconclusive that joint ownership of title to improvements encourages permittees to invest in further improvements, thereby improving range conditions, or increases the permittee's ability to secure a loan.

State-by-state data on range improvements is shown in the EIS in Table 3.4.3.1. It is clear from the data that the number of new range improvements has declined since 1995 when the rule was last changed. The number has declined in every state with grazing on public land. The average decline is 38 percent. From 1982 to 1994, BLM authorized an average of 1,945 range improvements per year. From 1995 to 2002, we authorized an average of 1,210 per year. Several factors may be contributing, but it is reasonable to conclude that some of that decline may have been the result of the 1995 rule change. It is logical to assume that sharing title among cooperators and the United States provides the opportunity to maintain some asset value for investments made, thereby encouraging and facilitating private investment in range improvements. A permittee's or lessee's belief that sharing the title to improvements in which he invests contributes to stable ranch operations is also significant. Shared title to range improvements also provides an opportunity for permittees and lessees to document investment in their business enterprises, which is useful for securing business capital and demonstrating value of their overall private and public lands operations. Permittees and lessees perceive this recognition of investment as crucial to their business and, therefore, as an important factor when considering personal investment in range improvements. Beyond ranch economics, range improvements are tools for improving range conditions. Those benefits accrue to both public and private land and resource managers. BLM may enter into a cooperative range improvement agreement with any person, organization, or other government entity to develop range improvements. The shared title to such improvements is expected to serve as an incentive for all potential cooperators to participate and partner with BLM in the development of range improvements to assist in meeting management or resource condition objectives.

Other comments were concerned that the impacts of shared title were not sufficiently analyzed, including the impact of increased wildlife use as range condition improves.

BLM analyzes the anticipated impacts of shared title in the FEIS on pages 4–25, 4–31, 4–42, and 4–48. To the extent that shared title provisions will stimulate investment in range improvements intended to improve or enhance grazing management practices, or the quantity and quality of forage, BLM expects that such actions will result in improved habitat for wildlife. BLM considers improvement in wildlife habitat that may result from range improvements, and subsequent upward trend of overall watershed condition, to be benefits of the final rule. However, the nature of the regulatory change does not lend itself to broad analysis of the topic raised by comment. Anticipated impacts that may result from increased wildlife use because of improvements, regardless of whether they are constructed as a result of the shared title provision, will be analyzed under NEPA on site-specific basis as part of the preliminary work that precedes the construction of any range improvement.

Some comments questioned the fairness of sharing title to improvements with permittees and lessees. They regarded the assignment of shared title as preferential treatment that is undeserved when terms and conditions of permits or leases are violated. One comment disapproved of shared ownership of improvements because they would be a constraint on other permittees or lessees in a common allotment.

BLM's commitment to fairness is an important aspect of the joint title to range improvements. A permittee's or lessee's share of the title to a development in which he or she invests has no effect on BLM's administration of terms and conditions of the grazing permit or lease. Under section 4120.3–6(c), permittees and lessees are only compensated for the adjusted value of their interest in range improvements in

the event the permit or lease must be canceled to allow the land to be devoted to another purpose. There is no compensation if there is no remaining value of their interest in the improvement. BLM believes this is an equitable approach. If a permittee or lessee loses his grazing preference due to noncompliance with the permit or lease, there is no compensation for range improvements that remain on the allotment. However, he or she would be given the opportunity to remove improvements unneeded by BLM. The former permittee or lessee would also be responsible for restoration of the improvement site.

Regarding common allotments, planning and implementation of range improvements on common allotments is an inclusive process involving all permittees or lessees authorized to graze in the allotment. As provided in section 4120.3–2(a), BLM enters into cooperative range improvement agreements to achieve management or resource condition objectives and does so through a collaborative process.

One comment suggested that all range improvements, not just permanent improvements, should be eligible for shared title based on contributions of the cooperator.

BLM currently allows title to temporary, removable range improvements installed under range improvement permits to be held by the permittee or lessee (section 4120.3–3). If the comment was suggesting that BLM should share title to non-structural improvements that cannot reasonably be removed from the land, such as a seeding or a prescribed fire treatment, BLM rejects this suggestion because it is impractical and would unduly complicate land administration. Where a cooperator permittee or lessee has contributed to an improvement that cannot be removed from the land, and BLM cancels the associated grazing permit or lease to devote the land to another public purpose that precludes livestock grazing, the permittee will be eligible for compensation for the adjusted value of their interest in the improvement, as documented in a cooperative agreement, under section 4120.3–6(c) and Sec. 402(g) of FLPMA (43 U.S.C. 1752(g)). BLM will continue to hold 100 percent of the title to range improvements that cannot be removed from the land.

One comment expressed concern about who would be liable if a public land user was injured in connection with a privately owned improvement.

Based on our previous experience with joint Federal-private ownership, we do not recognize any liability issues that should be addressed in this rulemaking. Issues of liability generally are fact-specific, and are best resolved on a case-by-case basis. Moreover, cooperative range improvement agreements will continue to include provisions that protect the interests of the United States in its lands and resources.

One comment asked that we clarify agency and permittee responsibilities under the Endangered Species Act (ESA) and NEPA for shared range improvements. Another comment stated that if grazing permittees share title to range improvements, they may be accountable for any taking under ESA that occurs as a result of these improvements. Another comment stated BLM should consider and allow modification of range improvements if they are negatively affecting sensitive species. In addition, this comment stated that modification may be necessary to minimize the effects and ''avoid jeopardy to listed species.'' One comment stated that, at a minimum, the rule should make it clear that ESA section 7 consultation requirements and consideration of state-listed or sensitive species would still be applicable to grazing activities.

Additional clarification is not needed to set forth BLM's responsibility to consult with the appropriate service agency pursuant to the ESA when a discretionary BLM action triggers the application of the ESA. BLM will continue to fulfill the requirements for consultation in accordance with Section 7 of the ESA. Section 4120.3–1(f) provides, and will continue to provide, that ''proposed range improvement projects shall be reviewed in accordance with the requirements of [NEPA].'' The fact that a permittee holds a joint title with BLM for a range improvement has no effect on BLM's obligations under the ESA and NEPA.

As part of NEPA analysis and the decision making process, BLM considers potential impacts of the range improvements to special status species (including listed species) and either avoids or mitigates them. Listed species are protected by the ESA. Therefore, BLM is obligated to make modifications as necessary to avoid jeopardy or to minimize incidental take as directed by the FWS or the National Marine Fisheries Service in a biological opinion.

BLM expects individuals to take steps to ensure they are in compliance with the appropriate provisions of ESA. It is a prohibited act under section 4140.1(b)(2) for any person to install, use, maintain, modify, or remove range improvements on public lands without BLM authorization. If any person did such an act without BLM authorization and thereby violated the ESA, he or she would be liable for the applicable penalties for violations of the grazing regulations as well as those for any violation of the ESA.

An additional comment suggested that BLM should retroactively provide for shared title to range improvements constructed under cooperative range improvement agreements after the 1995 rules changes took effect.

The Department has declined to make the proposed change retroactive to 1995, since such retroactive changes have been discouraged by the Supreme Court (*Bowen* v. *Georgetown University Hospital*, 488 U.S. 204 (1988)).

Section 4120.3–3 Range Improvement Permits

We modified paragraph (c) in this section of the proposed rule to remove a reference to conservation use.

We received two comments recommending that BLM authorize permanent range improvements under range improvement permits, noting that such permits are allowed under Section 4 of the TGA.

Under Section 4 of TGA (43 U.S.C. 315), the Secretary has the authority to determine whether to issue permanent range improvements under range improvement permits or under cooperative range improvement agreements. BLM believes it is in the best interests of the public to authorize all permanent developments such as spring developments, wells, reservoirs, stock tanks, and pipelines under cooperative range improvement agreements to promote achievement of management and resource objectives. We have not adopted this recommendation in the final rule.

We received an additional comment suggesting that BLM consult with all permittees associated with an allotment prior to approving nonrenewable use, and require cooperation from all permittees or lessees with the temporary operator.

Under section 4130.6–2, which addresses nonrenewable grazing permits and leases, BLM is required to consult, cooperate, and coordinate with all affected permittees or lessees, as well as the state having lands or responsibility for managing resources within in the area, before issuing a nonrenewable grazing permit or lease. If BLM issues such a nonrenewable permit or lease, the preference permittee or lessee shall cooperate with the temporary authorized use of forage by another operator. BLM agrees that all preference permittees or lessees in an allotment

with temporary use authorized should be consulted and should cooperate. Therefore, we have amended section 4120.3–3(c) in the final rule by adding a cross-reference to the section 4130.6–2 requirement.

One comment urged that we revise section 4120.3–3(c) to remove any reference to the permittee or lessee cooperating with a temporary authorized use of forage by another operator, stating that BLM should not have the discretion to allow someone other than an allotment's preference holder to graze in an allotment. Doing so, according to the comment, could cause conflict among BLM, the preference holder, and the temporary grazers.

BLM needs the discretion to authorize grazing use on public lands when forage is available. We realize that there is potential for conflict, as the comment describes. In the final rule, we have rewritten § 4120.3–3(c) to make it clear that BLM will consult with the preference operator before authorizing such use.

Section 4120.3–8 Range Improvement Fund

We amended this section only to correct a misspelling. One comment objected to the correction, but provided no reason. We have made no changes in the final rule.

Section 4120.3–9 Water Rights for the Purpose of Livestock Grazing on Public Lands

We proposed to amend this section by removing the requirement that livestock water rights be acquired, perfected, maintained, and administered in the name of the United States to the extent allowed by the laws of the states where the rights would be acquired. We made this change to provide BLM greater flexibility in negotiating arrangements, within the scope of state processes, for construction of watering facilities in states where the United States is allowed to hold a livestock water right. BLM continues to have the ability to acquire the water right to the extent allowed by state water law.

We received many comments objecting to the change in the water rights provision. Most common were the general concerns that the proposed change communicated less commitment by the United States to hold the water rights on public land, which would result in more water rights in the name of permittees or others, complicating multiple use land management in a variety of ways. The identified complications included clouding title, hindering land exchanges and transfers of preference, encouraging takings claims by privatizing public resources, and devaluing public land. The over-riding concern of these comments was the supposed rejection by the proposed rule change of the fundamental connection of water to the land.

We believe that the predicted complications that may be triggered by removing the requirement that water rights for livestock use be held in the name of the United States have a low probability of occurring. First, an increase in the number of water rights for livestock use on public lands held in the name of permittees or lessees is probable, but we believe it unlikely to compromise our ability to manage public lands effectively in accordance with FLPMA's requirement of multiple use management. Use of water on public land for wildlife, recreation, mining, and other uses will continue with rights for those uses usually in the name of the United States. By removing the requirement that water rights be acquired, perfected, maintained, and administered in the name of the United States, BLM may be in a position to negotiate better cooperative agreements, resulting in improved cooperation between BLM, states, and permittees and lessees. Second, ownership of water rights by permittees will have no effect on title to the land, since land remains in the ownership of the United States (section 4120.3–1(e)). Third, complications in exchanges or preference transfers resulting from permittee ownership of water rights for livestock use could occur, although we do not expect them to be common. When they occur, they can often be resolved through negotiated settlements among all parties. Moreover, in most cases, BLM will not exchange or dispose of large tracts of the public lands; thus, private party ownership of water rights on these lands will have little impact. In addition, a transfer of preference would likely involve a transfer or sale of a permittee's base property or base water to a new permittee. A settlement would have to be reached between transferor and transferee on compensation for range improvements and water rights. BLM does not believe that the necessity for this type of agreement will hinder transfer. We disagree that private ownership of water rights on public lands will lead to successful takings claims. A water right is a property right that is distinct from title to the land managed by BLM. Land management decisions do not affect title to water. Finally, we disagree with the comment that the value of public land may be reduced if BLM does not control the water rights. The value of the land and the water right are two separate things. BLM also believes, however, that any such decrease will not affect our ability to manage the public lands.

Several comments anticipated a loss of incentive to comply with grazing rules or consult and cooperate with BLM by permittees who own the livestock water rights.

We disagree that this is likely to occur. Many water rights are currently held by permittees, or jointly owned with BLM, and we have not seen evidence that holding a water right discourages cooperation or compliance with terms and conditions of grazing permits. BLM's authority to take action under subparts 4140, 4150, and 4160 is not affected by the name in which the water right is held.

Two comments observed that the proposed rule was inconsistent with laws governing water rights ownership on most state land, on land managed by the U.S. Forest Service, and on privately owned land.

BLM agrees that there is inconsistency among the laws and policies governing water rights ownership in states and agencies throughout the country. For example, the BLM grazing program is guided by different laws, regulations, and policies than the Forest Service's program. Further, states assign water rights under different state laws, regulations, and policies. In this patchwork regulatory setting the flexibility afforded by the proposed rule will benefit BLM in cooperating with permittees and states. We believe that any inconsistencies are unlikely to interfere with BLM land management.

Several comments questioned why permittees had any need for a water right that was associated with a water development. One asked why water right ownership would affect a permittee, as long as he had the water needed for his operation. Another said that water right ownership by the permittee was unnecessary now that the permittee has title of the water development. Another stated that the water right should be public, if BLM was investing public funds in the developments.

Although many water rights for livestock use are associated with water developments, it is not always the case. Moreover, water rights are separate and distinct from water developments. The water right provides for appropriation of water for a specified beneficial use for a specified season of use according to the applicable state law. A cooperative range improvement agreement authorizes the development of and provides the terms, specifications, and

conditions for the construction, maintenance, or abandonment of a water development or other range improvements. The permittee or lessee and BLM share the cost of and title to the development; not all the funds used for a water development are public. Moreover, BLM does benefit from water developments, regardless of funding, because water developments improve grazing management and watershed conditions.

One comment urged BLM not to implement the proposed change because it would encourage more livestock water developments to the detriment of wildlife.

Ownership of water rights does not affect the approval of water developments. Further, BLM disagrees that encouraging more livestock water developments would harm wildlife. Water developments are constructed to improve grazing management and watershed condition. Before BLM authorizes a water development, the development is analyzed in accordance with NEPA. Such analysis will consider the development's impacts on wildlife, positive as well as negative, and the ultimate authorization would include the mitigation measures necessary to limit any negative impacts.

Several comments stated that BLM should not acquire or retain water rights for livestock use on public lands.

BLM disagrees with this statement as contrary to current and proposed regulations, and contrary to the intent of most state water laws to put water to beneficial use by the senior appropriator and claimant. Neither the current regulations nor this final rule prevents BLM from filing on water rights now or prospectively, or filing jointly with a permittee or lessee, when it is in the interest of good rangeland management, supports meeting the objectives of BLM land use and activity plans, and is in accordance with state law.

One comment stated that the changes made in the BLM grazing regulations in 1995 that require livestock operators and BLM to use cooperative agreements to authorize new permanent water developments and direct the United States, if allowed by State water laws, to acquire livestock water rights on public lands, should be retained in the grazing rule.

The final rule requires BLM to use cooperative range improvement agreements to authorize all new permanent water developments under section 4120.3–2(b). The intent of the rule is to provide greater flexibility to the United States in this regard.

One comment recommended that BLM better explain its need to pursue water rights cooperatively with the permittee.

Under the current grazing regulations, BLM must seek to acquire, perfect, maintain, and administer state-based livestock water rights in the name of the United States, to the extent allowed by state law. BLM therefore has little flexibility to seek alternative arrangements with permittees. We expect that the increased flexibility allowing cooperative pursuit of livestock water rights to stimulate greater permittee and lessee support for the development of additional water resources on public land in accordance with resource objectives found in BLM land use plans, allotment management plans, activity plans, and vegetation management plans. This will contribute to an overall beneficial effect on vegetation resources. Having determined that permittees and lessees can hold livestock water rights, BLM may be able to negotiate better cooperative agreements, resulting in improved cooperation among BLM, states, and permittees and lessees.

One comment recommended that BLM discuss the environmental consequences to sensitive wildlife and plants if BLM were to retain the existing provision on water rights, that is, solely acquire livestock water rights from the state, without cooperatively sharing that right with a permittee or lessee.

BLM has observed a significant decrease in the number of water-related range improvements (especially reservoirs and wells) since adopting the existing regulations in 1995. It is widely recognized that water-related range improvements may be beneficial to sensitive wildlife and plants. One reason BLM is proposing to change the existing regulations is to provide an incentive for operators to install water-related range improvements, and thereby potentially benefit sensitive wildlife and plants.

Another comment stated that it is unclear whether BLM's ability to make changes in livestock management to protect sensitive wildlife, plants, and their habitat will be affected by the permittee or lessee having shared water rights.

BLM's ability to make changes in livestock management to protect sensitive wildlife, plants, or their habitat will not be affected by permittee or lessee sharing ownership of livestock water rights. The current grazing regulations, at section 4130.3–3, provide BLM with authority to make changes to the terms and conditions of a grazing permit or lease when management objectives are not being met or when grazing does not conform to the provisions of subpart 4180 (Fundamentals of Rangeland Health and Standards and Guidelines). This provision is not changed in the final rule. Permittee or lessee ownership of livestock water rights does not affect BLM's management discretion and authority.

Many livestock water rights are currently held by permittees or lessees, or jointly owned with BLM. BLM has seen no evidence that holding a livestock water right discourages cooperation or compliance with the terms and conditions of grazing permits. Nor is there evidence that BLM's ability to enforce and administer other provisions of the grazing regulations is affected by a permittee or lessee holding a livestock water right.

One comment recommended that BLM clarify its ability to control water at a spring if the water rights are shared with a permittee or lessee.

Shared livestock water rights are not expected to impair BLM's ability to control water at a spring. In cases of jointly held water rights, water cannot be moved from the source without the consent of both owners, and neither owner can prevent usage of the water at its source by the other owner.

Two similar comments stated it is extremely important for BLM to seek ownership of water rights where allowed by state law, and that if BLM authorizes a water development on public land, the associated water rights should belong to the public. One of the commenters stated that there is no more important resource for fish and wildlife in the arid west than water. A third comment expressed a variation of this concern.

The BLM agrees that water is an important resource for fish and wildlife in the West. The proposed rule does not mean BLM will not seek ownership of livestock water rights when allowed by state law. Rather, the proposed revision will allow BLM increased flexibility to seek alternative approaches to ensuring that water developed on public lands can be used to benefit multiple uses, including wildlife uses. Use of water on public land for wildlife, recreation, mining, and other uses will continue with rights for those uses usually in the name of the United States.

A comment asserted the need for BLM to have flexibility in cooperatively pursuing water rights with the permittee or lessee. The comment stated that we should make it clear whether under a cooperative water right BLM would have the senior water right.

The increased flexibility provided by the final rule may stimulate greater permittee and lessee support for the

development of additional water resources on public land. These resources would be developed in accordance with resource objectives found in BLM land use plans, allotment management plans, activity plans, and vegetation management plans, contributing to an overall beneficial effect on vegetation resources. Agreeing that permittees and lessees can hold livestock water rights should enable us to negotiate better cooperative agreements, and in turn leading to improved cooperation between BLM, states, permittees, and lessees.

Whether the United States holds a senior livestock water right in joint-ownership situations would depend upon individual circumstances and priority dates under applicable state water law. BLM's ability to negotiate the terms of joint ownership agreements with permittees is critical in being able to achieve acceptable settlement to avoid litigation of water rights and to enhance accomplishment of federal responsibilities in land management.

One comment asked whether removing the provision that BLM can acquire livestock water rights would put the state in a position where it could prevent BLM from holding livestock water rights. The comment also asked whether this revised provision pertains only to livestock waters, or also to BLM filings for wildlife, fish, or instream flow.

States control their water law procedures for granting, adjudicating, and administering livestock water rights, independent of the content of the Federal grazing regulations. Therefore, regardless of whether the existing regulations remain in place or whether the proposed rule is adopted, states may prevent BLM from holding livestock water rights. In fact, after 1995, when the grazing regulations were changed to *require* the United States to file for livestock water ''to the extent allowed by State law,'' two states—Nevada and Arizona—enacted laws to prevent BLM from claiming livestock water rights.

The grazing regulations address state water rights for livestock watering purposes, not other purposes. The regulations therefore do not affect other potential BLM filings, such as for fish, wildlife, or instream flow.

One comment pointed out that BLM has authority and discretion to apply penalties for specific prohibited acts. The comment stated that BLM may withhold, suspend, or cancel a grazing permit, and recommended clarification of the effect of sharing water rights if BLM needs to impose a penalty for a prohibited act if the permittee had a shared livestock water right on that allotment. The comment stated that a state water right can be looked upon as a property right and asked whether this could make it difficult for BLM to transfer a canceled permit to a new permittee.

BLM's authority and discretion to impose penalties for prohibited acts is independent of and unaffected by ownership of livestock water rights. BLM's authority to take action under subpart 4140 (Prohibited Acts), subpart 4150 (Unauthorized Grazing Use) and subpart 4160 (Administrative Remedies) is not affected by the name in which the water right is held. Thus, when a permittee engages in a prohibited act that triggers BLM's authority to suspend or cancel the grazing permit (e.g., grazing in violation of the terms and conditions of the permit), BLM may take appropriate action, regardless of who owns the water right. Indeed, even where a permittee has sole ownership of a livestock water right, BLM's authority to issue a new permit is unaffected. (Contrary to the way the comment stated the question, BLM does not transfer a canceled permit. BLM would issue a new permit, which may have terms and conditions reflecting the availability of less water for watering livestock within the allotment if the former permittee retained the water rights, unless the new permittee has acquired the water rights from the former permittee). The suspended or canceled permittee may sell or otherwise transfer its water rights in the absence of its ability to make use of the water right by grazing on public lands.

Another comment stated that it is unclear how cooperative water rights will affect BLM's ability to manage sensitive wildlife and plants on an allotment, and suggested that BLM management would become less flexible if water rights become cooperative.

The proposed water right policy changes would have no effect on water resources as long as the water resources remain available for use on public land. Also, the changes in the final rule should have no effect on special status species, as the changes largely provide clarification of the existing regulations or bring regulations into compliance with court rulings.

BLM does not anticipate significant impacts on special status species from the new livestock water rights policy for several reasons. First, the number of new water developments on which permittees would be able to claim livestock water rights will be very small relative to the total number of water sources on public land. Before such developments are constructed, BLM will analyze them under NEPA to identify potential impacts on special status species, and impose terms and conditions in the cooperative range improvement permit to protect those species. Current land use management plans, activity plans, grazing permits, right-of-way permits, and other land use authorizations govern the usage of water sources that have already been developed. They also govern usage of undeveloped water sources that provide livestock water. A claim for a livestock water right by a grazing permittee on existing undeveloped or developed water sources would not be capable of changing on-the-ground management at the source without explicit authorization from BLM.

One comment stated that ''giving up'' water rights inhibits BLM's flexibility in making management decisions and has the potential for impacts on water resources.

We disagree that BLM is ''giving up'' any of its water rights or its ability to obtain new water rights under state law. Moreover, the final rule will not result in less flexibility for water usage on public lands. In accordance with FLPMA's requirement of multiple use management, use of water on public land for wildlife, recreation, mining, and other uses will continue with rights for those uses usually in the name of the United States. Section 4130.3–3 provides BLM authority to make changes in the terms and conditions of a grazing permit or lease when it authorizes active use or a related management practice that does not meet management objectives or otherwise does not conform to the standards and guidelines established under subpart 4180. Usage of public lands is also subject to BLM land use authorizations, which contain appropriate terms and conditions to support continued multiple uses on public lands. Thus, the number of AUMs in a grazing permit or lease, or any other term or condition, is unrelated to the extent of state-granted water rights. Also, many livestock water rights are currently held by permittees, or jointly owned with BLM, and BLM has not seen evidence that holding a livestock water right discourages cooperation or compliance with terms and conditions of grazing permits.

One comment expressed concern that, although the rule stipulates livestock water development, the holder of the water right could subsequently request a transfer of use for some other purpose. The comment stated that this policy sacrifices future public value and multiple use opportunities that water might provide, such as in-stream flows, wildlife habitat, and recreation use. The comment went on to say that allowing

private acquisition of a water right gives ownership of a public resource to a private entity in perpetuity, and concluded that, without landowner control of water, public benefit and associated land management opportunities will be severely restricted.

States have control over their own water law procedures regardless of the content of Federal grazing regulations. The 1995 regulations acknowledged this control by directing the United States to acquire stock watering rights ''to the extent allowed by State law.'' Before 1995, permittees were able to file joint water rights applications with the United States on livestock water sources.

The concerns raised in the comment related to removing the requirement that water rights for livestock use be held in the name of the United States are unlikely to occur. An increase in the number of water rights for livestock use on public lands held in the name of permittees or lessees is probable, but unlikely to compromise BLM's ability to manage public lands in accordance with FLPMA's multiple use mandate. Use of water on public land for wildlife, recreation, mining, and other uses will continue with water rights for those uses usually in the name of the United States. By agreeing that permittees and lessees can hold livestock water rights, BLM anticipates that it will be able to negotiate better cooperative agreements, resulting in improved cooperation between BLM, states, and permittees and lessees. Ownership of water rights by permittees will have no effect on title to the land, since land remains in the ownership of the United States. Exchanges or preference transfers resulting from permittee ownership of water rights for livestock use could occur, although BLM does not expect them to be common. When they occur, they can often be resolved through negotiated settlements among all parties.

Section 4120.5–2 Cooperation With Tribal, State, County, and Federal Agencies

We amended this section in the proposed rule by adding a new paragraph (c) adding state, local, and county-established grazing boards to those groups we routinely cooperate with in administering laws and regulations relating to livestock, livestock diseases, and sanitation. Field-level range improvement and allotment management planning programs will benefit from the additional perspective that locally established grazing advisory boards could provide.

In the final rule, we have amended paragraph (c) to add Tribal grazing boards to the list of entities with which we are required to cooperate. We also modified the language in paragraph (c) to make it clear that BLM is required to cooperate only with Tribal, state, county, or local grazing boards that are established under government authority, as opposed to private organizations that assume the title ''grazing board.'' In addition, we amended the heading of the section and the introductory text so that they refer to Tribal as well as the other government agencies.

Many comments supported the addition of paragraph (c) to section 4120.5–2. These comments gave a variety of reasons.

A comment stated that the regulations should require agency cooperation with state, county, and local grazing boards, because the creation and use of such boards would give BLM land managers direct resource-related information from subject matter experts in the local areas, increasing our ability to devise appropriate strategies for managing public lands under the multiple-use mandate. Another supported the amendment because state and local governments and local citizens have more at stake in the health of the land in their area than does BLM. The comment said that where state and local governments have established grazing advisory boards to provide for the health and management of public lands in their jurisdiction, they should be given maximum opportunity to do so. Other comments supported the proposed provision because consultations between grazing boards and BLM officials will provide for improved working relations on issues of significant importance to all stakeholders, and the new provision also fulfills statutory and regulatory requirements for consultation, cooperation, and coordination. One comment stated that grazing advisory boards can be used to help resolve conflicts between the agency and allotment owners, while another said that local grazing advisory boards allow for more efficient use of agency resources and money.

BLM intends cooperation with grazing boards to provide BLM land managers local resource-related information from subject matter experts in local areas, thus increasing BLM's ability to develop and recommend appropriate strategies in developing allotment management plans and planning range improvements. BLM agrees that cooperation with local, county, and state agencies, governmental entities, and grazing boards established by state, county, and local governments will help us in considering how best to apply land management practices and spend range improvement funds. Cooperation with all groups and individuals, including Tribal entities, to achieve the objectives of grazing management, is required in section 4120.5–1 of the existing grazing regulations. Existing policy and law provides for the consultation, cooperation, and coordination with these groups as well as others. BLM recognizes that these entities have a high stake in promoting healthy public lands in their areas. We therefore also intend the provision to direct BLM field managers to cooperate with state, county, and local government boards in carrying out the boards' functions. That is, we will participate in their meetings, provide information on request when it is legal and appropriate to do so, answer inquiries, provide advice, and generally interact with the boards in a cooperative manner. The amended regulations would formalize the role of grazing boards in providing input and helping to avoid and/or resolve conflicts between BLM and grazing permittees and lessees. However, it is not the intent of the regulations to confer upon any grazing board cooperating agency status.

One comment stated that BLM should provide an opportunity for local collaborative groups to be creative and proactive in the management of local public lands. The comment added that private lands adjacent to the public lands—often the base property for permittees—are usually the most important habitat (for example, critical winter range) for many wildlife species.

BLM agrees that informal collaboration with local publics is beneficial to management of public lands and recognizes that adjacent private lands and land and water base properties often provide important wildlife habitats, for the same reasons that historically these lands were more likely to have been homesteaded or otherwise converted from public domain to private ownership. Our regulations at sections 4120.5–1 and 4120.5–2 require us to cooperate with individuals and other local (along with Federal, state, and Tribal) entities, to the extent appropriate and consistent with the applicable laws of the United States, to achieve the objectives stated in the regulations. However, the only requirement added in section 4120.5–2 is that we cooperate with government and government-created boards, not informal citizen groups, in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds.

Many comments opposed the addition of paragraph (c) to section 4120.5–2. These comments also gave a variety of reasons.

One comment stated that the provision gives the impression that grazing board concerns have greater weight than the interests of other groups. The comment said that the perspectives of these other groups can also be valuable to the BLM decisionmaking process. Others stated that it will reduce BLM's role as an independent land management agency, and that it will duplicate or supplant the current arrangement BLM has with, and will undermine the efforts of, the RACs.

As a general matter, BLM considers the views of all stakeholders providing input into BLM's decisionmaking process, but will not be constrained in its management by input from grazing boards. This means that, assuming we have the manpower, we will attend their public meetings when invited, provide information when requested, and invite their input when appropriate. BLM will cooperate with the boards to facilitate their review of range improvements and allotment management plans on public lands, but we will retain our independent decisionmaking role.

The role of the RACs is broader, in that it also encompasses input into and review of the standards and guidelines for grazing administration under subpart 4180. There may be some overlap among these groups in the discussion of grazing allotment management issues. Nevertheless, this input will be valuable to BLM, broadening perspectives as to the issues. As a result, we expect that our decisionmaking process will be more effective and our data will be more comprehensive. Of course, laws, regulations, policy, and a multitude of other factors also guide and direct BLM's decisionmaking process.

A comment from a state wildlife management agency stated that specific language should be added to paragraph (c) to address appropriately the requirements for consultation with state wildlife management agencies called for in several Federal laws, including the TGA.

Section 4120.5–1 requires BLM to cooperate, to the extent appropriate, with Federal, state, (including state wildlife management agencies), Tribal, and local government entities, institutions, organizations, corporations, associations, and individuals to achieve the objectives of the regulations in part 4100. Section 7 of the ESA requires formal consultation with FWS and/or NOAA Fisheries if a federally-listed species may be adversely affected due to a proposed action. Furthermore, the grazing regulations specifically require BLM to consult with states having lands or responsibility for managing resources within the area—

- Before adjusting allotment boundaries,
- Before apportioning additional livestock forage,
- Before implementing changes in active use,
- Before closing allotments or modifying grazing for immediate protection of resources,
- During the preparation of allotment management plans,
- Before revising or terminating allotment management plans, or issuing or renewing grazing permits or leases, including nonrenewable permits, and
- Before modifying the terms and conditions in permits or leases.

No additional language is necessary in the grazing regulations to ensure coordination with state wildlife management agencies.

One comment stated that paragraph (c) should be removed because many states, counties, and local areas do not have any established grazing boards. Another stated that it is not clear how these grazing boards are defined or established, nor what it would take for a grazing board to qualify as ''established.'' One comment stated that paragraph (c) was tantamount to the reestablishment of grazing advisory boards, the authority for which expired on December 31, 1985 (43 U.S.C. 1753(f)).

The establishment of grazing boards is at the discretion of state, county, and local governments, and is not required or authorized by BLM. This rule change formally recognizes the benefit of cooperating with existing and any future Tribal, state, county, or local government-established grazing boards in reviewing range improvements and allotment management plans. Each specific grazing board, or the governmental entity creating or authorizing it, determines the grazing board's establishment, internal organization, and role.

One comment stated that BLM should include other groups and boards representing various public land resource interests in the local area (such as Tribal Associations) in section 4120.5–2(c), because many of these groups and agencies utilize BLM lands.

In section 4120.5–2 of the grazing regulations, the authorized officer is required to cooperate, to the extent consistent with applicable laws of the United States, with the involved state, county, and Federal governmental agencies in administering certain laws and regulations. Section 4120.5–1 requires cooperation, to the extent appropriate, with Federal, state, Tribal, and local entities, as well as individuals, institutions, organizations, corporations, and associations to achieve the objectives of grazing management. Cooperation with grazing boards, where they exist, can give BLM land managers resource-related information from local subject matter experts, thus increasing our ability to develop appropriate strategies for managing grazing allotments and developing range improvements under the multiple-use mandate. We have added Tribal associations to paragraph (c) of section 4120.5–2 in response to the comments.

One comment suggested that we expand the scope of paragraph (c) to require cooperation with local grazing boards as to other elements of rangeland management. The comment stated that these groups could assist with the resolution of such issues as conflicts between permittees and other users of the public lands and in designing monitoring programs.

Tribal, state, county, and local government-established grazing boards are independent entities, set their own agendas, select their own members, and determine the level of their interest in reviewing allotment management plans and range improvements. Under this rule, BLM will not establish, sanction, or direct the function of grazing boards. BLM's role, as identified in the grazing regulations, is to weigh any input from the grazing boards as well as from others as we consider allotment management plans and range improvements. Under section 4120.5, BLM coordinates with Federal, state, Tribal, and county government entities and RACs on a wide variety of public land management issues and proposed actions.

One comment stated that grazing boards should be consulted but should remain autonomous from RACs, as provided in the TGA. Another stated that grazing boards comprised of members of the general public may have personal concerns or pet issues that should not affect BLM management practices.

Under the proposed grazing regulations, grazing boards established by state, county, and local government and RACs will remain as distinct organizations. The grazing advisory boards referred to in the TGA were terminated in 1974 in accordance with Section 14 of the Federal Advisory Committee Act of 1972 (5 U.S.C. App. 1), and should not be confused with the grazing boards in the proposed grazing regulations. These grazing boards are

neither established nor sanctioned by BLM. Partly in response to the confusion and concerns demonstrated by these comments, we are amending paragraph (c) in the final rule to add the word ''government'' after the word ''local.'' This should make it clear that the grazing boards referred to in the provision with which BLM must cooperate in administering livestock laws are only those created or sanctioned by state, county, Tribal, or local government entities.

One comment suggested that only affected permittees, and not individuals from other locations, should be consulted regarding section 4120.5–2, ''Cooperation with State, county and Federal agencies.''

That section addresses cooperation with Tribal, state, county and Federal agencies and thus does not include a consultation requirement with the interested public, that is, individuals. The section does require BLM to cooperate with Tribal, state, county, and other Federal agencies regarding the administration of laws and regulations related to livestock, livestock diseases, sanitation, and noxious weeds. No changes were made in the final rule as a result of this comment. BLM believes it is important to continue to work cooperatively with other governmental authorities regarding the administration of laws and regulations related to livestock, livestock diseases, sanitation, and noxious weeds.

One comment expressed concern that the rule may lead to inconsistency and inefficiency between BLM and the Forest Service in the areas of water rights, management of ''federal trust'' resources, range improvement ownership, temporary nonuse, prohibited acts, the definition and role of the interested public, and the ability of the agencies to ensure that fish and wildlife are managed in a sustainable manner across administrative boundaries. One comment stated that, although the FWS is not specifically mentioned in the FEIS, consultation with the Service should occur as required under Section 7(a)(2) of the ESA (50 CFR 402.14).

BLM will coordinate and consult with the Forest Service and state agencies when administering the grazing program. Consistency with the Forest Service regulations, though desirable at times, is not necessary for implementing effective rangeland management practices. Specific inconsistencies between the regulations and policies of BLM and the Forest Service related to fish and wildlife resources have not been identified. In general, however, inconsistencies continue to exist largely because the two agencies have different statutory requirements that govern their regulations and policies. However, nothing in the proposed revisions will preclude BLM and the Forest Service from working across administrative boundaries to manage fish and wildlife in a sustainable manner.

BLM consults with the FWS when an evaluation of a discretionary action results in a determination that there may be an effect on an endangered species. Although BLM coordinated with the FWS on various aspects of the rule, ultimately BLM concluded that the rule will have no effect. Consultation under Section 7(a)(2) of the ESA is not required under 50 CFR part 402 on an action that has no effect on an ESA-listed species.

One comment referred to an MOU that BLM, the Forest Service, and the FWS signed with WAFWA to conserve the greater sage-grouse and its habitat. The comment stated BLM should consider the commitments of the MOU in the proposed revisions to grazing regulations.

The WAFWA MOU outlines the roles of state and Federal partners throughout the 11 Western States in conservation of the currently-occupied range of the sage-grouse. Our commitments under this MOU are compatible with grazing management. Under the MOU, BLM will continue to coordinate with the states and local working groups to develop state and local conservation strategies. The administrative changes in the final rule will have no effect on this coordination commitment. In addition, and to complement the WAFWA MOU commitments, BLM released the National Sage-Grouse Habitat Conservation Strategy in 2004. This strategy describes agency actions necessary to conserve the sage-grouse and its habitat on BLM land, and includes a detailed timeline of actions that BLM is implementing through agency directives. The grazing rule amendments will have no effect on BLM's implementation of the sage-grouse strategy.

One comment urged BLM to include the FWS among the entities it must consult before changing grazing allotment boundaries under 43 CFR 4110.2–4.

Where a proposal to undertake a discretionary action under the grazing regulations, such as designating or adjusting an allotment boundary under 43 CFR 4110.2–4, triggers ESA consultation requirements, BLM will meet those requirements. However, BLM does not believe it appropriate to list in its grazing regulations all instances where discretionary action taken under the regulations may trigger ESA consultation.

One comment encouraged BLM to consider how the rule would affect the ability of local sage-grouse working groups to implement conservation actions for this species.

The working groups and their commitments are outlined in the WAFWA MOU, and are unchanged by the proposed regulations. Site-level decisions remain within the purview and discretion of BLM field offices, and address sage-grouse habitat needs in an allotment-level assessment process outlined in the existing regulations, using local working group recommendations. BLM's ability to identify and react to sage-grouse habitat needs will not be affected by the proposed administrative adjustments of the grazing regulations.

Section 4130.1–1 Filing Applications

In the proposed rule, we moved the provisions on determining satisfactory record of performance from section 4110.1 to section 4130.1–1 on filing applications, where they more logically fit. We also amended the provisions to clarify the factors that we take into account in determining whether an applicant for a new permit has a satisfactory record of performance. The rule deems applicants for issuance of a new permit or lease to have a satisfactory record of performance if:

1. The applicant or affiliate has not had a Federal lease canceled within the previous 36 months;

2. The applicant or affiliate has not had a state lease canceled, for lands in the grazing district where they are seeking a Federal permit, within the previous 36 months; or

3. The applicant or affiliate has not been legally barred from holding a Federal grazing permit or lease by a court of competent jurisdiction.

One comment urged BLM not to adopt the proposed rule provision regarding satisfactory record of performance, stating that the proposed wording is an attempt to show favoritism to someone with past recent violations that did not occur on the allotment for which the applicant is applying. Another comment stated that permittees could avoid violations by timing applications to particular grazing allotments where they had not committed a violation in the last 3-year period.

The changes made provide consistent direction on what constitutes a satisfactory record of performance. Determining a satisfactory record of performance is not limited to grazing permit or lease violations on the particular allotment for which an

application is being made. Section 4130.1–1(b)(2)(i) states that the authorized officer will consider applicants for a new or transferred preference to have a satisfactory record of performance when the applicant has not had any Federal grazing permit or lease canceled for violation of the permit or lease within the 36 months preceding the date of application.

One comment suggested that BLM should subject a permit applicant who has a poor management record to a public hearing as part of its process for determining whether the applicant has a satisfactory record of performance. The author of the comment stated that legitimate users of the land do not need to have someone who is known to ignore good range management standards abusing the land or BLM's staff, and added a request for open hearings so that the public interest could be heard.

BLM will determine whether applicants for renewal or issuance of new permits and leases and any affiliates have a satisfactory record of performance. BLM agrees that a poor operator who abuses public land is detrimental to sound land management. BLM will not approve such renewal or issuance unless the applicant and all affiliates have a satisfactory record of performance, as provided in section 4130.1–1(b). BLM does not believe that any useful purpose would be served by including a public hearing as part of the process of determining whether an applicant for a permit or lease has a satisfactory record of performance. If rejected applicants appeal BLM's decision to deny them a permit or lease based on an unsatisfactory record of performance, they would have the right to a hearing of their appeal before an Administrative Law Judge under 43 CFR part 4, which would be open to the public.

Several comments urged BLM to remove section 4130.1–1(b)(2)(ii), stating that cancellation of a state grazing permit should not be grounds for determining that a permittee or applicant has an unsatisfactory record of performance. The comments stated that some state rules go beyond practices directly related to livestock grazing. Another comment stated that the provision exceeds BLM's authority under Section 302(c) of FLPMA (43 U.S.C. 1732(c)).

The provision in question provides standards for determining that an applicant has a satisfactory record of performance. BLM will find a record of performance satisfactory if the applicant has not had a state permit or lease of lands within the allotment for which the applicant seeks a Federal authorization, canceled for violation of its terms or conditions within the preceding 36 months. Note that the threshold in the regulations is cancellation, in whole or in part, for violation of the state permit or lease rather than for other reasons under state law, such as cancellation because the state declines to issue permits for the particular time or land or the state has disposed of the land. Section 302(c) states that any ''instrument'' authorizing the use of public lands shall include a provision authorizing BLM to revoke or suspend the instrument upon a final administrative finding of a violation of any term or condition of such instrument. Section 302(c) does not limit the scope of what BLM may require of an applicant.

One comment requested BLM to clarify whether a person has a satisfactory record of performance if he is damaging the public lands, but has not had a Federal permit or lease canceled, has not had a state permit or lease canceled on the pertinent allotment, and has not been barred from holding a Federal permit or lease by a court of competent jurisdiction. On the other hand, another comment stated that requiring a permittee to apply for renewal will increase the importance of the performance review in the renewal process, but could lead to using the performance review as an excuse not to renew a permit.

BLM will consider the question whether a person is damaging the public lands in determining whether he is in substantial compliance with the terms and conditions of his permit or lease and with the regulations applicable to the permit or lease. Whether or not there has been a cancellation, BLM may find a permittee not in substantial compliance with permit or lease terms and conditions or with the regulations, and consider this finding in determining whether to renew the permit or lease. BLM will also consider whether the lack of substantial compliance was due to circumstances beyond the control of the permittee or lessee.

One comment suggested that section 4130.1–1(b)(2) also provide that a party would not be considered to have a satisfactory record of performance if he—

(1) Obstructs public access to public lands;

(2) Grazes livestock after the end of the grazing period;

(3) Removes water sources used by wildlife; or

(4) Poaches or kills wildlife.

A permittee or lessee who does things like those listed in the comment may be found not in substantial compliance with the terms and conditions of the permit or lease, and thus not to have a satisfactory record of performance.

One comment stated that BLM should change its qualifications to receive a grazing permit so that applicants with a criminal background are barred from getting a permit.

We have considered the comment and decided that it would be impractical for BLM to bar applicants with a criminal background from getting a grazing permit, unless the criminal conviction was directly related to the loss of a Federal or state grazing permits or leases due to violations, or the applicant was barred from holding a Federal grazing permit or lease by a court of competent jurisdiction as provided in the final rule in section 4130.1–1 *et seq.* Furthermore, it is not Federal or BLM policy to prevent a person who has been convicted of a crime, served his sentence, and been rehabilitated, from obtaining gainful employment.

One comment stated that BLM should consider increasing the ''statute of limitations'' on conditions for having a satisfactory record of performance in section 4130.1–1(b)(2) to more than 3 years.

The 36-month period has been in the regulations since the requirement to have a satisfactory record of performance was added in the 1995 rule. We have no evidence that this threshold is not working, and have not changed it in this final rule.

In the proposed rule we invited comments on whether we should require an application for renewal of a grazing permit or lease (68 FR 68456). Several comments addressed this issue.

Several comments urged BLM to change section 4130.1–1(a) to provide that only new applicants for grazing permits or leases need to submit a formal application, so that it is clear that the holder of an expiring 10-year term permit or lease does not have to submit a formal application for renewal of that permit or lease. These comments stated that Section 402(c) of FLPMA provides that, so long as the lands under the permit or lease remain available for livestock grazing, the holder of the expiring permit has complied with applicable regulations and accepts the terms and conditions of the new permit or lease, the holder of the expiring permit must be given first priority for receipt of the new permit or lease. They offered several policy reasons for not requiring preference holders to reapply for permits every ten years, stating that requiring such applications would allow the agency too much discretion; be used by environmental groups as tools to

force review of environmental conditions on allotments; consume agency resources; burden permittees and lessees; increase the importance of performance reviews and perhaps lead to using the performance review as an excuse to deny a new permit; have allowed or will allow agency personnel to use the lease renewal process to extract inappropriate concessions from, or impose inappropriate requirements, on permittees and lessees on environmental and other issues. They stated that FLPMA allows a preference holder the right to renew. One contended that, if grazing allotments are designated in the land use plan, they should not be considered discretionary activities requiring periodic review before renewal.

One comment, however, felt that permittees and lessees should submit an application for renewal when their permits or leases expire. It stated that the renewal application should be thoroughly reviewed by BLM before a decision is made to renew.

The first group of comments is correct in that BLM must give the holder of an expiring permit or lease priority for receipt of a new permit or lease, so long as the conditions of Section 402(c) of FLPMA are met. However, there is administrative utility in requiring application for the renewal of an expiring permit or lease. Therefore, we have not adopted this suggestion in the final rule. The regulatory text does not explicitly require an application, but by referring to ''the applicant'' it implies the requirement. Submitting a permit or lease renewal application by the holders of an expiring permit or lease documents their interest in their continued use of the permit or lease and that they are aware that their permit or lease will be expiring and must be renewed. Submitting an application for renewal also allows an opportunity for the holders of the expiring permit or lease to apply for changes in its terms and conditions that they may desire, and provides them certainty under the APA (5 U.S.C. 558 (c)(2)) as to continued use of their permit or lease in the event that its renewal is delayed due to BLM's inability to process the application in a timely manner. The application will also be a useful element of the administrative record.

A comment stated that BLM should not renew grazing permits when they expire. Ranchers should not be allowed to graze cattle for personal gain on public land.

The TGA, FLPMA, and other laws authorize grazing on public land for private business purposes.

Section 4130.1–2 Conflicting Applications

In the proposed rule we made no changes in this section, which provides for how we resolve the situation when more than one qualified applicant seeks a permit or lease for grazing use of the same public lands or where additional forage or acreage becomes available. However, questions raised in comments indicated a degree of confusion as to the meaning of one paragraph of this section, and suggested that we should change the wording for purposes of clarification.

Section 4130.1–2(d) provides that when BLM must decide among conflicting applicants who is to receive grazing use, it may consider, along with the several other factors listed in this section, ''[p]ublic ingress or egress across privately owned or controlled land to public lands.'' Several comments stated that BLM should remove paragraph (d) because ''[p]ublic access across private lands should be given voluntarily and never become a condition for consideration by BLM under any part of these regulations.''

This provision first appeared in the regulations (Grazing Administration—Outside Grazing Districts and Exclusive of Alaska) in 1968, in the following form:

> 4121.2–1(d)(2) The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application (where access is not presently available), and (vii) other land use requirements.

Paragraph (d)(2)(vi) included a footnote that stated, ''Where the United States obtains such a right-of-way, it will assume responsibility therefore to the full extent authorized by law.'' The major rewrite of the regulations in the mid-1970s combined the regulations for inside and outside grazing districts. The provision in the current regulations is a ''carry over'' from the Section 15 grazing lands regulations. The regulation in its original form does in fact direct that, all other factors being equal, if there were several applicants for use of a specific tract of public land, and one applicant offered public access across their base property to the public lands and the others did not, we would choose the applicant that did, and obtain and manage a right-of-way across their lands. BLM obtains public ingress and egress across the successful applicant's base property and the successful applicant receives a grazing permit or lease, so that both parties benefit.

We may consider changing this provision in a future rulemaking exercise.

Other comments suggested that we amend the introductory text of section 4130.1–2 to provide that applicants with preference have priority for receipt of increased available forage, rather than that preference is treated co-equally with the other factors listed in paragraphs (a) through (h) of the section.

Priority for preference holders in apportioning additional forage is already required by section 4110.3–1. It is unnecessary to restate this priority in this section. This section, however, directs BLM to consider the other factors in addition to preference, to resolve conflicts among applicants with preference.

Section 4130.2 Grazing Permits and Leases

In the proposed rule, we revised paragraph (a) in this section to make it clear that the grazing permit or lease, as distinguished from other documents such as a grazing fee billing, is the document BLM uses to authorize grazing use for those who hold grazing preference on BLM-managed lands. BLM also uses ''other grazing authorizations'' such as free use permits, exchange-of-use permits, and crossing permits to authorize grazing for preference and non-preference holders in limited circumstances. These are addressed in sections 4130.5 and 4130.6.

We removed the phrase ''types and levels of use authorized'' from paragraph (a) and replaced it with the term ''grazing preference'' because the level of use, the forage amount expressed in AUMs, and the ''type'' of use, whether active or suspended, are embodied in the term ''grazing preference.'' We removed the term ''conservation use'' from this paragraph for reasons stated in the discussion of section 4100.0–5.

We also removed the requirement in paragraph (b) that BLM consult, cooperate, and coordinate with the interested public prior to the issuance or renewal of grazing permits and leases. Comments and responses to this change can be found in the discussion of section 4100.0–5 as well as below.

We added a provision to paragraph (f) that requires BLM and the permittee or lessee to sign the permit or lease in order to validate it.

We revised the provisions in paragraphs (g) and (h) on temporary nonuse and moved them to section 4130.4, which contains provisions for

authorization of temporary changes in grazing use in order to clarify the regulations. We removed all references to conservation use. Other changes to provisions on temporary nonuse are described in the discussion of that section.

Some comments stated that the amendment of this section for the purpose of clarifying that the grazing permit or lease is the document that BLM uses to authorize grazing creates an unnecessary burden on BLM to prepare NEPA analysis before issuing a permit or lease. The comment stated that grazing use on public lands is authorized by the land use plan coupled with grazing preference, and that therefore NEPA analysis is not necessary when issuing a permit or lease.

The Taylor Grazing Act directs BLM to authorize livestock grazing through a permit or lease. NEPA requires site-specific analysis of impacts before an agency can authorize activities on public land. Most land use plans do not meet site-specific NEPA analysis requirements for issuing permits or leases on individual allotments.

A comment suggested that BLM should not state that the grazing permit or lease is the only document that authorizes grazing use because each year BLM may approve applications for grazing use under terms and conditions that do not exactly match the terms and conditions listed on the grazing permit or lease. Therefore, the comment went on, BLM should also consider the approval of such an application as a grazing authorization. BLM also should require proof of payment of grazing fees before allowing grazing.

The TGA directs BLM to authorize livestock grazing through a permit or lease. FLPMA provides that a grazing permit or lease will have a 10-year term with certain exceptions. BLM evaluates permits and leases before it issues them pursuant to its obligations under NEPA and its land use planning regulations. One outcome of this process is permit or lease terms and conditions of grazing use that are compatible with achieving multiple-use management objectives specified in BLM land use plans. The grazing regulations require that terms and conditions of permits and leases include, as a minimum: The allotment(s) to be grazed, the number of livestock, the period of use, and the amount of forage to be removed. Since forage growth and livestock operation needs can change slightly from year to year, BLM allows or requires adaptive minor adjustments in the number of livestock, use period, and amount of forage, so long as the adjustments are within the terms and conditions of the permit or lease and accord with applicable land use plans. These adjustments are documented by BLM case records, decisions, and grazing fee billings/payment records. Such adjustments become a part of the term grazing permit or lease for the period the adjustments are in effect. However, the term permit or lease is the document that authorizes the grazing use, not the application and paid grazing fee bill.

Another comment suggested that grazing permit changes that do not affect the environment or change the terms and conditions of a permit, but only involve paper changes such as a transfer, should not be subject to NEPA, or at most should only involve a categorical exclusion.

Addressing whether the issuance of a permit or lease that is a result of a preference transfer and that is substantially unchanged from the immediately preceding permit or lease should be subject to NEPA is not within the scope of this rulemaking. In a separate effort to streamline permitting processes, BLM is reviewing its current list of actions that are categorically excluded and examining whether a permit or lease that meets specific criteria also should be categorically excluded.

Some comments suggested that a requirement for consultation, cooperation, and coordination with permittees or lessees should be reiterated at section 4130.2(f) in order to emphasize the importance of consultation regarding permit or lease terms and conditions.

While we recognize the importance of coordinating with permittees and lessees when developing terms and conditions, there is no need to restate this requirement because it is redundant. The requirement for consultation, cooperation, and coordination with affected permittees or lessees before issuing or renewing grazing permits and leases is already provided for at section 4130.2(b).

Numerous comments expressed displeasure with any reduction in the role of the interested public, and many cited the issuance or renewal of permits and leases as specific instances where the rule should not be changed. These comments stated that the issuance of a grazing permit or lease was a significant decision worthy of extensive public involvement. Comments also argued that reliance on NEPA's public participation opportunities was not sufficient, due to the backlog of grazing permit environmental assessments and the recent history of special legislation authorizing renewals without traditional NEPA compliance. Other comments supporting the rule described the grazing permit or lease as the decision that has suffered the most inefficiency because of the interested public consultation requirements. Some argued that grazing permits and leases should be processed in a timely manner and only BLM and permittees and lessees should be directly involved in this process.

BLM issues or renews an average of nearly 2,000 permits and leases each year, and, thus, we view these as day-to-day grazing management decisions. Permits and leases implement decisions made in land use plans, allotment management plans and other grazing activity plans—decisions made with significant public input. Many of the comments requesting continued interested public consultation actually raised broad allocation issues (i.e., whether grazing should occur at all) that would properly be addressed in a land use plan rather than at the permit issuance stage. There currently is a backlog of grazing permits requiring final NEPA compliance. BLM is working hard to eliminate this backlog as soon as possible. Under current funding levels, BLM is scheduled to complete full NEPA processing of all permits and leases by 2009. Although timely NEPA participation may be temporarily delayed for some permits, the interested public will ultimately have the opportunity to participate in the NEPA process. If BLM contemplates any changes in levels of grazing use or in permit or lease terms and conditions, we will provide the interested public an opportunity to review and provide input during the preparation of any evaluation or other reports that the authorized officer may use as a basis for such changes. Such reports may include monitoring reports, evaluations of standards and guidelines, BAs or BEs, and any other formal evaluation reports that are used in the decisionmaking process. Also, the interested public will be notified of proposed decisions and retains the option to protest before a decision is final. This level of participation should achieve a balance that utilizes public input while allowing for timely processing of permits and leases. No changes have been made in the final rule.

One comment stated that BLM should not grant priority for renewal of permits and leases to permittees and lessees who hold expiring permits and leases unless they, in addition to meeting the other criteria found at section 4130.2(e), have a satisfactory record of performance. This would make section

4130.2(e) consistent with the proposed rule at section 4130.1–1(b) and (b)(1).

The existing regulations in section 4130.2(e)(2) require, under Section 402(c)(3) of FLPMA (43 U.S.C. 1752(c)(3)), that the permittee or lessee be in compliance with the rules and regulations and the terms and conditions in the permit or lease to have first priority for a new permit or lease. This provision is very similar to language at section 4130.1–1(b)(1)(i) that addresses satisfactory performance. We determined that the language in this final rule is adequate.

Another comment suggested that BLM should remove the requirement that acceptance of terms and conditions of a new permit or lease is required of holders of expiring permits and leases in order for them to receive priority for receipt of the permit or lease. It stated that this requirement is redundant to the statement that ''a permit or lease is not valid unless both BLM and the permittee or lessee have signed it,'' and that it is also an inappropriate condition upon which to base priority for renewal of a permit or lease.

We have determined that retention of section 4130.2(e)(3) reflects criteria established in Section 402(c)(3) of FLPMA regarding priority to receive new permits and leases.

Section 4130.3 Terms and Conditions

We added a new paragraph (b) to this section in the proposed rule specifying that when BLM offers a permit or lease, the terms and conditions may be protested and appealed unless the terms and conditions are not subject to OHA appeals, or the terms and conditions pertain to a permit or lease for grazing use of additional acreage under section 4110.4–1. We gave an example of terms and conditions that would be exempt from administrative appeal to OHA, namely those mandated by a biological opinion (BO) issued under the ESA. We also added paragraph (c) providing that if terms and conditions are stayed, BLM could authorize grazing use in accordance with section 4160.4. By adding this language, we sought to clarify that we are providing the opportunity to protest and appeal decisions that specify the terms and conditions of the permit or lease we are offering. In this final rule, we have removed the example of terms and conditions that are exempt from appeal presented at section 4130.3(b)(1). The proposed example was based on a policy articulated in two Secretarial memoranda, and those memoranda address the issue adequately.

Some comments objected to the exemption from appeal for those terms and conditions resulting from a biological opinion. In cases where a biological opinion (BO) is the basis for additional terms and conditions in a grazing permit or lease, they stated that the affected permittee or lessee should be able to appeal those additional terms or conditions that are based on the biological opinion. They asserted that in those cases, as may be necessary for a full and true disclosure of the facts, where the BLM authorized officer's decision rests, in whole or in part, on a material fact not appearing in the agency's record, such as the material constituting a BE, BA, or biological opinion, the affected permittee should be entitled to an opportunity to rebut such fact.

Currently, terms and conditions required in a BO, as well as implementation of a reasonable and prudent alternative if required in the BO, are the only terms and conditions not subject to OHA review. This exclusion from OHA review is based on Secretarial memoranda dated January 8, 1993, signed by Secretary Lujan, and April 20, 1993, signed by Secretary Babbitt. It has thus been the policy of the Department of the Interior that the Office of Hearing and Appeals (OHA) does not have the authority to review BOs issued under Section 7 of the ESA. Under these Secretarial memoranda, if BLM decides to implement a reasonable and prudent alternative set forth in a FWS BO, or if BLM implements the mandatory terms and conditions of a BO, OHA is not entitled to ''second guess'' the FWS findings in the guise of reviewing the BLM decision. Any review of FWS BOs is limited to the Federal courts pursuant to the review mechanism created by Congress in Section 11(g) of ESA (16 U.S.C. 1540(g)). This issue is further addressed in the preamble discussion of section 4160.1. We dropped this provision because BLM believes the Secretarial memoranda signed by Secretaries Lujan and Babbitt provide sufficient clarity regarding the inability of OHA to review the merits of FWS biological advice. This example has been removed from the final rule.

Some comments stated that BLM should remove the requirement that ''grazing permits and leases shall contain terms and conditions * * * to ensure conformance to the provisions of subpart 4180'' at section 4130.3(a) and section 4130.3–1(c). Subpart 4180 describes Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration. The comments reasoned that this change would clarify that permits and leases must be in conformance to all of the provisions of part 4100 and the management objectives established by applicable land use plans. They felt that these provisions were redundant because standards and guidelines developed under subpart 4180 are made a part of land use plans and there is an existing requirement that livestock grazing activities conform to land use plans.

It is true that terms and conditions included in permits and leases implement all the provisions of part 4100 pertinent to the permit or lease. The provision on conformance to subpart 4180 does not mean that the terms and conditions must only conform to the fundamentals of rangeland health, standards, and guidelines found in subpart 4180. They must also conform to the appropriate land use plans. The reference to subpart 4180 appears in this newly designated paragraph (a) (which was the entire section 4130.3 in the 1995 regulations) as a matter of emphasis. Management objectives from applicable land use plans also establish desirable outcomes that BLM strives to achieve. Terms and conditions of permits and leases should conform to and not hinder progress towards management objectives, fundamentals, and standards. BLM has considered these comments and has determined that, despite the redundancy pointed out by the comment, it would be best to continue to state plainly in the regulations that permits and leases must incorporate terms and conditions that ensure conformance to subpart 4180.

Some comments stated that BLM should remove the proposed language at section 4130.3(b)(2) which would not allow protest or appeal of terms and conditions placed on grazing use on additional land acreage outside designated allotments. The comment stated that this would violate TGA Section 9 hearing rights relative to grazing use upon ''additional land acreage'' within a Grazing District, and that there is no rational basis to treat appeal rights for permits issued for additional land acreage different from appeal rights for permits issued as a result of preference transfer or permit renewal.

In response to this comment we have removed the provision at section 4130.3(b)(2) from the final rule.

Comments suggested that BLM insert a standard term and condition into all grazing permits that states unequivocally that nothing in the terms and conditions of the permit shall be construed as affecting valid existing rights of way, easements, water rights,

land use rights, vested rights, or any other property rights of any kind.

The comment expresses concern that the issuance of a grazing permit or lease and the BLM management of the public lands associated with the permit or lease may affect valid existing rights, including, among other things, ''property rights of any kind.'' The TGA provides that the Secretary ''shall make such rules and regulations * * * enter into such cooperative agreements, and do any and all things necessary to accomplish the purposes of'' the TGA ''and to insure the objects of such grazing districts, namely, to regulate their occupancy and use, preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range.'' BLM accomplishes these goals through grazing permits and leases, which authorize grazing use on the public lands. Typically, the terms and conditions of a permit or lease specify such things as seasons of use and numbers of livestock. If we were to adopt the comment and add a term and condition in grazing permits that would prohibit BLM from doing anything that would affect any valid existing rights or any other property rights of any kind, it would impose an unlawful limit on the Secretary's broad authority to regulate the use of the public rangelands. Because of the potential confusion the suggestion in the comment would create, because property rights are adequately protected by the U.S. Constitution, and because there are established avenues for seeking compensation for ''takings,'' we have not adopted the comment in the final rule.

One comment suggested that BLM include a statement in section 4130.3 that terms and conditions will include compliance with management goals and objectives.

Authority to include terms and conditions in a grazing permit or lease to assist in achieving management goals and objectives is sufficiently addressed in section 4130.3–2.

Another comment stated that the regulations should provide that the new permit or lease that BLM offers to the holder of an expiring permit or lease should reflect changes in terms and conditions that apply at the time of renewal, or reflect the terms and conditions of the expiring permit or lease until the terms and conditions are officially changed.

When renewing a permit or lease, BLM must retain the discretion to authorize grazing use under terms and conditions that it determines to be appropriate, even if those terms and conditions are different from the permit or lease that recently expired. The final regulations also provide in section 4160.4 that, should OHA stay any term or condition included in a BLM decision that renews a permit or lease, BLM will continue to authorize grazing under the permit or lease, or the relevant term or condition thereof, that was in effect immediately before the decision was issued, subject to any relevant provisions of the stay order.

Section 4130.3–2 Other Terms and Conditions

In the proposed rule, BLM proposed to remove paragraph (h) from this section. Paragraph (h) authorizes BLM to include in a grazing permit or lease a statement disclosing the requirement that a permittee or lessee provide reasonable administrative access to BLM across non-federal lands owned or controlled by the permittee or lessee, for the orderly management and protection of the Federal lands under BLM management. BLM reasoned that the absence of such disclosure under the proposed rule would not affect the underlying principle that reasonable administrative access is an implied condition of grazing permits.

In response to public comments, as explained below, we have restored paragraph (h) in this final rule. Paragraph (h) provides that optional terms and conditions include a ''statement disclosing the requirement that permittees or lessees shall provide reasonable administrative access across private and leased lands to the Bureau of Land Management for the orderly management and protection of public lands.''

Several comments stated that the regulations should retain the provision in section 4130.3–2(h) regarding administrative access across private lands in order for agency staff to perform resource management activities on public lands efficiently. Comments expressed concern that removal of this provision might impede the agency's management of public lands, and pointed out that such access is an implied condition of a grazing permit. Other comments supported the removal of this provision, asserting that the agency should only have access across private property by permission of the land owner or to respond to an emergency. Some comments thought this provision should be retained because its removal would limit public access to public lands, misinterpreting the intent of this provision. This provision does not apply to public access across private land; it only applies to agency administrative access to perform necessary resource management activities on the public lands.

In response to comments, the final rule retains the language at section 4130.3–2(h) that we considered removing in the proposed rule. Administrative access is an important component of BLM's ability to manage the lands for which it is responsible, including, but not limited to, Federal grazing lands. The provisions of paragraph (h) regarding administrative access refer to reasonable access across a permittee's or lessee's owned or controlled lands to reach Federal lands so that BLM, including BLM staff and third party contractors working for BLM, may perform necessary resource management activities on those lands. These include such activities as range use supervision, compliance checks, trespass abatement, monitoring of resource conditions, and evaluating the conditions of or the need for range or other improvements. Land management agencies, like any landowner, need appropriate access to the lands they manage. Efficient and reasonable access to, for example, grazing allotments, is necessary and is consistent with the partnership between grazing permittees or lessees and the agency to manage rangelands properly. Retaining paragraph (h) is the most effective and efficient means of informing the public, including interested parties, of the requirement that a permittee or lessee provide reasonable administrative access across lands owned or controlled by them to BLM for the orderly management and protection of the Federal lands under BLM management.

One comment stated that BLM should discourage the use of supplemental feed on public land because such feed can introduce weeds and pollute water with excess nutrients.

Supplemental feed, as referred to in section 4130.3–2(c), means a feed that supplements the forage available from the public lands and that the operator provides to improve livestock nutrition or rangeland management. BLM grazing regulations allow placement of supplemental feed, including salt, for improved livestock and rangeland management, but prohibit placement of supplemental feeds on public lands without authorization, or contrary to the terms of the permit or lease. When BLM authorizes the use of supplemental feed it includes all necessary restrictions, including any requirements for avoiding the introduction or spread of noxious weeds, and directions for placement to ensure that its use does not contribute to resource degradation. We have not

amended the regulations in response to this comment.

Some comments suggested that BLM should include in section 4130.3–2(f) a requirement that the Bureau must develop a ''findings'' document containing the relevant facts, based on documented resource data, supporting decisions BLM issues to change current terms and conditions of grazing permits or leases for any of the reasons stated in paragraph (f). They stated that such a ''findings'' document also should accompany any grazing decision placed in full force and effect by the Bureau.

Section 4130.3–2(f) provides that BLM may temporarily delay, discontinue, or modify grazing use as scheduled by the permit or lease to allow for plant recovery, improvement of riparian areas, protection of rangeland resources or values, or to prevent compaction of wet soils, such as when delay of spring turnout is required because of weather conditions or lack of plant growth. This provision allows for timely implementation of temporary changes to grazing use that are needed to respond to on-the-ground conditions that cannot be reliably predicted when the permit or lease is issued. Similarly, BLM makes grazing decisions effective immediately (''full force and effect'') only when needed to respond to temporary and unpredictable conditions such as lack of forage due to wildfire, drought, or insect infestation, or to close grazing areas to abate unauthorized grazing use.

In most cases, the resource conditions that trigger a temporary change in terms and conditions should be evident to both the permittee or lessee and BLM. In the event that they are not and the permittee or lessee does not voluntarily agree to such temporary changes, BLM would need to issue a grazing decision to require the temporary changes. Such a grazing decision would include a rationale for the temporary changes and be subject to appeal and petition for stay.

Because the need for changes cannot be reliably predicted and can arise suddenly, BLM will not adopt the suggestion that a ''findings'' document be required before making temporary changes or before making changes by grazing decision effective immediately. Such a requirement could result in unnecessary delay of actions that are needed to conserve and protect resources.

Some comments stated that BLM should modify the regulation at section 4130.3–2(g) by removing the phrase ''within the allotment'' with respect to lands allowed for exchange of use, so that a permittee or lessee who owns land within another permittee's or lessee's allotment may be credited on his grazing fee bill for the forage that their lands are providing to the other permittee.

We have not adopted this suggestion in the final rule. An exchange of use agreement is not the appropriate instrument to document the arrangement described by the comment. The arrangement described by the comment is where BLM acts as an intermediary between two permittees/lessees by: (1) Collecting grazing fees from the first party for their grazing use of the second party's private lands that are located in the first party's grazing allotment; and (2) then crediting the grazing fee billing of the second party (for grazing use in a different allotment) in the amount collected from the first party. BLM suggests that a more appropriate approach to this situation would be: (1) The first permittee lease for grazing purposes land owned by the second permittee that is located in the first permittee's allotment; and, (2) the first permittee then provide BLM a copy of the lease to show evidence of control sufficient for BLM to enter into an exchange of use agreement with them. BLM recognizes that where the second permittee does not fence his land and state or local law provides that lands must be fenced before a landowner can gather stray livestock from their land, there is no incentive, other than good will, for the first permittee to lease the second permittee's land because he can graze the second permittee's land for free (although they cannot stock to the capacity of the public and private lands considered together because they cannot demonstrate control of the private land). Therefore, at the local office level, BLM may be willing to provide the intermediary billing services described above through the terms of a cooperative agreement or service contract with all involved parties.

The purpose of an exchange of use agreement is to allow a permittee who owns or controls land that is intermingled with and unfenced from public land within his allotment to stock to the capacity of the public and private lands considered together and be charged grazing fees only for the forage that occurs on the public lands. Removing the phrase ''within the allotment'' from this paragraph would allow permittees to offer lands in exchange of use that are not within the allotment for which they have a permit. Although removing this phrase could facilitate BLM performing the intermediary billing service described above in some circumstances, generally allowing lands outside allotments to be offered in exchange of use could create an expectation that the permittee would be allowed to stock his permitted allotment to the extent of the forage produced on the land outside his allotment offered in exchange of use, plus the forage that occurs on lands within his allotment. This expectation could not be met by BLM because the resulting stocking level would not comply with the requirement at section 4130.3–1(a) that livestock grazing use authorized by a grazing permit or lease not exceed the livestock carrying capacity of the allotment.

One comment suggested that BLM should require other users of the public lands to get permission to be on public land from BLM and BLM should inform the permittee when other users and/or BLM staff will be out on the permittee's allotment.

Determining whether and under what circumstances users other than livestock permittees need approval to use public lands is outside the scope of this rulemaking. Whenever feasible, BLM will inform the livestock operators in advance about BLM field operations that affect grazing management of allotments where they have permits or leases in the spirit of consultation, cooperation, and coordination. A regulation requiring advance notification, however, would be impractical to implement and detract from efficient management of the public lands. We have not adopted this suggestion in the final rule.

Section 4130.3–3 Modification of Permits or Leases

In the proposed rule, we amended this section in order to clarify that BLM may modify terms and conditions of a permit or lease if we determine that either the active use or related management practice is no longer meeting the management objectives specified in the land use plan, an allotment management plan, an applicable activity plan, or any applicable decision issued under section 4160.3. We may also modify permit or lease terms and conditions that do not conform to the provisions of subpart 4180.

Also, we removed the regulatory requirement that we consult with the interested public on any decisions to modify terms and conditions on a permit or lease. The interested public retains, to the extent practical, the opportunity to review and provide input on reports supporting BLM's decisions to increase or decrease grazing use. The interested public, permittees and lessees, and the state should all have opportunity to review and submit input to BAs and BEs when they are used to

supplement grazing management evaluations. However, since they are among the body of documents that qualify as ''reports,'' there is no need to highlight them in the regulations. Therefore, the specific reference to BAs or BEs at section 4130.3–3(b) has been removed from the final rule.

Some comments suggested that BLM not use the need to conform to the provisions of subpart 4180 as justification for modifying terms and conditions of a permit or lease. The comment stated that standards developed under subpart 4180 are subjective, and there are no requirements to collect data to support a determination of achievement or failure to meet those standards.

We have not adopted this comment in the final rule. BLM developed rangeland health standards and guidelines for livestock grazing administration in consultation with RACs in most states and regions. The fundamentals of rangeland health and standards and guidelines recognize rangeland ecological complexity and multiple values, and are among the many tools BLM uses to ensure sustainable multiple use of public lands. Evaluation of rangeland conditions is carried out using all available monitoring, inventory, and assessment data. Permit modifications are based on range health assessments and evaluations, completed by an interdisciplinary team, using all available monitoring data and all available resource information. This final rule further emphasizes the importance of using monitoring data by adding, at section 4180.2(c), a requirement for its use to identify what the significant contributing factors are, once a standards assessment has indicated that the rangeland is failing to meet standards or that management practices do not conform to the guidelines. The final rule retains the provision on conformance to subpart 4180.

Another comment suggested adding requirements to collect monitoring data that shows that current grazing use or management is the cause of not meeting management objectives. A similar comment suggested adding requirements to document facts and findings, supported by resource data, as a justification for changing terms or conditions. Finally, another comment stated that BLM should make it clear in subparts 4110 and 4130 that any changes in grazing preference and/or changes in other grazing permit terms and conditions must be supported by monitoring done by BLM-approved Manual procedures.

Permit and lease modifications are based on land health assessments and evaluations, completed by an interdisciplinary team, using all available monitoring data and all available resource information. BLM documents facts and findings during the evaluation process by preparing an evaluation report and NEPA documents that reference all data and information used as a basis for recommending changes in terms and conditions. This final rule further emphasizes the importance of using monitoring data by adding a requirement at subpart 4180.2(c) that it be used to identify significant contributing factors for failure to meet standards, once a standards assessment has indicated that the rangeland is in fact failing to meet the standards or that management practices do not conform to the guidelines. BLM needs flexibility to use site-specific methods in addition to those monitoring methods set forth in Manual guidance. This flexibility will allow BLM to use techniques that meet local needs and that we may develop in cooperation with other agencies and partners.

Another comment suggested that we consider adding a provision at section 4130.3–2 stating that ''this regulation does not obviate the need to obtain other federal, state or local authorizations required by law.'' The comment pointed out that the construction of range improvements associated with grazing activities, such as water improvements and storage structures, is often governed by other laws or regulations.

Section 4120.3 governs the installation, construction, and maintenance of range improvements. Permittees or lessees must enter into a cooperative range improvement agreement with BLM before building water improvements or storage structures. Through the cooperative agreement, BLM retains control over standards, design, construction and maintenance criteria. The provision suggested by the comment is unnecessary because BLM has a responsibility to ensure compliance with applicable law. Nothing in the regulations prevents BLM from adding such a term where it is warranted. BLM still must comply with NEPA, the Clean Water Act, and state water rights laws. Since BLM maintains control over range improvement planning, implementation and maintenance, existing regulations and policies ensure compliance with applicable Federal, state, and local law and regulations.

Under the final rule, consultation, cooperation, and coordination with the interested public is no longer required before a term or condition in a grazing permit or lease is modified due to active use or related management practices not meeting relevant plans or decisions. This change is intended to improve the administrative efficiency of grazing management operations.

Many comments expressed opposition to any reduction in the role of the interested public, and many cited the modification of permits as a general concern. Many felt it was important to have non-grazing interests involved in both planning and implementation-level decisions. Numerous other comments supported a general reduction in mandatory consultation with the interested public, seeing these as activities that would benefit from faster and more efficient action.

Permit and lease modifications are routine management activities. BLM modifies permits and leases to maintain consistency with broader planning decisions such as land use plans and allotment management plans. These planning-level decisions are made with extensive involvement of the interested public and public participation opportunities through environmental analysis under NEPA. Modifications may also be made as a result of monitoring studies, evaluations of rangeland health standards and guidelines for grazing administration or BAs or BEs prepared as part of the Section 7 consultation requirements under the ESA. In these cases, BLM provides the interested public, to the extent practical, an opportunity to review and provide input on these reports and evaluations during their preparation, in accordance with section 4130.3–3(b). Most modification decisions themselves require site specific NEPA analysis leading to public notice and potential public participation. Additionally, the interested public will be specially notified of a proposed decision and can protest if so desired.

In BLM's view, informal consultations and the ability to review the NEPA document and protest a proposed decision provide adequate mechanisms for identifying legitimate public concerns over permit modifications. The final rule maintains the opportunity, to the extent practicable, for the interested public to review and provide input on reports that evaluate monitoring or other data. BLM appreciates that the interested public can potentially provide important insights on reports that will be used to shape implementation decisions. Because this is information that postdates planning decisions, yet will influence future daily

implementation decisions, it is appropriate for the interested public to participate in reviewing this data.

The proposed rule specifically referred to the preparation of BAs or BEs prepared pursuant to the ESA as being open for review. Several comments requested that these reports be removed from the rule because of their technical nature.

A change has been made in the final rule to remove the specific listing of these example reports. While the range of reports subject to this review procedure would include, in most circumstances, BAs or BEs, it is not BLM's intention nor is it appropriate to create an exhaustive list of reports subject to review in the regulations. Listing these particular reports could have unduly narrowed the perceived range of what should be made available for review and input.

One comment stated that BLM should clarify that it maintains sole responsibility and authority to ensure the accuracy of the biological assessment and the conclusions therein, and to ensure that listed species are not likely to be jeopardized, regardless of economic considerations.

There is adequate direction provided in the ESA and in the FWS and National Marine Fisheries Service regulations on these requirements. BLM will continue to use the procedures specified in BLM Manual section 6840 to carry out our responsibilities under the ESA and coordinate with other agencies

Section 4130.4 Authorization of Temporary Changes in Grazing Use Within the Terms and Conditions of Permits and Leases, Including Temporary Nonuse

In the proposed rule, we revised section 4130.4 to provide additional detail on what is meant by the phrase ''within the terms and conditions of the permit or lease.'' When we refer to ''temporary changes within the terms and conditions of the permit or lease,'' we mean changes to the number of livestock and period of use that BLM may grant in any one grazing year. We authorize such changes in response to annual variations in growing conditions that arise from normal year-to-year fluctuations in temperature and the timing and amounts of precipitation and to meet locally established range readiness criteria. Most permits or leases include a period of use described by specific dates. These dates do not always account for the natural fluctuations that can lead to forage availability outside the listed dates. Existing regulations allow for temporary changes, but this authority has, at times, been applied inconsistently within BLM. The new definition clarifies the amount of flexibility BLM authorized officers will have when considering temporary changes. Under the revised section, ''temporary changes in grazing use within the terms and conditions of a permit or lease'' includes temporary changes in livestock number, period of use, or both, that would—

(1) Result in temporary nonuse; or

(2) Result in forage removal that does not exceed the amount of active use specified in the permit or lease, and occurs either not earlier than 14 days before the begin date specified on the permit or lease, and not later than 14 days after the end date specified on the permit or lease, or that conforms to flexibility limits specified in an allotment management plan under section 4120.2(a)(3).

The provision also applies to temporary changes that result in both temporary nonuse and forage removal 14 days or less before the begin date and/or after the end date, as just described in (2), above.

In the final rule, we removed language listing reasons for allowing temporary changes in grazing use within the terms and conditions of the grazing authorization. First, comments objected to the reference to locally established range readiness criteria, and second, the list may be too restrictive. We also removed paragraph (a)(2), because it is unnecessary to require consultation, cooperation, and coordination with the applicant.

We have amended paragraph (d)(2) of this section in the final rule by changing the word ''will'' that appeared in the proposed rule to ''may'' in order to avoid an interpretation of this provision that BLM has no discretion to deny temporary nonuse. We also added a reference to ''temporary nonuse'' in the section heading as a convenience to readers, and reorganized the section to increase clarity.

In the proposed rule we moved provisions addressing approval of ''temporary nonuse'' from section 4130.2 to section 4130.4 and amended them to give BLM discretion to approve applications on a year-to-year basis for temporary nonuse of all or part of the grazing use authorized by a permit or lease when the nonuse is warranted by rangeland conditions or the personal or business needs of the permittee or lessee. When rangeland conditions are such that less grazing use would be appropriate, BLM encourages operators, if they have not done so already, to apply for nonuse for ''conservation and protection of rangeland resources.'' Events such as drought, fire, or less than average forage growth typically result in ''rangeland conditions'' that will prompt the need for temporary nonuse of all or part of the grazing use allowed by the permit or lease.

Paragraph (f) of this section (§ 4130.2(h) in the existing regulations, as revised for clarity) continues BLM's current discretion to issue a nonrenewable authorization to other qualified applicants to use the forage that became temporarily available as a result of nonuse approved for business or personal reasons. On the other hand, when BLM approves nonuse because we agree that rangeland conditions would benefit from temporary nonuse, we do not authorize another operator to use it.

We also moved current paragraph (a) to the end of section 4130.4 and redesignated it as paragraph (g). In newly designated paragraph (g), we made editorial changes.

The principal change that we made in the proposed rule with regard to temporary nonuse was to remove the current three-consecutive-year limit on temporary nonuse. We proposed that BLM should have the same discretion to approve temporary nonuse as existed before the 1995 rule changes, to provide us with management flexibility needed to respond to the common occurrence of site-specific fluctuations in available forage levels that may occur for a variety of reasons as explained above.

First we will consider the comments that discussed temporary changes in grazing use within the terms and conditions of the permit or lease, and then the comments that discussed the changes that we proposed with regard to temporary nonuse.

One comment stated that grazing permits should contain soil, water, riparian vegetation, and wildlife objectives, in order to help determine whether it is appropriate to authorize early opening or late closing of grazing. The comment continued that most detrimental changes in condition of soil, water, riparian vegetation, and wildlife result from ill-planned season of livestock use, duration of use, or amount of utilization. It concluded that terms and condition of the permit need to contain objectives that can address these activities, and that BLM should only change grazing use within the terms and conditions of permit or lease if they have monitoring and assessment data to support the change in use, and the change does not result in removing more forage than the ''active use'' specified by the permit or lease.

Objectives for soil, water, riparian, wildlife, and other resources are usually developed through the planning process and included in land use plans,

allotment management plans, or activity plans, becoming more site specific at each level of planning. A grazing permit must conform to the objectives of land use plans. Therefore terms and conditions are designed to achieve the objectives established in the relevant land use plans and it is not necessary to restate objectives in the permit. In addition to objectives established in overarching plans, standards for rangeland health provided for in section 4180.2 establish levels of physical and biological condition or degree of function and minimum resource conditions that must be achieved or maintained. Terms and conditions of permits must provide for achievement of the rangeland health standards. The proposed rule at section 4130.4(b)(1) already limits the temporary use provided for in this section to the amount of active use specified in the permit or lease. Approval of applications for temporary changes will be dependent on range conditions as observed by the authorized officer, following the criteria in internal guidance and in the standards and guidelines under subpart 4180.

Another comment suggested that the rule should provide that grazing use that removes more forage than active use specified in the permit or lease be justified by monitoring and assessment data.

The regulations in this rule already address this situation. If BLM were to authorize use greater than the active use specified in the permit or lease, we would do so under section 4110.3–1, which addresses increasing active use, and base it on monitoring or documented field observations.

Several comments, including one from a state wildlife agency, stated that the rule should provide for consultation with state wildlife departments before BLM authorizes changes within the terms and conditions of the permit. It went on to say that, just as the criteria to be used in justifying temporary changes in grazing use within the terms and conditions of a permit or lease include annual fluctuations in timing and production of forage and rangeland readiness criteria, so are the needs of wildlife species dependant upon these fluctuations. One comment agreed with BLM's approach on this issue, but stated that we should consider wildlife-critical periods when deciding whether to authorize the temporary changes in grazing terms within the terms of the permit or lease.

Consideration of wildlife habitat needs occurs during all stages of planning the multiple use of public lands. During each stage of this planning process—land use planning, allotment management planning and the formulation of individual permits and leases—the state is invited to participate in developing objectives and strategies to protect wildlife habitat. Since the temporary changes are by definition within the terms and conditions of permits or leases, we believe the state has had ample opportunity to communicate the wildlife-critical periods and specific habitat needs that BLM must consider while processing an application for temporary changes in grazing use.

Other comments urged BLM to reconsider applying range readiness criteria, and one asked for a definition of range readiness. They opposed the idea of using ''locally established range readiness criteria'' in this context, stating that the concept of ''range readiness'' is no longer supported by the range science community. Another comment stated that BLM should amend § 4130.4(a)(1)(ii) to provide that the ''locally established range readiness criteria'' must have been established in applicable land use plans, activity plans, or decisions. The comment strongly supported recognizing that range readiness for turn out may vary from year to year, and stated that providing a 14-day window is prudent. Several comments stated that the authorization of temporary changes of use should not be based on active use or preference, but on whether forage is actually available.

We have amended this section in the final rule by removing the references to the reasons for authorizing temporary changes in grazing use. Thus, the final rule does not contain any reference to ''range readiness criteria.'' We made these deletions for two reasons. First, we did not want to limit our discretion as to why we may authorize temporary changes in grazing use, and second, we recognize that the method for determining ''range readiness'' is controversial and technical in nature. It is therefore more appropriately addressed in manual, handbook, or other technical guidance. This guidance will include the criteria BLM will follow in authorizing such changes, and appropriate consultation requirements. BLM considers the availability of forage as well as many other physical and biological factors when processing an application for temporary changes in grazing use.

One comment urged BLM to allow changes within the terms of the permit or lease only if BLM determines it appropriate before the grazing season, to avoid the possibility of legitimizing trespass by changing grazing use periods or numbers part way through the grazing year.

BLM will not use the provision to approve changes in use after the fact, agreeing that it is inappropriate to legitimize grazing trespass. It is also impossible to determine before the grazing season starts what conditions will exist in ensuing months. We have amended paragraph (e) of this section in the final rule to make it clear that applications for changes within the terms and conditions must be filed in writing on or before the date the change in grazing use would begin. We have also amended paragraph (b) by adding language recognizing that the allotment management plan may allow grazing beyond the 14-day limit. Nevertheless, grazing would still be limited to the total active use allowed in the permit or lease.

One comment urged BLM to consider shortening the limit for grazing within the terms and conditions of the permit or lease to 7 days instead of 14 days. The comment stated that some permittees will request a 14-day opening as soon as forage is bite high. It went on to say that 7 days is plenty to allow for varying weather conditions. The comment also said that the same limit should apply at the end of the grazing season, and that if there is more than 7 days of forage remaining, it should be banked for the next year. Another comment asked BLM to explain how the possible 28-day combined extension of the grazing period will not result in overgrazing.

We have determined that 14 days before the begin date in the permit or lease provides an appropriate degree of flexibility in determining when to allow turn out, as does 14 days after the end date to require round up. As for the suggestion that excess forage measured in days should be saved for the next year, it is unnecessary to state this in the regulations. The provision already limits its application to the amount of active use called for in the permit or lease. Forage in excess of this amount will not be allocated under this provision, so this provision will not lead to overgrazing. The regulations allow increases in active use under section 4110.3–1 in appropriate circumstances.

Many comments raised concerns about the temporary nonuse provisions in section 4130.4(c) through (e).

Several comments expressed the concern that, if we adopt the rule as proposed, BLM would be unable to deny nonuse for conservation purposes. The comments pointed out the possibility that since the rules do not limit the number of years that a grazing

operator could potentially be approved for nonuse of his grazing permit or lease, conservation organizations could acquire grazing permits and perpetually receive BLM approval not to use them for reasons of natural resource conservation, enhancement, or protection. Another comment supporting the proposed rule expressed concern that BLM's discretion to grant nonuse for more than 3 years allows a *de facto* ''conservation use'' permit in violation of the TGA, FLPMA, and the decision in *Public Lands Council* v. *Babbitt*, *supra*. Also, the proposed rule stated that BLM ''will'' authorize nonuse to provide for natural resource conservation, enhancement or protection or for the personal or business needs of the permittee.

In the final rule, BLM has changed the term ''will'' to ''may'' to make clear that BLM retains the discretion to disapprove nonuse if BLM, based on the facts applicable to the circumstances, does not agree that nonuse is warranted.

The final rule also does not change provisions that authorize BLM to cancel permits and leases if they are not used for the purpose intended—namely, to graze livestock—and to award them to other applicants in accordance with the decisions, goals, and objectives of the governing land use plan. BLM believes it necessary to retain discretion to approve or disapprove nonuse based on the facts and circumstances at hand, so that it may adapt its management to the needs of the resources as well as the resource user. The regulations adopted today provide that unless BLM approves nonuse in advance, it is not approved. BLM may deny nonuse if we find that it is not needed either for natural resource conservation, enhancement or protection, or for personal or business needs of the permittee. If BLM denies a permittee's application for nonuse, the permittee would be obligated to graze in accordance with their permit or lease. If the permittee failed to make use as authorized by their permit or lease for two consecutive fee years, then BLM could cancel the unused preference under section 4140.1(a)(2) and allocate it to other applicants under sections 4110.3–1(b) and 4130.1–2.

If BLM approves nonuse for personal or business reasons of the permittee or lessee, we may authorize other qualified applicants to graze the forage that is temporarily made available due to the nonuse by the preference permittee under section 4130.4(e). If BLM approves nonuse for reasons of resource conservation, enhancement, or protection, and should a qualified applicant believe that BLM's approval of nonuse for any of these reasons is not justified, that applicant could apply to use the forage that he believes to be made available as a result of BLM's approval of nonuse. Because the regulation at section 4130.4(e) would not allow BLM to approve an application for forage made available as a result of temporary nonuse approved for reasons of resource conservation, enhancement, or protection, BLM would then necessarily deny such an application for use by grazing decision. This grazing decision would be subject to protest and appeal, thereby providing the applicant an opportunity to demonstrate to an administrative law judge or board why he believes BLM's decision to approve the nonuse application was in error, and to have the court compel BLM to either require that the forage be used by the preference permittee or to make the forage available for use by other applicants.

Some comments stated that the Supreme Court found that unlimited nonuse was not consistent with the TGA.

The final rule does not authorize BLM to grant ''unlimited'' nonuse. The final rule restores to BLM flexibility to approve permittee or lessee applications for nonuse as long as BLM determines annually that the nonuse is warranted by resource needs or by the personal or business needs of the operator.

One comment questioned why temporary nonuse must be subject to annual application, stating that in at least some cases it should be easy to predict that the benefits from nonuse would take several or even many years to accumulate. The comment suggested that an analysis of historic employment of temporary nonuse might shed light on reasons ranchers applied for temporary nonuse: BLM proposals to reduce AUMs; business reasons of the permittee or lessee; or cooperative agreements to allow range or riparian recovery.

Annual reconsideration of temporary nonuse allows BLM to determine whether it is still necessary. Of course, in some cases the determination will be easy to make. Historical analysis of temporary nonuse is not necessary. Of the three reasons for nonuse suggested in the comment, two are explicitly provided for in the regulations at section 4130.4(d)(2)(i) and (ii). As for the other reason suggested for temporary nonuse, that BLM is proposing to reduce AUMs, temporary nonuse may be a preferable, less drastic, alternative, which will give the range an opportunity to recover to forage levels that will support the permitted AUMs before BLM cancels the AUMs.

One comment urged BLM to ensure that the grazing regulations provide for maximum flexibility for nonuse, or reduced use, including allowing nonuse for 3 years for reasons other than resource management. Upon 3 years of nonuse, then, according to the comment, BLM should consult with the preference holder to determine how to make the nonuse AUMs temporarily available to other applicants engaged in the livestock business, or to reallocate them permanently in accordance with the grazing regulations. The comment concluded that BLM should limit nonuse for resource protection reasons to 5 years to protect the range from rangeland health concerns that some contend start to accrue after 5 years without livestock grazing.

The final regulations provide sufficient flexibility for approving nonuse for reasons other than resource management. BLM should not wait for 3 years before authorizing other applicants to graze AUMs made available due to a preference permittee's nonuse for personal or business reasons, as there may be times where the use can appropriately be made immediately. However, we disagree that there should be an arbitrary limit on nonuse for reasons of resource conservation, enhancement, or protection. There may be times when nonuse based on these needs is justified for longer than 5 years, which BLM will determine based on monitoring and standards assessment.

One comment supported the proposed policy that removes the current 3 consecutive year limit on temporary nonuse of a grazing permit, because it gives BLM and the permittee more flexibility in resting allotments to protect and restore natural resources.

One comment suggested the rule should include a description of the types of information and documentation that a permittee must submit to ''justify'' nonuse. The comment expressed concern that if the level of detail required is too great, it may become too burdensome on the permittee at the expense of the wildlife or habitat resource. The comment also stated that the requirement that nonuse be re-authorized annually could prove burdensome to the permittee. Finally, there was concern that these requirements may ultimately conflict with Sections 7(a)(1) and 7(a)(2) of the ESA and conservation agreements and strategies for sensitive species.

BLM does not believe that the application process will be burdensome. BLM's long-standing procedure is annually to provide its permittees and lessees a grazing application reflecting the use authorized by their permit or

lease, with an invitation to amend it within certain parameters if it does not meet their needs for that year. The new nonuse provision will not create any additional burden. Further, BLM does not believe that expanding its flexibility to allow longer periods of temporary nonuse will ultimately conflict with Sections 7(a)(1) and 7(a)(2) of the ESA or conservation agreements and strategies for sensitive species. In fact, just the opposite is expected with the use of this flexible resource conservation tool.

One comment urged that BLM should not propose reductions and eliminations in resting or nonuse because this action, which is only beneficial to the permittee or lessee, implies that BLM is only concerned about short-term production of livestock and not the long term benefit of stewardship.

BLM does not believe that granting nonuse when it is beneficial to a permittee or lessee implies that BLM is only interested in short term livestock production. Long-term stewardship of public lands is inherent in the stated missions and goals of the agency in Section 102(a) of FLPMA. There are also many sections (such as section 4130.3–3(b), subpart 4180, etc.) in the grazing regulations that provide mechanisms for exercising stewardship of the public lands to ensure that the lands are productive and available to future generations. Additionally, the concept is embodied in BLM's mission statement: ''sustains the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations.''

Another comment supported the proposal to allow annual re-authorization of nonuse, based on the local manager's judgment, to promote flexibility in management of BLM grazing permits. The comment noted, however, that this flexibility would also provide a permittee the opportunity to retain monopoly control of an allotment and its resources at low or no cost. The comment suggested a limit on nonuse of 3 to 5 years. At that point, a more careful review of the situation and future alternatives would be conducted, and a decision could be made to continue the nonuse or move ahead with other options.

It is necessary to retain discretion to approve or disapprove temporary nonuse based on the facts and circumstances at hand, so that BLM may adapt its management to the needs of the resources as well as the resource user. BLM may deny nonuse if we find that it is not needed for natural resource conservation, enhancement, or protection, or for the personal or business needs of the permittee. Under the final rule, however, temporary nonuse may be approved annually for longer than three years, if the reasons for nonuse remain. BLM believes it is important to require an annual request for temporary nonuse in order to re-assess the circumstances. With this annual re-assessment, establishing a firm limit on the number of years of nonuse is unnecessary.

One comment suggested that the regulations should provide that when permit holders request nonuse or a reduction or suspension of what is currently permitted use, such requests would be granted.

Section 4130.4 provides that BLM may authorize temporary nonuse for natural conservation reasons or for business or personal reasons of the permittee or lessee. If the applicant supports the request with appropriate reasons, BLM will normally approve the request, on a year-to-year basis, as provided by section 4130.4(d)(1)(ii). BLM believes it necessary to retain discretion to approve or disapprove nonuse based on the facts and circumstances at hand, so that it may adapt its management to the needs of the resources as well as the resource user.

One comment stated that BLM's consideration of a request for conservation use should consider whether that use would create a fire hazard.

The final rule allows permittees and lessees to apply for temporary nonuse for conservation purposes. BLM's deliberation regarding an application for nonuse for conservation purposes will include consideration of whether approval would result in other effects such as unhealthy buildup of fuels.

Section 4130.5 Free-Use Grazing Permits

In the proposed rule, we removed all references to conservation use, including in paragraph (b)(1) of this section, to conform the regulation to the decision of the Tenth Circuit Court of Appeals. We also removed the word ''authorized'' to keep the rule internally consistent. No comments addressed these changes.

Section 4130.6–1 Exchange-of-Use Grazing Agreements

In the proposed rule, BLM invited comment regarding whether BLM should facilitate ''trade-of-use'' arrangements between operators (68 FR 68456). As stated in the proposed rule, this type of arrangement allows one permittee or lessee to own or control unfenced intermingled private lands that are not within his allotment, but in the allotment of a second permittee or lessee. Some comments urged that BLM facilitate ''trade-of-use'' in this type of situation by collecting a grazing fee from the second permittee for the use of lands owned by the first permittee but located in the second permittee's allotment, and crediting the fees collected from the second permittee for these lands to the first permittee's grazing bills.

Comments on the proposed rule either urged BLM to facilitate this arrangement or urged BLM not to facilitate this arrangement, but did not provide reasons other than either that it would ''contribute to multiple use benefits'' (from comments supporting BLM facilitation), or that it would not (from comments opposing BLM involvement).

We have made no change in the final rule in response to these comments. BLM continues to believe that ''trade-of-use'' arrangements between private parties are best handled by the private parties. The regulation continues to provide that lands offered in exchange-of-use must be unfenced and intermingled with the public lands in the same allotment.

Another comment urged BLM to include in this section a provision stating, ''BLM will include in calculation of the total allotment or lease livestock carrying capacity, the total number of livestock carrying capacity AUMs of lands offered for exchange of use as determined by a rangeland survey conducted by persons qualified as professional rangeland managers.''

We have not adopted this comment in the final rule. The regulation continues to limit the level of use on public lands authorized by an exchange-of-use agreement on public lands to the livestock carrying capacity of the lands offered in exchange-of-use. Guidance regarding how this level is determined is best contained in grazing management handbooks and technical references, not in the grazing regulations.

Section 4130.6–2 Nonrenewable Grazing Permits and Leases

In this section we removed the requirement that BLM consult with the interested public before issuing nonrenewable permits and leases. BLM issues nonrenewable permits and leases to allow grazing use of additional forage that is temporarily available. Here are two examples of when we apply this provision: when BLM has approved an application for nonuse for personal or business reasons under section 4130.4; and when we need to manage grazing use authorized on ''cheatgrass'' ranges.

For purposes of clarity and ease of usage, in the final rule we have further amended the second sentence of paragraph (b) by adding a cross-reference to section 4110.3–1(a), which provides for the disposition of additional forage temporarily available.

Under the final rule, consultation, cooperation, and coordination with the interested public is no longer required before a nonrenewable grazing permit or lease is issued. This change is intended to improve the administrative efficiency of grazing management operations and allow for a rapid response during the limited time periods when additional forage, such as cheatgrass forage, is available.

In the final rule, we have added a new paragraph (b) giving the authorized officer the option of making a decision that issues a nonrenewable grazing permit or lease, or that affects an application for grazing use on annual or designated ephemeral rangelands, effective immediately or on a date established in the decision. This provision replaces and meets the need served by paragraphs (c)(2) and (3) of section 4160.4 in the proposed rule. Those paragraphs would have provided that decisions authorizing temporary nonrenewable grazing or grazing on ephemeral or annual rangeland are to be implemented despite a stay by OHA.

We have decided to allow such grazing to proceed, pending appeal, for several reasons. In some cases, we have a limited time to authorize forage to be grazed before it loses its nutritional value. Under existing rules, upon an appeal and petition for stay (regardless of whether the stay is granted), BLM cannot authorize the use until the end of the regulatory time frames for addressing the stay petition (45 days in addition to the 30-day appeal period, for a total of 75 days, or 2.5 months), and often by that time it is too late to utilize the forage because the forage has lost most of its value. In annual range (or converted annual range such as cheatgrass ranges), this may result in a buildup of wildfire fuels. BLM believes that this approach is a more efficient management tool. Parties may still appeal and seek a stay, but the decision will be immediately effective and there will be no protest period.

This allows BLM to manage the utilization of annual or ephemeral rangelands on a real time basis (under land use plans, activity plans and other documents that contain multiple use objectives), and allows those who may wish to dispute such a decision the opportunity for review.

Moreover, the provision does not exempt the action of issuing a nonrenewable permit or lease or approving or disapproving an application for use in annual or designated ephemeral rangelands from the normal consultation, NEPA review, and approval requirements.

The phrase ''orderly administration of the rangelands'' in this provision requires BLM to explain in its decision the circumstances that justify placing such a decision in full force and effect.

Other sections of the rules are cross-referenced accordingly (those being sections 4160.1(c) and 4160.3(c)).

A comment urged BLM to reconsider the proposal to increase grazing on cheatgrass ranges because of the potential impact of cheatgrass on native grasses and ecosystem functions.

Grazing of cheatgrass ranges was given as an example in the preamble of the proposed rule when BLM would not be obliged to consult with the interested public. BLM would need to implement cheatgrass range grazing promptly at specific times and under specific conditions. BLM is not proposing permanent increases in grazing on cheatgrass ranges.

A few comments expressed concern that public participation under NEPA would not be sufficient, and noted the possibility that a NEPA categorical exclusion could be implemented. One comment requested that the rule be modified to exclude any possibility of a categorical exclusion. Several comments supported the change as proposed.

At the time the October 2004 FEIS was published (June 2005), BLM was not proposing a categorical exclusion (CX) for issuing nonrenewable permits, and responded accordingly. On January 25, 2006 (71 FR 4159), BLM proposed a CX for issuing nonrenewable permits, limited to those allotments that have been assessed and evaluated and the authorized officer determines and documents that the allotment meets land health standards or where existing livestock grazing is not a factor in not achieving land health standards. The number of permit or lease decisions that could make use of the CX would be further limited by the 12 extraordinary circumstances listed in Appendix 2 of Departmental Manual 516 DM 2, and BLM must document that the grazing use authorized by the nonrenewable permit would not change the status of the land health standards. This CX proposal (which is not a part of this rulemaking), if adopted, would lead to a change in the result of the rule, changing somewhat the ability of interested publics to participate in the consideration of issuing nonrenewable permits. However, if the CX were to be adopted, the interested public would still be able to participate in the process of developing land use plans and activity plans, where resource objectives, allocation of resource use (including allocation of excess forage through nonrenewable permits), and parameters for resource management (including the dates of use that could be allowed under a nonrenewable permit) are established; in developing reports that lead to a determination regarding status of land health; and at the decision stage under subpart 4160.

Comments stated that BLM should retain the authority to authorize livestock grazing by issuing nonrenewable permits or leases to help maintain the health of rangelands in situations where significant authorized non-use by livestock exceeds a period of time appropriate to the respective western ecosystem.

BLM retains the authority to authorize livestock grazing on an allotment even if the preference permittee is granted nonuse of his permit to graze that allotment for personal or business reasons. Although the final rule no longer restricts nonuse of a grazing permit or lease to 3 consecutive years, section 4130.6–2(d) allows BLM to issue a temporary and nonrenewable grazing permit or lease to a qualified applicant when forage is temporarily available, the use is consistent with multiple use objectives, and it does not interfere with existing livestock operations. Under that provision and section 4130.4(e), when an allotment has livestock forage available that is not being used by a preference permittee whom BLM has approved for temporary nonuse for business or personal reasons, BLM may grant other qualified applicants a nonrenewable permit or lease to graze it. Section 4120.3–3(c) requires that the preference permittee or lessee cooperate with the temporary use of forage by the permittee or lessee with a temporary, nonrenewable authorization from BLM. In contrast, if BLM approved an application by the preference permittee for nonuse for reasons of resource conservation, enhancement, or protection under section 4130.4(d)(2)(i), BLM would deny an application for a nonrenewable permit under section 4130.4(e) and subpart 4160. In this circumstance, if the applicant for a temporary, nonrenewable permit or lease disagreed with BLM's determination that the nonuse was warranted for reasons of resource conservation, enhancement, or protection, he would have the option to protest and appeal the grazing decision that denies his application, and BLM would need to defend the determination

that the nonuse was warranted for the reasons specified.

One comment stated that BLM should address the effects of the grazing use that would be authorized by a nonrenewable permit on seed replenishment by annual forbs, root reserve replenishment by perennial grasses and forbs, and the potential for damage to soil crust.

We believe that it is unnecessary to address these concerns in the regulations, since BLM undertakes appropriate environmental review before issuing nonrenewable permits. Any impacts, such as those identified in the comment, would be addressed as a result of that environmental review.

Section 4130.8–1 Payment of Fees

We proposed editorial changes to this section to make it easier to read, and to correct a cross-reference in the existing regulations in paragraph (f) (paragraph (h) in the proposed rule) to subpart 4160. In the final rule we further amended paragraph (h) of section 4130.8–1 to make it clear that failure to make payment within 30 days is a violation of a prohibited act in section 4140.1 and may result in enforcement action. As a practical matter, if a payment is late by only a few days, there will not be time for BLM to issue an enforcement decision. However, BLM will consider such late payments in determining whether a permittee or lessee has a satisfactory record of performance.

We received numerous comments on grazing fees. Many comments favored increasing BLM's grazing fees to help fund monitoring activities and range improvements and to offset the costs of managing public rangelands. The reasons cited for raising fees included the following: The current system skews the market, below-market fees promote overgrazing: It is inequitable to increase fees for recreation and not for grazing; and it is appropriate to reduce taxpayer burden. Comments stated that BLM should no longer subsidize public land ranching. Several comments recommended that BLM increase fees to fair market value or to private land lease rates but offer ranchers the financial incentives of lowered fees in return for conservation easements or for management that improves riparian areas, land health, and maintenance of wildlife habitat and corridors. Many comments stated that BLM should allow competitive bidding for allotments, and listed a number of reasons, including economic efficiency, promotion of multiple use and rangeland health, reduction of taxpayer burden, and emulation of state and eastern national forest grazing fees.

The grazing program has many purposes. Congress, in relevant statute, has directed that a reasonable fee be charged for grazing use. There are many requirements that we have under the law, two of which are to protect the health of the land and to manage the public lands on a multiple use basis, which includes livestock grazing. The 1995 regulations and the changes contained in this rule combine to protect the health of the land while allowing appropriate public land grazing. The amount of appropriated funds that go toward the grazing program as opposed to that which is returned in various fees and charges does not amount to a subsidy. Additionally, there are benefits to the general public in open space preserved as private ranch land attached to Federal allotments that might not exist but for the grazing program. Benefits also include the production of beef as well as the preservation of Western heritage that is important to the American identity.

As indicated in the Advanced Notice of Proposed Rulemaking (68 FR 9964, March 3, 2003), as well as the proposed rule (68 FR 68452, December 8, 2003), we were not intending to address grazing fee issues in this rulemaking. We specifically stated that increasing grazing fees and restructuring grazing based on market demand were outside the scope of this rulemaking. We have not analyzed any of the grazing fee related options presented in comments, have not addressed grazing fees in the proposed or final rule, and have not adopted any of the recommendations. The existing fee structure is not altered by this rule.

One comment stated that BLM should implement grazing fee increases immediately rather than implement them over 5 years because public land ranchers should not be protected from market forces.

We did not propose any changes in grazing fees nor in how changes in grazing fees would be implemented. It appears that the individual making this comment misinterpreted our proposal to phase in implementation of changes in active use over a 5 year period when such changes were in excess of 10 percent. This proposal applied only to changes in grazing use—not changes in grazing fees.

Many comments recommended that the sheep/goat to cattle equivalency be changed from ''5 sheep or 5 goats'' to ''7 sheep or 7 goats.'' They asserted that this proposed change would not involve a change in any portion of the established grazing fee formula, but would track more closely the amount of forage used by sheep as compared to cattle. Several comment letters pointed out that the 5:1 ratio used by BLM, originated from data collected on sheep and cattle grazing in Utah from 1949 to 1967. The research data was collected by Dr. C. Wayne Cook, who used the concept of metabolic body weight to reflect the differences between nutritional requirements of different species. Dr. Cook's research was based on forage consumption and energy expenditures for sheep and cattle and indicated an approximate 5:1 ratio; although Dr. Cook concluded that ''these calculations do not represent a conversion factor for exchanging numbers of one kind of animal for another on the range.'' This early research was also based upon using a 914 lb. lactating cow and her calf as an AUM, and a 139 lb. ewe and her lamb for forage consumption estimates. The comments stated that in 1991, the Forage and Grazing Terminology Committee, with participation from the U.S. Departments of Agriculture and Interior, published new standardized definitions of animal units. The animal unit was defined as a 1,100 lb. non-lactating bovine, and estimated the weight of a mature ewe at 147 pounds. This new definition indicated that a 6.5:1 ratio would be appropriate. Comments also cited a study by the USDA–ARS 1994, Animal Unit Equivalents: An Examination of the Sheep to Cattle Ratio for Stocking Rangelands which supported a 7:1 ratio. This study was submitted with comments by several organizations. Several of the comments objected to the rationale given in the proposed rule for not addressing this issue, which was that the ratio is used for the purpose of calculating grazing fee billings and is therefore outside the scope of the rule. Comments stated that this issue is not a grazing fee issue but an issue of equity and improved management for the health of western rangelands.

The sheep to cattle ratio is strictly a matter involving grazing fees and is therefore outside the scope of this rule. Confusion regarding the role of the sheep to cattle ratio is understandable due to the two distinct definitions of ''animal unit month'' in the grazing regulations. However, a sheep to cattle ratio is only stipulated in one of these definitions.

The first definition is used in all aspects of grazing administration except fee calculation. See section 4100.0–5. Here, an AUM is defined as follows: ''Animal unit month (AUM) means the amount of forage necessary for the

sustenance of one cow or its equivalent for a period of 1 month.'' No sheep to cattle ratio is stipulated, no specific amount of forage is designated, and no equivalency to any other animals is mentioned.

The second definition of AUM, the definition at issue here, is found at section 4130.8–1(c). It is as follows: ''For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of the range by 1 cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats * * *.'' This definition strictly pertains to the calculation of fees. The ratios of all kinds and classes of livestock to one another are based upon the administration of a month's use and occupancy, not the amount of forage necessary for their sustenance or any other biological measure. This method of calculating the fee facilitates efficiency and consistency in permit administration by controlling variables associated with ecological site, vegetation composition and/or quality, topography, pasture, allotment, grazing management, breed, size, weight, physiological stage, metabolic rate, etc.

On the other hand, one comment stated that each sheep and goat should be counted as 1 animal unit because all animals should be charged, and because any other way of accounting allows too much grazing.

As previously indicated, issues related to the fee structure, including the definition of an AUM for purpose of calculating fees, are not being addressed in this rule. In response to this comment, however, we wish to clarify that, as defined in section 4100.0–5, an AUM is ''the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month.'' On a forage-consumption basis, 5 sheep or goats grazing for one month is, by regulation, ''equivalent'' to one cow grazing for one month, and therefore comports with the regulation.

One comment stated that BLM's practice of not charging a grazing fee for calves under 6 months is antiquated, and BLM should charge a fee for such calves.

As previously stated, we are not addressing issues related to the fee structure, including the definition of an AUM for the purpose of calculating fees. In response to this comment, however, we provide the following information for clarification of the exclusion of calves 6 months or younger from the calculation of fees. Typically, calves under 6 months of age are not weaned and therefore rely on their mother's milk rather than forage as their primary source of sustenance. Because grazing fees are charged for the amount of forage consumed, an animal unit is considered to be a mother cow and her calf less than 6 months of age, unless the calf has been weaned or becomes 12 months of age during the authorized period of use.

Another comment urged BLM to amend the definition of an AUM in section 4130.8–1 by specifying that 2 steers or heifers that are between 1 and 2 years old will equal one AUM for the purposes of calculating the grazing fee. The comment explained that a heifer will not calve until she is over 24 months of age. Her weight is not equal to that of a grown cow. A weaned steer or heifer that weighs 500 lbs. going on an allotment will not consume forage equal to that consumed by a cow. In daily intake, it will require 2 steers to equal 1 cow. The comment concluded that this change would allow for more flexibility in livestock operations.

The definition of an AUM in section 4130.8–1(c) is strictly for ''the purposes of calculating the fee.'' As we have stated throughout this rulemaking process, matters involving grazing fees are outside the scope of this rule. Therefore, the definition of AUM in section 4130.8–1(c) is outside the scope of this rule.

Numerous comments recommended that BLM recognize that the surcharge, which is added to grazing fee billings under section 4130.8–1(d) of the current regulations where an operator does not own the livestock that are authorized by permit or lease to graze on public lands, is not a grazing fee and eliminate or reduce surcharges.

We have not changed the requirement that a surcharge be added to grazing fee billings where an operator does not own the livestock that are authorized by permit or lease to graze on public lands (except that the paragraph is redesignated (f) in the rule). The surcharge equals 35 percent of the difference between current Federal grazing fees and the prior year's private grazing land lease rates for the appropriate state as determined by the National Agricultural Statistics Service. Sons and daughters of the permittee or lessee are exempt from the surcharge where they meet the conditions listed at section 4130.7(f).

The surcharge is BLM's most recent response to a longstanding problem, *i.e.*, a potential for windfall profits stemming from pasturing agreements. In 1984, Congress enacted legislation that was intended to recapture such profits for the Federal treasury. The legislation provided that ''the dollar equivalent of value, in excess of the grazing fee established under law and paid to the United States Government, received by any permittee or lessee as compensation for assignment or other conveyance of a grazing permit or lease, or any grazing privileges or rights thereunder, and in excess of the installation and maintenance cost of grazing improvements provided * * * shall be paid to the Bureau of Land Management.'' Continuing Appropriations, 1985—Comprehensive Crime Control Act of 1984, Pub. L. 98–473, 98 Stat. 1839 (1984). The penalty for noncompliance was mandatory cancellation of the operator s permit or lease. BLM promulgated regulations to implement the 1984 legislation.

In 1986, the General Accounting Office reviewed the extent to which BLM permittees and lessees sublease their grazing privileges, and the adequacy of our regulations to control this practice. One of the recommendations in the resulting report (RCED–86–168BR) was to require that subleasing arrangements be approved for a minimum of 3 years. Such a lease constitutes a long-term commitment, and thus reduces the potential for large, short-term profits. This recommendation was promulgated in 1995, and continues in effect at section 4110.2–3(f).

In 1992, the Inspector General for the Department of the Interior recommended that BLM adopt more stringent measures further reducing the potential for collecting windfall profits through pasturing agreements or subleasing of base property. Selected Grazing Lease Activities, Bureau of Land Management, Report No. 92–I–1364 (Sept. 1992). BLM responded by promulgating the existing surcharge provision at section 4130.8–1(d).

One comment stated that the surcharge is an obstacle to finding ways to adapt to drought conditions. This comment stated that short-term flexibility is important so that livestock can be moved rapidly from an area in decline to an area where forage is available. Some other comments stated that the surcharge is an obstacle to adjusting stocking rates quickly when weather conditions change, and that the surcharge results in the loss of cooperation among ranchers in the event of a natural disaster. Finally, some comments stated that the elimination of surcharges would improve management flexibility, resulting in more effective relationships between BLM and operators, as well as better land management.

Drought and other weather-related conditions are a perennial risk in ranching and farming. We are not persuaded that the claimed extra increment of risk, which may or may

not be added by the surcharge, is significant enough to warrant rescission.

Many comments suggested that the surcharge discourages livestock owners from entering into pasturing agreements with permittees who pass through their costs to livestock owners. According to these comments, the surcharge causes permittees to lose opportunities to collect income that could help them weather cycles of prosperity and hardship. These comments also allege that the surcharge causes destabilization of ranching operations, loss of open spaces and western communities, and fragmentation of wildlife habitat.

The concerns expressed in these comments provide no basis for BLM to eliminate or reduce the surcharge. Permittees who want to augment their income without purchasing livestock may sublease all or some or all of their public land grazing privileges to another operator along with the base property associated with those grazing privileges. While BLM must approve the transfer of the grazing preference and permit in connection with the transaction, BLM assesses no surcharge.

Some comments suggested that the surcharge is too high for permittees to profit from their operations while paying the surcharge. Several of these comments stated that the surcharge makes public land ranchers less competitive than ranchers who use only private land. One of these comments stated that the surcharge gives non-resident interests a foothold on public rangelands, and increases financial pressures for owner-operated ranches. Finally, some of these comments included two illustrations intended to show financial difficulties resulting from the surcharge. In one illustration, a young rancher is forced to abandon his efforts to establish a cow-calf operation. In another, a rancher's widow incurs expenses in order to avoid the surcharge, so that she and her family can remain on their ranch.

It is unreasonable to assign the surcharge the sole blame for an individual rancher's financial success or failure. Ranching tends to be a low-or negative-profit enterprise on both private and public lands (Section 3.16 of EIS). There are many factors in addition to the grazing fee surcharge that may affect whether a rancher will have financial success; the rancher's business acumen, operating loan interest rates, mortgage rates, livestock prices, business efficiency of the enterprise, and the weather are among those factors. The comments we received on financial impacts do not justify changing the surcharge regulation.

Some comments stated that the surcharge was instituted as a penalty, and that the surcharge is not a grazing fee issue. To the contrary, it was implemented as a component of the grazing fee to reduce the potential for windfall profits, as identified by the General Accounting Office and the Office of the Inspector General. See 60 FR 9945.

One comment stated that BLM should not exempt children of permittees from the surcharge in order to reduce the taxpayers' burden for the management of public lands. One comment stated that, assuming windfall profits are a large enough concern to justify the surcharge, BLM should waive it in cases of drought and stewardship contracts, and otherwise retain the requirement. Another comment stated that there is no windfall profit to the rancher if he brings in outside cattle. A few comments suggested that the surcharge should be eliminated because it represents an unnecessary workload for BLM. One of these comments stated that administering the surcharge takes valuable time away from on-the-ground monitoring and management activities. Another stated that the surcharge complicates the paperwork for both the operator and the land manager. Some other comments requested that we consider providing relief from the surcharge in cases of extreme drought, or where permittees' finances are strained. Some comments stated that the surcharge should not apply where ranchers sublease their private property rights in their allotments. These suggestions, like all those pertaining to fees, are beyond the scope of this rule. Moreover, none of the comments provide persuasive evidence that the original rationale—the potential for windfall profits—has changed. We have not changed the provision establishing a surcharge.

One comment stated that BLM should waive surcharges for permittees who enter into stewardship contracts to make surplus forage available to other operators, pursuant to Section 323 of Public Law No. 108–7. This comment states further that a permittee who provides surplus forage under a stewardship contract performs a public service by helping to preserve ranches, with their attendant benefits to local economies, open spaces, and wildlife habitats.

As we have stated, we are not addressing issues related to grazing fees, including surcharge issues. Furthermore, this rule is not promulgated to implement the legislation (16 U.S.C. 2104 note) that authorizes BLM to enter into stewardship contracts with private persons or entities, or with other public entities. That legislation is the subject of guidance issued by BLM and the U.S. Forest Service. 69 FR 4107, 4174 (January 28, 2004).

One comment stated that BLM should not allow ''after-the-grazing-season'' payment of grazing fees.

After-the-grazing-season billing is allowed only where BLM has made an allotment management plan (AMP) a part of the permit or lease and it provides for the privilege of after-the-grazing-season billing. AMPs generally contain grazing systems that prescribe limits of flexibility in the number of livestock and period of use, allowing operators to adjust grazing practices within such limits to meet the resource use and management goals specified in the AMP. BLM may cancel the privilege of after-the-grazing-season billing if the operator fails to submit the required report of actual grazing use on time, fails to pay the grazing fee billing on time, or if BLM finds that the use is erroneously reported. BLM believes that after-the-grazing-season billing remains a useful management and administrative tool that happens to be advantageous to operators. In addition to relieving operators of the requirement to pay fees in advance, it provides flexibility for operators to make adjustments in grazing use, within pre-set limits, without first having to apply for and receive approval for such adjustments. BLM benefits from reductions in paperwork, and both BLM and operators benefit from the improved working relationships that result from AMPs.

One comment urged BLM to find a means of reimbursing counties for bearing the burden of high Federal land ownership in parts of the West. They suggested that BLM allocate a portion of grazing lease and permit fees to the counties.

This issue is not addressed in the regulations. It is, however, addressed in the TGA. Under 43 U.S.C. 315i, 12½ percent of revenues from grazing permits and 50 percent of revenues from grazing leases are distributed to the states in which the lands producing the revenues are situated. The state legislature then decides how to spend those funds for the benefit of the affected counties. We note also that counties do receive Federal payments in lieu of property taxes under 31 U.S.C. 6901–6907. (In 2003, those payments totaled $2,050,000.)

Section 4130.8–3 Service Charge

The proposed rule removed the reference to conservation use in this section to conform to the Tenth Circuit

decision. We also proposed to raise service charges for issuing crossing permit, transferring grazing preferences, and canceling and replacing grazing fee billings.

The proposed rule provided for the following increases in service charges:

Action	Current service charge	Proposed service charge
Issue crossing permit	$10	$75
Transfer grazing preference	10	145
Cancel and replace grazing fee billing	10	50

Upon internal review, we have expanded the third action in the table to include a $50 fee for supplemental grazing fee billings, which BLM employs from time to time in lieu of canceling and replacing billings. The current regulations include a service charge for supplemental as well as replacement billings, so this change makes the final rule consistent with the current regulations except as to the amount.

Some comments generally supported increases in the service charges, stating that they would allow BLM's services to be self-supporting, or stating that the service charges should better reflect the costs of grazing administration. However, some of these comments objected to the size of the proposed increases. One comment stated that the maximum service charge should be $25. Another stated that increases ranging from 500 percent to 1,450 percent appeared excessive. Finally, one comment stated that the proposed service charges were too low, and suggested $275 for the issuance of a crossing permit, $2,045 for the transfer of a grazing preference, and $250 for the cancellation and replacement of a grazing fee billing, in order to shift the full cost of those services to permittees.

Some comments opposed service fee increases for a number of reasons. For example, they stated that increases would not improve working relations between BLM and permittees, would not address legal issues or administrative inefficiencies, and would be too expensive for operators to afford. One comment stated that BLM should reduce the costs of providing services rather than increasing service charges. Some comments objected specifically to the proposed service charge for issuance of a crossing permit. One comment stated that crossing permits merely authorize an operator access to his own allotment, and many such permits are consistent with historical usage and/or consent of neighboring operators. Some comments supported the increases for preference transfers and for canceling and replacing a grazing bill, but stated that increasing the service charge for crossing fees would provide operators a disincentive to report a need to cross lands occupied by others. These comments stated that BLM needs to know when operators are crossing public lands occupied by others, that there are safety concerns when operators trail livestock along highways, and that there may be concerns about insurance.

We believe the proposed service charges will not damage working relationships with permittees, will contribute to the goal of covering a portion of administrative costs, and will not likely lessen BLM's goal of protecting rangelands. We do not believe that operators will avoid contacting BLM for a crossing permit in order to avoid the service charge, since this could lead to a trespass violation with serious consequences. We also believe that the proposed service charges are reasonable, as required by Section 304(a) of FLPMA, 43 U.S.C. 1734(a). They range from $50 to $145, reflecting the processing costs associated with transactions that require BLM officers to engage in analysis and decisionmaking activities. Issuing a crossing permit involves analysis of terms and conditions for the grazing use that is incidental to a crossing. The transfer of a grazing preference requires findings with respect to base property, qualifications, and other matters. The $50 service charge for the cancellation and replacement of a grazing fee billing will be assessed only when a BLM officer must change a billing notice because a permittee or lessee files an application to change grazing use after BLM has issued billing notices for the affected grazing use. That service charge can be avoided altogether merely by applying to change grazing use, in those cases where a permittee knows of the grazing use change, before BLM issues the grazing fee billing for grazing use specified in the permit or lease. This typically occurs 30 days before the first grazing begin date listed on the permit or lease and 30 days after BLM has provided the operator a ''courtesy grazing application'' that lists grazing use shown on the permit or lease and invites application for changes in this use as may be needed or desired by the permittee or lessee. Additionally, BLM will not assess the service charge if, after a grazing fee billing is issued, BLM changes the grazing fee bill because we have approved an operator's grazing application not to use all or a portion of his preference for reasons of resource conservation, enhancement, or protection.

Some comments suggested that BLM add a service charge of $50 to $75 for filing a protest, and $100 to $150 for filing an appeal, in order to reimburse BLM for a portion of the initial costs of processing protests and appeals. One comment supported the proposed service charges, and suggested that BLM add a service charge of about $50 to accompany applications for cooperative agreements or permits for range improvements, stating that permittees and lessees would become more serious about implementing a project, having more invested in it.

Instituting additional service charges is not necessary or appropriate at this time. Parties, including permittees and lessees, may be discouraged from filing legitimate protests or appeals of grazing decisions if they have to pay service charges. Further, aggrieved parties do not generally have to pay service charges in order to seek administrative remedies in other BLM programs. Applications for range improvements should not be subject to service charges because range improvements are useful to BLM in rangeland management, and because the public receives more palpable benefits from range improvements than they do from crossing permits, transfers of grazing preference, or the cancellation and replacement of a grazing fee billing.

One comment stated that, instead of increasing service charges, BLM should increase grazing fees to fair market value because such fees would eliminate the need for the proposed service charges.

As previously stated, grazing fees and related issues are not being addressed in this rulemaking. BLM believes the proposed changes in service charges respond to the increasing need for cost recovery. Further, it would not be fair to operators who do not need to transfer their preference, obtain a crossing

permit, or ask for a rebilling, to subsidize those who do.

One comment urged BLM to clarify when BLM or the permittee will absorb charges for grazing fee billings under certain circumstances, for example, when permittees take temporary nonuse at the suggestion of BLM due to continuing drought.

Section 4130.8–3(b) in the proposed rule provides that BLM will not assess a service charge when BLM initiates the action. That provision is adopted as proposed. Thus, if BLM suggests temporary nonuse due to drought, there will be no service charge.

One comment noted the absence of specific information on the proposed increases in service charges.

In response to this concern, we included in the final EIS additional information on current average costs associated with the proposed service charges. Specific information on the average cost of issuing billings, free use permits, exchange of use permits, trailing permits, temporary non-renewable permits, and the average cost of processing preference transfers including issuance of a permit to a preference transferee with all NEPA compliance, ESA consultation, and protests and appeals, and data management support including GIS costs during Fiscal Year 2003, is found in Section 2.2.15 of the final EIS

Section 4140.1 Acts Prohibited on Public Lands

In the proposed rule, we amended the prohibition of the placement of supplemental feed on public lands in section 4140.1(a)(3) to make it clear that the prohibition applies if the placement of supplemental feed was without authorization or contrary to the terms and conditions of the permit or lease.

We also revised section 4140.1(b)(1)(i) to state that it is a prohibited act to graze without a permit or lease or other grazing use authorization and timely payment of grazing fees. We also amended paragraph (b) to make it clear that the acts listed in the paragraph are prohibited on all BLM-administered lands, rather than that the acts are prohibited if they are related to rangelands.

We amended section 4140.1(c) to limit its application to prohibited acts performed by a permittee or lessee on his allotment where he is authorized to graze under a BLM permit or lease. It pertains to violations of certain Federal or State laws or regulations, including placement of poisonous bait or hazardous devices designed for the destruction of wildlife; pollution of water resources; and illegal removal or destruction of archeological or cultural resources. It also pertains to the violation of specific laws and regulations including the Bald and Golden Eagle Protection Act, ESA, and any provision of the regulations concerning wild horses and burros, and to the violation of state livestock laws or regulations relating to branding and other livestock related issues. We retained the provisions that allow us to withhold, suspend, or cancel all or part of a grazing permit if the lessee or permittee is convicted of violating any of the prohibited acts in paragraph (c).

Many comments supported the proposed changes to the section on prohibited acts. They agreed that BLM should only enforce actions against permittees if the violations occur while grazing on their permitted allotments. Many comments stated that the proposed changes will promote better cooperation with operators.

Many comments opposed the changes in section 4140.1 that applied civil penalties only if the acts prohibited took place on the allotment that was subject to the permit or lease. They stated that permittees and lessees should be subject to civil penalties set forth in section 4170.1–1 for performance of prohibited acts in section 4140.1 on any public lands, not just those public lands that are part of their grazing permit or lease. The comments gave a number of reasons for this view. They stated that this policy seems inconsistent with the stated intent of the rule to promote strong partnerships with good stewards of the land by development of simple and practicable ways to attain our shared purpose of sustaining open space, habitat, and watershed values; permittees should be held accountable and responsible for all local, state, and Federal resource-related laws; it weakens BLM's enforcement of terms of its own leases and permits; it has a negative effect on wildlife and their habitats and could lead to the degradation of resources; no analysis is provided for the validity of or necessity for the provision; it makes it easier for permit holders to violate environmental laws without fear of repercussions to their permit; it should require tougher enforcement, not more lenient enforcement; a convicted criminal should not be able to hold a grazing permit; and BLM should discontinue leasing to individuals who violate BLM requirements on their allotments.

We intend the change in this provision to clarify whether or not the performance of the prohibited act must occur on the allotment for which the permittee or lessee has a BLM permit or lease. There is also some concern that some of the laws and regulations identified in this category of prohibited acts could result in penalties against permittees and lessees that are unfair because they involve a secondary penalty for a violation of a law or regulation whose primary enforcement is by another agency, with its own separate statutory enforcement and penalty authorities. BLM permittees and lessees are still accountable and responsible for violations of local, state, and Federal resource-related laws, since they are subject to these other penalties for violations of the acts listed in section 4140.1(c). These other penalties will still serve as a deterrent to violation of the prohibited acts. In addition, if the violation occurs on the allotment of the BLM permittee or lessee, that person is subject to the penalties in subpart 4170. The amendment in section 4140.1(c) has no effect on enforcement of violations occurring on the permittee's or lessee's allotment. BLM has not frequently had need to apply this provision of the grazing regulations in the past. A prospective permittee or lessee must meet the requirements stated in section 4110.1 and have a satisfactory record of performance under section 4130.1–1(b). The permittee or lessee must have substantial compliance with the terms and conditions applied to their grazing permit or lease and with the rules and regulations applicable to that permit or lease. The overall purpose for our amendments of the grazing regulations, including those in this section, is to develop strong relationships with all partners. As to whether or not a convicted criminal should be able to hold a permit, as we stated earlier, it is not Federal or BLM policy to exclude a person who has been convicted of a crime, paid his penalty or served his sentence, and been rehabilitated, from gainful employment.

Comments stated that the rule should not prohibit failure to make grazing use as authorized for 2 consecutive fee years, saying only that the provision does not make sense. A second comment recommended that BLM amend the provision that prohibited failure to make substantial grazing use as authorized for two consecutive fee years. The comment cited the proposed rule provision that states ''the BLM may deny nonuse if the permittee cannot justify that nonuse is for resource stewardship,'' and recommended that the rule provide a clear exception if nonuse would be beneficial for listed or sensitive species and their habitats.

Another comment stated that the rule should not cancel permitted use for failure to make substantial use as authorized or for failure to maintain or

use water base property because threats to cancel use present an obstacle to developing a financial plan acceptable to a lender.

The prohibition of failing to make grazing use as authorized for 2 consecutive fee years ensures that those who acquire grazing permits or leases will use them for the purposes intended, namely to graze livestock. Originally, the purpose of this regulation was to discourage acquisition of base property and grazing permits or leases by land speculators whose primary business was not livestock-related. It may now also be applicable to those who acquire ranch base property and a permit or lease, yet do not graze so that their permitted allotments are ''rested'' from grazing, ostensibly realizing conservation benefits. Failing to make grazing use as authorized for 2 consecutive fee years would occur when a permittee or lessee does not obtain BLM approval for nonuse of his permit or lease and does not graze livestock as authorized by his permit or lease for 2 years in a row.

BLM believes the rule, and the proposed changes, are rational and do not constitute any threat to operators' finances. Failure to make substantial grazing use as authorized for 2 years, and failure to maintain or use water base property, are listed as prohibited acts so that BLM can ensure that permittees are grazing at authorized levels. This helps ensure accurate monitoring and data collection, and in general supports management of the public lands. The provision is also helpful in recognizing whether someone does not intend to graze livestock. Such recognition can be applicable to BLM's implementation of FLPMA, which designates livestock grazing as a ''principal or major use'' of public lands. 43 U.S.C. 1702(*l*).

No amendment of this provision is necessary. Under the final rule, the authorized officer may grant nonuse for the number of years needed to provide for natural resource conservation, including threatened and endangered species. The present regulations that limit BLM's ability to allow for annual temporary nonuse for more than 3 years were changed. Under the final rule, temporary nonuse can be approved annually for longer than 3 years. BLM believes it is important to require an annual request for temporary nonuse. The annual review process allows BLM to assess the reasons for the request and to gauge the success of range recovery (if temporary nonuse was issued for resource conservation purposes). To do otherwise could lead to less active BLM oversight and management of public lands. The provision that prohibits failure to make substantial grazing use as authorized for 2 consecutive years applies to situations where a nonuse application has not been approved.

Several comments stated that BLM should not make it a prohibited act to place supplemental feed on public lands without authorization, asserting that BLM has no personnel who are knowledgeable in livestock nutrition.

The prohibition on placing supplemental feed on public lands without authorization is already stated in the regulations; it is not new in this rule. This rule does, however, add a reminder that information regarding the authorization of placement of supplemental feed on public lands may be in the terms and conditions of the permit or lease, and those must be adhered to as well. We disagree with the assertion that BLM has no personnel knowledgeable in livestock nutrition. One of the intents of the prohibited act on placing supplemental feed on public lands without authorization is to manage distribution of livestock for improved livestock and rangeland management on an allotment. The requirement for BLM authorization of supplemental feeding should reduce the risk of spread of noxious weeds and other undesirable exotic plants that could be introduced by supplemental feeding. Also, supplemental feeding can influence diet selection of the livestock among established plant species, and thus potentially change plant species composition on the allotment.

Comments stated BLM should not make it a prohibited act for a permittee to violate Federal or state laws relating to placement of wildlife destruction devices, pesticide application or storage, alteration or destruction of stream courses, water pollution, illegal take, harassment or destruction of fish and wildlife, or illegal removal or destruction of archaeological resources. The comment stated that these provisions will tend to remove permittees from Federal lands.

BLM disagrees entirely with the implication of the comments that unless permittees are allowed to perform these acts, they will be driven from public lands. The vast majority of BLM permittees and lessees do not perform these acts and yet are able to maintain commercial livestock enterprises that depend upon grazing use of public lands. Such acts can have a negative impact on the natural resource values of the allotment.

One comment stated that BLM should not make it a prohibited act for a permittee to violate state brand laws because BLM does not have authority to enforce state brand laws.

BLM agrees it does not have the authority to enforce state brand laws. A permittee or lessee who violates state brand laws would be subject to state penalties enforced by the state, as well as the Federal penalties set forth in this rule. BLM believes that violation of state brand laws is a significant infraction that warrants the penalties as stated in the grazing regulations. While states enforce their respective brand laws, compliance with such laws is also an integral part of a permittee's operations on public lands, and facilitates BLM's own management of public lands. Section 4140.1(c)(1)(ii) makes it clear that being convicted under the state enforcement authority is a condition precedent for being found in violation of this prohibited act. This provision will not be removed from the rule.

Several comments recommended that BLM adopt as a prohibited act the provision set forth in Alternative 3 of the EIS: ''Failing to comply with the use of certified weed-seed free forage, grain, straw or mulch when required by the authorized officer. Comments expressed concern about the adverse impacts of invasive plants on native ecosystems, and stated that such a provision would contribute to the ongoing efforts to control the alarming invasion and spreading of exotic and noxious plant species and would benefit wildlife and watersheds.

BLM has decided not to pursue adding a prohibited act to section 4140.1(b) addressing non-compliance with weed-seed free forage requirements on public lands at this time. We agree that promoting the use of weed-seed free forage products on public land will help control the introduction and spread of invasive and noxious plants. BLM will continue to develop and implement a nationwide weed-seed free forage, grain, and mulch policy for the public lands, working closely with state and local governments. We will also continue to implement our Partners Against Weeds strategy plan, which includes measures for controlling and preventing the spread and introduction of noxious and invasive weeds.

One comment from a state department of agriculture urged BLM to remove all of section 4140.1(c) of the proposed rule. The comment stated that, if a permittee or lessee were convicted of a crime and paid the consequences under that conviction, any additional penalties imposed by BLM or another entity would be arbitrary, and that there are other ways to encourage good stewardship of the public lands.

The intent of section 4140.1(c), as amended by this rule, is to help enforce provisions of prohibited acts that would

affect the integrity of natural resources on the allotment on which the permittee or lessee has a grazing permit or lease. Stewardship of the land includes protection of endangered species and wildlife, protection from pollution by hazardous materials, protection of streams and water quality, and protection of cultural resources. In this rule, as explained above, we have limited the scope of paragraph (c) to actions on the allotment in question.

One comment suggested reorganizing section 4140.1(c) of the proposed rule so that the Bald and Golden Eagle Protection Act (BGEPA) and State livestock laws and regulations are not contained in the same numbered paragraph (3), even though they are in separately numbered subparagraphs (i) and (ii). The comment stated that there was no nexus that justified their designation together under paragraph (3).

We have not adopted this comment in the final rule. There is no basis for changing the organization of section 4140.1(c)(3). There is no qualitative difference between numbering the references to the BGEPA and the state livestock laws (c)(3) and (c)(4)), respectively, and numbering them (c)(3)(i) and (c)(3)(ii). The nexus between them, if any were needed, is that the same penalty applies.

One comment stated the proposed rule implies that a permittee convicted of violating the BGEPA on any lands outside his BLM grazing permit boundary would not risk loss of grazing privileges. The comment noted that the BGEPA (16 U.S.C. 668(c)) provides specifically for revocation of permits for violations of the BGEPA regardless of where the violation occurs (i.e., the violation does not have to occur within the grazing permit boundary), and stated that the grazing rule should be consistent with the BGEPA.

The BGEPA provides authority for the Director of BLM to impose a penalty of immediate cancellation of leases, licenses, permits, or agreements authorizing livestock grazing on Federal lands for violations of the BGEPA. The statute, however, leaves the decision of whether to cancel a lease, license, permit, or agreement to BLM's discretion. The final rule does not alter BLM's discretionary authority granted under the BGEPA, but would clarify and limit BLM's enforcement authority under its grazing regulations by limiting its application to prohibited acts performed by a permittee or lessee on his allotment where authorized to graze under a BLM permit or lease. BLM permittees and lessees are still accountable and responsible for violations of the BGEPA, which carries civil and criminal penalties other than permit or lease cancellation (16 U.S.C. 668(a) and (b)). These other penalties will still serve as a deterrent to violation of the BGEPA on areas other than the allotment where the permittee or lessee is authorized to graze.

Another comment expressed the broader concern that the rule does not provide for revocation of a permit when a prohibited act occurs outside of the grazing permit boundary. The comment stated that this contradicts the stated objectives of the proposed rule: To improve cooperation, promote practical mechanisms for assessing rangeland change, and enhance administrative efficiency. Further, the comment stated that the rule may result in more livestock trespass violations on Fish and Wildlife Service refuge lands. The comment noted that the current rule, which allows BLM to determine whether cancellation or suspension of a permit is appropriate, likely helps deter trespass violations.

Finally, the commenter stated that the FEIS should report the miles of boundaries shared by BLM grazing allotments and refuge land and assess the implications of the proposed rule for the FWS mission.

BLM believes it is appropriate that penalties applied to grazing permits be directly linked to the abuse of the permission being granted by the permits. In BLM's view, the most effective and direct deterrent to livestock trespassing onto refuge lands or any other Federal lands is for the managers of those lands to take action directly against the violator. This is preferable to relying upon ''secondary'' sanctions against the violator's BLM permit.

BLM does not disagree that the threat of additional penalty against an operator's BLM permit for violation of another Federal or state agency's regulations has deterrence value. Violations of Federal and state law and regulation already carry penalties. To include an additional penalty in the grazing regulations unintentionally and unfairly treats grazing permittees inequitably. The 1995 regulations single out a particular use for additional penalty to which other violators are not subject. We do not expect that the proposed change will have any effect on lands adjacent to BLM-managed lands. Furthermore, as noted above, existing law should be sufficient to protect against trespass. BLM remains committed to cooperating with other Federal and state land managers on a case-by-case basis to address incidents of livestock grazing trespass.

Finally, the final rule does not prevent BLM from penalizing a permittee if the permittee unlawfully trespasses on another allotment. Nor does the final rule prevent BLM from penalizing a permittee by altering his permit if he is convicted of destroying government property on Federal lands other than on his allotment (section 4170.1).

One comment suggested that the regulations should provide that any grazing use that was canceled as a penalty is available to other applicants.

Grazing permits and leases that are canceled due to noncompliance with terms and conditions of a permit may be available under section 4130.1–1 to other qualified applicants who apply for grazing use on that allotment.

Subpart 4150—Unauthorized Grazing Use

Section 4150.3 Settlement

In the proposed rule we amended section 4150.3 by adding a new paragraph (f) specifying that if a permittee or lessee obtains a stay of a decision that demands payment or cancels or suspends a grazing authorization, BLM will allow him to graze under his existing authorization pending resolution of the appeal.

In the final rule, we amended paragraph (f) to make it clear that ''this part'' refers to all of part 4100, for the benefit of readers who may not be familiar with CFR conventions. We also amended this paragraph to make it clear that BLM will allow grazing pending the completion of the administrative appeal process, rather than judicial appeals.

A few comments addressed this section of the proposed rule. One urged BLM to change the regulations to provide that a nonwillful livestock grazing use violation can only occur upon a finding that a volitional act and/or an act of negligence by the permittee or lessee (or an affiliate) caused the violation. It stated that section 4150.3 should provide that an act of negligence by the permittee or lessee is required as a precedent to a finding of nonwillful livestock grazing trespass, so that BLM does not cite permittees and lessees for trespass when, for example, livestock stray from their authorized pasture because another party left a gate open.

BLM disagrees with this view. Nonwillful unauthorized grazing use occurs when the operator is not at fault, such as when cattle stray from their authorized place of use because a third party left a gate open. In contrast, willful unauthorized grazing use occurs, for example, when the use results from a volitional act and/or act of negligence

committed by a permittee, lessee, or affiliate. The grazing regulations continue to provide that, under certain circumstances, nonwillful violations are eligible for nonmonetary settlement. It also remains a prohibited act under the grazing regulations for any person to fail to re-close any gate or livestock entry during periods of livestock use.

Another comment urged that we add language to section 4150.3(e) to clarify that BLM cannot withhold a grazing authorization unless: (a) Attempts at settlement have failed; (b) BLM has issued a decision that finds there has been a violation, demands payment for the amounts due, and provides that grazing will not be authorized until payment has been received; and (c) any petition for stay of such a decision has been denied. The comment stated that some BLM offices have been withholding grazing authorizations based on allegations of trespass that have not been finally determined upon review, and that this is contrary to legal administrative procedure.

BLM agrees that the regulations require clarification on this matter. Some BLM field staff persons have erroneously interpreted section 4150.3(e) to mean that they must refuse to process grazing applications of and issue grazing fee billings to an alleged trespasser during the period after BLM has issued a decision demanding payment but before the decision has been finally determined upon review. The proposed rule included new § 4150.3(f) providing that, should a decision issued under section 4150.3(e) that demands payment for outstanding unauthorized use fees and penalties be administratively stayed, BLM will authorize grazing under the regulations pending resolution of the appeal. BLM may not withhold authorization to graze under this section unless BLM has issued a decision under subpart 4160 demanding payment for the amount due, the decision is in effect, and the amount has not been paid.

One comment urged BLM to provide in the regulations for mandatory cancellation or suspension of grazing authorizations, or denial of applications for grazing use, if permittees or lessees fail to pay trespass fees and fines that BLM finds are due under section 4150.3, so that the permittee or lessee does not unduly evade or delay payment.

The regulation referenced by the comment provides that ''[t]he authorized officer may take action under subpart 4160 to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid.'' This regulation gives BLM permission to take action under 4160—in other words, issue a grazing decision—in this circumstance. Subpart 4160 requires BLM to issue a grazing decision, with right of protest and appeal, to cancel or suspend grazing authorizations or to deny approval of applications for grazing use. BLM sees no need to mandate that failure to pay trespass fees will result in suspension. Facts and circumstances in each trespass case are unique, and BLM prefers to retain its discretion to determine when it would be appropriate to cancel or suspend a permit or lease.

Subpart 4160—Administrative Remedies

Section 4160.1 Proposed Decisions

Existing section 4160.1(c) provides that an authorized officer may elect not to issue a proposed decision where he has made a determination in accordance with section 4110.3–3(b) or section 4150.2(d), which allow under certain circumstances the authorized officer to make a decision effective upon issuance or a date specified in the decision. The final rule amends section 4160.1(c) to reflect the addition of section 4130.6–2(b) in this rule, and the addition of section 4190.1(a) in a previous rulemaking (68 FR 33804, June 5, 2003). The final rule now includes cross-references to all BLM grazing regulations allowing decisions to be made effective upon issuance or a date specified in the decision.

We also proposed to amend this section to provide that a BA or BE that BLM prepares for purposes of the ESA (16 U.S.C. 1531–1544) is not a proposed decision for purposes of a protest to BLM, or a final decision for purposes of an appeal to OHA under the TGA. Pursuant to the Secretary's supervisory authority, this provision prospectively supersedes the decision in *Blake* v. *BLM*, 145 IBLA 154, 166 (1998), *aff'd,* 156 IBLA 280 (2000), which held that the protest and appeal provisions of 43 CFR subpart 4160 apply to a proposed change in a permit or lease evaluated in a BA or BE.

Proposed section 4160.1(d) provided that a BA or BE prepared for purposes of an ESA consultation or conference is not a decision for purposes of protest or appeal. The final rule clarifies the proposed rule by adding the words ''by BLM'' after the word ''prepared.''

Comments opposed this section and stated that it effectively eliminates all administrative appeals of grazing permit or lease terms and conditions that result from a BA and related BO. Other comments said that where the terms and conditions of a grazing lease or permit were required by a BO, the terms and conditions should be subject to appeal if they were substantially the same terms and conditions submitted by BLM in a BA or BE. Both the TGA, 43 U.S.C. 315, and the APA, 5 U.S.C. 551 *et seq.*, provide for administrative appeals, comments noted.

Other comments pointed out that proposed section 4130.3(b)(1) presented similar problems. That section states that permit or lease terms and conditions may be protested and appealed unless they are not subject to review by OHA. This would include grazing permit or lease terms and conditions required as a result of ESA consultation. Comments opposed this provision, arguing that it denied permittees and members of the public opportunities to correct mistakes in an agency BE.

Regulations at 50 CFR 402.02 and 402.12 make it clear that a BA or BE is an intermediate step that BLM will take in assessing its obligations under the ESA, and thus is not subject to appeal. A BA or BE does not grant or deny a permit application, modify a permit or lease, or assess trespass damages, which are examples of BLM decisions that are subject to appeal.

A BA or BE is not a proposed decision for purposes of a protest to BLM, or a final decision for purposes of an appeal to OHA under the TGA. The final rule at section 4160.1(d) prospectively supersedes a requirement imposed by IBLA in *Blake* v. *BLM*, 145 IBLA 154 (1998), *aff'd*, 156 IBLA 280 (2002), that BLM issue a BE or BA as a proposed decision that may be protested and appealed (as if it were a grazing decision), even though a BE or BA does not take action, require action, or implement anything.

As explained in the preamble to the proposed rule at 68 FR 68464, a BA or BE is a tool that FWS and NOAA Fisheries use to decide whether to initiate formal consultation under Section 7 of the ESA. Formal consultation results in a BO prepared by FWS. TGA Section 9 hearings are administered by OHA, a body that has been delegated authority regarding public land use decisions, but has not been delegated authority over FWS actions. *See* Secretarial Memorandum of January 8, 1993 (Secretary Lujan); Secretarial Memorandum of April 20, 1993 (Secretary Babbitt). The ESA does not require or authorize the creation of an administrative appeal procedure for biological opinions, and instead authorizes direct suit in a Federal court. 16 U.S.C. 1540(g). A BO may be challenged in Federal court under the APA. *Bennett* v. *Spear*, 520 U.S. 154,

178 (1997). Thus, direct legal remedies are already in place and OHA has not been delegated administrative review authority over BOs issued by FWS.

OHA's review is limited to the merits of the BLM decision and can not extend to the validity of the BO findings or the FWS procedures used to produce the opinion. This final rule does nothing to change this longstanding policy, which is summarized in Secretary Lujan's memorandum as follows: ''In summary, OHA has no authority under existing delegations to review the merits of FWS biological opinions. Any review of biological opinions would necessarily be limited to the federal district courts pursuant to Section 11(g) of the ESA. The longstanding administrative practice of not providing OHA review of the biological determinations of the FWS under the ESA, the specific remedies provided by the ESA itself, and the need for expedited treatment, all militate against a change to the existing delegations.''

One comment stated that BLM should clarify exactly which terms and conditions in a permit or lease resulting from a biological opinion may be appealed to the Office of Hearings and Appeals (OHA).

Section 4130.3(b)(1) of the proposed rule included a provision that specified that the terms and conditions mandated by a biological opinion are not subject to review by OHA. BLM intends to drop this provision in the final rule. The regulatory language in the proposed rule at section 4130.3–3(b) reflected Departmental policy as explained in two 1993 Secretarial memoranda. These memoranda state that the OHA does not have the authority to review biological opinions. Such review is provided by the Federal Courts through Section 11(g) of the ESA. Although we have removed proposed paragraph (b)(1) in the final rule, BLM is not changing its longstanding policy. BLM is dropping proposed paragraph (b)(1) because the Secretarial memoranda are sufficient.

Another comment stated that an appeal to OHA should not be allowed as to stipulations resulting from interagency programmatic consultations, or from interagency coordination intended to substitute for formal consultation. The comment stated that if these stipulations could be removed through appeal, it may be necessary to re-initiate formal consultation or renegotiate interagency agreements, which would negate the streamlining efforts by both BLM and the FWS.

Issues of OHA jurisdiction are better addressed in the OHA regulations or through Secretarial directives. BLM must avoid jeopardizing the continued existence of any listed species, and will formally consult with the FWS and the National Marine Fisheries Service whenever appropriate.

One comment suggested that the rule be amended at section 4160.1(d) to state that, although biological assessments are not decisions that can be protested or appealed, the facts and findings of biological assessments may be challenged in a grazing protest or appeal.

Section 4160.1(d) states that a BA prepared for the purposes of an ESA consultation or conference is not a decision for purposes of protest or appeal. This provision ensures consistency with the ESA regulations, such as 50 CFR 402.02 and 402.12, which define BAs as documents that evaluate the potential effects of an action or management proposal on listed or proposed species and designated or proposed critical habitat. BAs are not documents that authorize an action. Therefore, BAs cannot be protested or appealed. BLM believes that the language in the final rule at section 4160.1(d) is clear and appropriate in this regard, and we have not adopted the comment in the final rule.

One comment stated that whether grazing may continue while an administrative stay is in effect is a decision that should be based on what is best for the resource. A similar comment stated that maintaining or improving rangeland health should be the overriding concern in grazing management, including how the range is managed during appeal. Another comment asked specifically that BLM clarify how threatened and endangered species would be protected when grazing continues during OHA consideration of an appeal, and how any loss of species or habitat would be remedied once the appeal is resolved.

The proposed rule recognizes the continuing nature of grazing operations and is consistent with the Administrative Procedure Act requirement that ''a license with reference to an activity of a continuing nature'' does not expire until an agency makes a new determination (5 U.S.C. 558). In light of this, section 4160.4(b) provides that grazing may continue when a decision affecting a grazing permit or lease has been stayed by OHA. BLM believes that actively managing the use of the rangelands and not automatically halting grazing when a stay is issued is consistent with BLM's obligations under FLPMA and the TGA.

In response to comments, BLM plans to limit the application of paragraph (b) to certain types of grazing decisions—

- Those that cancel or suspend a permit or lease, or change any term or condition during its current term or renew a permit or lease,
- Those that issue or deny a permit or lease to a preference transferee; or
- Offer a preference transferee a permit or lease with terms and conditions that differ from those in the previous permit or lease.

In addition, BLM is entirely removing proposed section 4160.4(c) from the rule.

BLM agrees that the condition of the rangeland and protection of species listed under the ESA must be considered in making grazing decisions and in instances where there is a stay of a decision. BLM takes these matters into account in making grazing decisions and, when necessary to protect resources or species, can issue a decision that is effective immediately (section 4110.3–3(b)(2) in the final rule). The IBLA also has the flexibility to issue a stay in whole or in part so that resources and species may be protected (43 CFR 4.21(b)(4)).

Section 4160.37 Final Decisions

We proposed to amend section 4160.3 by moving the discussion of appeal procedures in paragraph (c) to, and combining it with, existing section 4160.4 as a new paragraph (a).

We also moved and revised paragraphs (d) and (e) of section 4160.3, regarding grazing use when OHA has granted a stay of a final grazing decision, to section 4160.4.

In the final rule, we have added necessary cross-references to paragraph (c) to conform the paragraph to changes made in other sections in this rule and in a previous final rule (68 FR 33804, June 5, 2003). The final rule now includes cross-references to sections 4110.3–3(b), 4130.6–2(b), 4150.2(d) and 4190.1(a), all of which allow under certain circumstances for a decision to be made effective upon issuance or a date specified in the decision.

Comments urged that BLM amend section 4160.3 so that the authorized officer cannot make decisions adverse to the livestock grazing permittee or lessee effective immediately unless he has found after a hearing on the record that the current authorized grazing use poses an imminent likelihood of irreparable resource damage. The comment also recommended that BLM be barred from making a decision effective immediately before the hearing unless the authorized officer declares an emergency, after having applied the IBLA standards for a

stay found in 43 CFR 4.21(b)(1), in which case the decision would be in effect only for the 30-day period allowed for filing an appeal. In addition, the comment recommended retaining the consultation requirements already proposed for section 4160.1. The comment contended that BLM grazing decisions over the past 10 years have not been based on state of the art rangeland studies, and that the OHA regulations misplace the burden of proof on appellants in justifying stays.

We have not amended the section 4160.3 in the final rule in response to these comments. Consultation, cooperation, and coordination with affected permittees and lessees are already required before active use can be decreased. See 43 CFR 4110.3–3. Further, any reduction in active use must be issued as a proposed decision, subject to a possible protest before it is finalized, unless the authorized officer documents the emergency-type situations listed in section 4110.3–3(b)(1). A decision may also be appealed after it is finalized, and a stay of the decision may be sought. Thus, the current requirements provide ample opportunity for affected permittees and lessees to participate in the decisionmaking process. Adding a pre-decisional hearing based on the OHA stay standards would unnecessarily limit BLM's ability to respond in a timely manner to changing range conditions.

A number of comments addressed proposed section 4160.3. That section provided that, notwithstanding section 4.21(a), BLM may provide that a final decision shall be effective upon issuance or on a date established in the decision when BLM has made a determination under sections 4110.3–3(b) or 4150.2(d). (The latter two provisions authorize final decisions effective upon issuance where reductions in permitted use or temporary closures are necessary.)

Comments expressed the opinion that BLM decisions, as a general matter, should be suspended pending resolution of an appeal. Comments acknowledged that special circumstances could apply, such as the likelihood of irreparable resource damage, to render a decision effective during this time.

The comments, if adopted, would, in effect, revive the provisions of section 4.21(a) as they existed before its amendment on January 19, 1993, at 58 FR 4939. Prior section 4.21(a) provided that ''except as otherwise provided by law or other pertinent regulation, a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal.'' (A grazing regulation similar to prior section 4.21(a) was changed in 1995.) This prior section was criticized because it allowed the filing of an appeal to halt agency action without regard to the merits of the appeal.

Current section 4.21 sets forth a general rule that suspends an agency decision for the 30-day period during which appellant may file an appeal and request for stay. An appellant seeking a stay must demonstrate, among other factors, the likelihood of success on the merits of the appeal. We believe this to be a superior rule. It allows agency decisions to go into effect reasonably quickly, but allows for a stay of such decisions upon a showing as to the likelihood of success on the merits and other requirements under section 4.21.

Proposed section 4160.3 acknowledges the vitality of current section 4.21(a) even as it sets forth an exception to its terms. Comments in favor of a general rule that would suspend a decision during appeal have not been adopted in the final rule.

Section 4160.4 Appeals

The proposed rule amended section 4160.4 by adding language clarifying the extent, if any, that grazing activities are permissible after OHA grants a stay of a grazing decision. We are adopting the proposed rule with revisions. We are also adopting regulations at 4130.6–2(b) that address grazing use following a stay of decisions regarding annual or ephemeral use and temporarily available forage.

The current regulations, at section 4160.3(d) and (e), specify a number of variables that determine the extent of grazing that will be allowed between the grant of an administrative stay and the resolution of an administrative appeal. For example, three of the variables in the current regulations are whether grazing was authorized in the preceding year, whether the decision is ''regarding an application for grazing authorization,'' and whether ''grazing use in the preceding year was authorized on a temporary basis under section 4110.3–1(a).'' 43 CFR 4160.3(d). If only the first two variables are present, the applicant may continue grazing use at the same level as the preceding year. However, if all three variables are present, the regulations imply (but do not expressly provide) that ''grazing use shall be consistent with the final decision pending the Office of Hearings and Appeals final determination on the appeal.'' *Id.*

Proposed section 4160.4 described the effects of a stay granted by OHA on a grazing decision under appeal, i.e., what happens when OHA stays implementation of a grazing decision. In three types of cases identified at paragraphs (b)(1), (2), and (3), the proposed rule provided that a rancher's immediately preceding authorization and any terms and conditions therein will not expire, and the permittee, lessee, or preference applicant may continue to graze under the immediately preceding grazing authorization, subject to the stay order and section 4130.3(b). Proposed paragraphs (b)(1), (2), and (3) described those cases that (1) change the terms and conditions of a permit or lease during the current term; (2) offer a permit or lease to a preference transferee with terms and conditions that are different from the permit or lease terms and conditions that are most recently applicable to the allotment or portion of the allotment in question; and (3) renew a permit or lease with changed terms and conditions.

The proposed rule also described four types of cases at paragraphs (c)(1), (2), (3), and (4) that call for BLM, upon the grant of a stay by OHA, to authorize grazing consistent with the final decision under appeal. Briefly stated, proposed paragraphs (c)(1), (2), (3), and (4) described those cases that (1) modify a permit or lease because of a decrease in available acreage; (2) affect an application for ephemeral or annual rangeland; (3) affect an application for forage temporarily available under section 4110.3–1(a); and (4) affect an application for a permit or lease not made in conjunction with a preference transfer.

Comments expressed support for proposed section 4160.4(b), stating that, in effect, the immediately preceding authorization would not be terminated, but would be extended for purposes of the stay. This is consistent with a stay allowing the status quo to continue, comments stated, and allows for continuity of operations when grazing decisions are appealed. Other comments thought that our use of the terms ''authorized'' and ''authorization'' in the proposed rule was confusing and should be clarified. We have clarified section 4160.4(b) in the final rule to reflect these comments. In the final rule, we state that, upon OHA's issuance of a stay of a decision described at paragraph (b)(1), BLM will continue to authorize grazing under the permit or lease that was in effect immediately before the decision was issued. Clarifying language has also been added to paragraphs (b)(2) and (b)(3). BLM believes it is important to actively manage the use of the

rangelands and not automatically halt grazing when a stay of a decision is issued. This approach recognizes the continuing nature of grazing operations that are authorized through permits and leases as contemplated in the APA (5 U.S.C. 558(c)).

We invited comment (at 68 FR 68465) on how we might effectively incorporate the provisions of the APA at 5 U.S.C. 558(c) and the APA judicial review ''finality'' provision at 5 U.S.C. 704. Section 558(c) provides in part, ''When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.'' The APA's exhaustion requirements are found at 5 U.S.C. 704. As explained in our proposed rule at 68 FR 68465, an agency action is not considered final for purposes of judicial review where the agency requires by rule that an administrative appeal to a superior agency authority be filed and provides that the agency action is inoperative while the appeal is pending.

A comment from OHA suggested elimination of proposed section 4160.4(c), stating that the rationale for authorizing grazing consistent with the stayed decision does not logically apply to the cases described at paragraphs (c)(2) and (c)(3), which address forage available on ephemeral or annual rangeland or ''temporarily available.'' Such forage is, inherently, not reliably available from year to year, and BLM allocates it on a short-term basis of a year or less. Decisions allocating this type of forage do not involve activity of a continuing nature under 5 U.S.C. 558(c). We agree with this comment, and have adopted section 4130.6–2(b) in lieu of proposed regulations at section 4160.4(c)(2) and (c)(3).

This same comment stated that it was difficult to evaluate proposed section 4160.4(c)(4) without knowing the full range of decisions to which it would apply, but that it seemed odd to provide for stay petitions in a given category of cases and also provide that, if a stay is granted in such cases, grazing will be authorized regardless of the stay. If an administrative process is worth having, the comment stated, effect arguably should be given to any stays that are granted.

Other comments expressed concerns about trying to identify the types of cases to which paragraphs (b) and (c) of section 4160.4 might apply. It is impossible to anticipate all types of appeals that might be encountered because grazing decisions do not fit neatly into one of the listed categories, these comments stated.

As a result of the concerns expressed in these comments, we have entirely removed proposed section 4160.4(c) from the final rule and limited paragraph (b) to apply to a very circumscribed set of circumstances. With the intention of simplifying these provisions, and improving administrative efficiency, we are revising the regulations proposed at section 4160.4(b) to address the following kinds of BLM grazing decisions:

- Those that cancel or suspend a permit or lease, those that renew a permit or lease, and those that modify terms and conditions of a permit or lease during its current term;
- Those that issue or deny a permit or lease to a preference transferee; and
- Those that offer a preference transferee a permit or lease with terms and conditions that differ from those in the previous permit or lease.

If a BLM decision renews, cancels, or suspends a permit or lease, or makes changes to terms and conditions of a permit or lease, and all or some of these changes are stayed by OHA pending appeal, then, under paragraph (b)(1), the affected permittee or lessee may graze in accordance with the comparable provisions of the immediately preceding permit or lease that were changed or deleted by the BLM decision under appeal, subject to any applicable provisions of the stay order.

Under paragraphs (b)(2) and (b)(3), stays of decisions relating to preference transfers are treated in an analogous manner. If the stay is of a decision issuing or denying a permit or lease to a preference transferee, BLM will issue the preference applicant a permit or lease with the same terms and conditions as the most recent permit or lease of that allotment or part thereof, under paragraph (b)(2). If the stay is of a decision issuing the preference transferee a permit or lease, but with changed terms and conditions, BLM will offer the permit or lease with those stayed terms and conditions stated as they appeared in the most recent grazing authorization pertinent to that allotment, under paragraph (b)(3).

So, although the grazing decision appealed is stayed, grazing can continue at the previous levels of use, as provided by the APA. This ensures that the decision appealed is rendered inoperative for exhaustion purposes under 5 U.S.C. 704 and the status quo prior to issuance of the decision appealed remains in effect. In the instance of an appeal and stay preventing implementation of a new grazing authorization, the fact that a permittee may still be authorized to graze at some level is not a function of the stayed decision being implemented, but is consistent with the APA's concept that existing authorizations remain in effect until an agency makes a final decision on a new authorization. It is worth noting that the APA provides at 5 U.S.C. 558(c) that existing authorizations remain in effect until an agency makes a final decision on a new authorization. BLM is making these changes to balance the exhaustion of administrative remedies under the APA and our responsibilities under FLPMA and TGA to—

- Manage lands for multiple use and sustained yield,
- Regulate the occupancy and use of the rangelands,
- Safeguard grazing privileges,
- Preserve the public rangelands from destruction or unnecessary injury, and
- Provide for the orderly use, improvement, and development of the range.

There is no need for a provision equivalent to proposed section 4160.4(c)(1) in the final rule. That paragraph provided that, notwithstanding a stay order by OHA, we would authorize grazing consistent with our decision that modifies a permit or lease because of a decrease in acreage available for grazing. On internal review, we found the proposed provision unnecessary in light of the provision in section 4110.4–2(b), which gives grazers a 2-year lag time to reduce grazing in decreased acreage situations.

In our proposed rule at 68 FR 68455, we noted that we were not addressing whether BLM would be assigned the burden of proof in appeals. A number of comments thought that this topic should have been addressed, and moreover that BLM should bear the burden of proof to support its decisions. Several cited the APA in support. Section 7 of the APA, 5 U.S.C. 556(d), provides that ''[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.''

We believe the comments lack merit for the reasons stated in our proposed rule. Each case must be analyzed on its own terms to determine the identity of the proponent of a rule or order. A one-size-fits-all rule would be difficult to craft. Case law of IBLA has answered this question in one context: Where a rancher is claimed to have allowed cattle to graze in trespass, BLM has the burden of proof. *BLM* v. *Ericsson*, 88 IBLA 248, 255, 261 (1985). However, as we pointed out in the proposed rule (68 FR 68456), if BLM denies a permit or lease to a new grazing applicant, that

applicant would have the burden of showing where BLM erred in its decision. See *West Cow Creek Permittees* v. *BLM*, 142 IBLA 224, 236 (1998).

One comment said that we should not have cited in our proposed rule a workers compensation board case when discussing who bears the burden of proof in grazing appeals.

We cited *Director, Office of Workers' Compensation Programs* v. *Greenwich Collieries*, 512 U.S. 267 (1994), in our proposed rule because it is a fairly recent case of the U.S. Supreme Court that examines section 7 of the APA in considerable detail. Section 7 is key to any decision assigning the burden of proof in a formal APA hearing.

A number of comments suggested that BLM consider imposing bonds on appellants who are not directly affected by a BLM decision in order to help pay for adverse economic impacts to permittees during the adjudication of an appeal. We have not adopted the comment.

In order for an appeal to be filed, the person or entity filing an appeal must be adversely affected by a decision of BLM. 43 CFR 4160.4. It is thus unclear who would have to obtain the bond suggested by comments. A bond is ordinarily required by BLM to protect the interests of the United States. In such a case, the holder of a permit would have to obtain a bond in order to secure the obligations imposed by the permit and applicable laws and regulations. See, e.g., 43 CFR 2805.12(g) (bonding for rights-of-way.)

One comment stated that only those individuals who are directly affected by a decision and can meet the standing requirements of 43 CFR part 4 should be able to appeal terms and conditions contained in a BLM grazing decision.

Regulations at 43 CFR 4.470(a) provide that any applicant, permittee, lessee, or any other person whose interest is adversely affected by a final decision may appeal to an administrative law judge. Thus, the requirement that an appellant be directly affected appears to be set forth in existing regulations. This requirement is also set forth in the standing regulations of IBLA, which require that an appellant be a party to the case and adversely affected by the decision on appeal. A party is adversely affected when that party has a legally cognizable interest and the decision on appeal has caused, or is substantially likely to cause, injury to that interest (43 CFR 4.410(d)).

One comment stated that BLM regulations should provide for independent science panels to examine and resolve grazing-related disputes.

We have not adopted this comment in the final rule. We believe that the formal APA hearing provided by the TGA, with its opportunity for presentation of evidence, cross-examination of witnesses, and decision by an impartial tribunal, provides an opportunity for the evidence, including scientific evidence, to be impartially examined.

It should be noted that there are mechanisms in place for providing science advice and input before the issuance of a proposed and final grazing decision. Existing regulations at 43 CFR 1784.6–1 and 1784.6–2 provide for the formation of a RAC, whose function is to ''advise * * * the Bureau of Land Management official to whom it reports regarding the preparation, amendment and implementation of land use plans for public lands and resources within its area.'' RACs, in turn, may provide for the formation of ''Rangeland Resource Teams,'' whose function is ''providing local level input to the resource advisory council'' regarding issues pertaining to the administration of grazing on public land within the area for which the rangeland resource team is formed. 43 CFR 1784.6–2(a)(1)(iv). While a rangeland resource team is not an independent science panel, one of its functions is to examine and provide the RACs advice regarding grazing-related disputes. The rangeland resource team, in turn, may request that BLM form a technical review team from Federal employees and paid consultants whose function is to ''gather and analyze data and develop recommendations [for consideration by the rangeland resource team] to aid the decisionmaking process * * *.'' Id. Ultimately, if BLM's decision is disputed despite the efforts and advice of these groups, it may be protested and appealed under subpart 4160 and part 4.

One comment said that BLM should add to its regulation a requirement that all parties in a dispute must first litigate under the OHA administrative process to allow field solicitors to develop and resolve cases before they are filed in Federal Court.

The comment is in effect asking for a regulation requiring exhaustion of administrative remedies. The APA addresses exhaustion at 5 U.S.C. 704, and OHA regulations cross-reference this provision. OHA's exhaustion requirement appears at 43 CFR 4.21(c) and 4.479(e). Those regulations state that no decision which at the time of its rendition is subject to appeal to OHA shall be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704, unless a petition for stay of the decision has been filed in a timely manner and the decision being appealed has been made effective pending the appeal. For further discussion of administrative exhaustion and judicial review, see the proposed rule at 68 FR 68465.

Subpart 4170 Penalties

Section 4170.1–2 Failure To Use

The proposed rule removed the term ''permitted use'' from this section and replaced it with the term ''active use'' to be consistent with the definitions in section 4100.0–5.

One comment addressed this section, stating that BLM should not cancel a permit or lease for failure to make substantial use as authorized or for failure to maintain or use water base property for 2 consecutive grazing fee years. The comment averred that this provision could be construed to mean that if a well on private property is not used for 2 years then BLM can cancel all or part of the lease. It went on to say that BLM through its regulations is placing an unfair burden on the lessee in his ability to obtain financing from a local lender, that BLM's threat to cancel or suspend active use creates a major obstacle in producing a feasible financial plan required by the lender, and that lenders would not be impressed with a plan that would force them to term out a loan over a period of time based on BLM's whim to create uncertainty and prevent a positive cash flow for the borrower.

BLM disagrees. As indicated by the TGA, Congress intends grazing permits and leases to be used for grazing purposes as ''necessary to permit the proper use of lands, water or water rights owned, occupied, or leased by'' the permittees or lessees. Failure of a permittee or lessee to maintain or use water base property in the grazing operation would indicate that the grazing operator is not making ''proper use'' of the water. Under these circumstances, it would be appropriate to revoke the grazing privileges that had been associated with that water, and to award them to someone who would maintain or use some other nearby water in the furtherance of his livestock operations. Agricultural lenders are, or should be, aware that retention of a BLM permit or lease is contingent upon the permittee or lessee complying with the grazing regulations that govern the permits and leases.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

Section 4180.1 Fundamentals of Rangeland Health

In the proposed rule, we revised the introduction of section 4180.1 to provide that BLM will take action to change grazing management so that it will assist in achieving the fundamentals only if there are no applicable standards and guidelines in place. Also, we amended the introduction to change the amount of time within which BLM would need to take action to ensure that resource conditions conform to the requirements of this section. In the proposed rule the deadline changed from not later than the start of the next grazing year to not later than the start of the grazing year following BLM's completion of action, including consultation under sections 4110.3–3 and 4130.3–3 and meeting all relevant and applicable requirements of law and regulations.

As a result of comments, we are amending section 4180.1 in the final rule to clarify the relationship between the fundamentals and the standards and guidelines. Specifically, we are replacing the first paragraph of the existing 4180.1 with the following: ''Standards and guidelines developed or revised by a Bureau of Land Management State Director under § 4180.2(b) must be consistent with the following fundamentals of rangeland health.'' The fundamentals themselves remain as approved in 1995.

This change recognizes the relationship of the standards and guidelines to the fundamentals. The fundamentals are broad national goals, whereas the standards are applicable at the local and regional level. The proposed rule would have restricted regulatory action under section 4180.1 to geographic areas without approved standards and guidelines. But these areas were already subject to the fallback standards and guidelines in section 4180.2.

Comments received highlighted that fallback standards and guidelines are in place if state or regional standards and guidelines have not been developed, and so application of the fundamentals is not necessary in those instances. Comments also characterized the fundamentals as encompassing critical requirements not included in all standards and guidelines. A more precise way to look at the fundamentals and the standards and guidelines is to examine the differing character of these provisions. Standards of land health are expressions of physical levels and biological condition, or the degree of function required for healthy lands and sustainable uses. These standards define minimum resource conditions that must be achieved and maintained. A guideline is a practice, method, or technique determined to be appropriate to ensure that standards can be met or that significant progress can be made toward meeting the standard. Guidelines are tools such as grazing systems, vegetative treatments, or improvement projects that help managers, permittees, and lessees achieve standards. A guideline may be adapted or modified when monitoring or other information has shown that the guideline is not effective, or that a better means of achieving the applicable standards is available. (BLM Handbook H–4180–1)

The 1994 Draft Environmental Impact Statement described the broad nature of the fundamentals, stating that they were intended to ''reflect the fundamental legal mandates for the management of public lands under the Taylor Grazing Act, FLPMA, Endangered Species Act, Clean Water Act, and other relevant authorities.'' (1994 Draft EIS, page 1–16.) The 1994 Draft EIS also described the fundamentals as providing the foundation for developing the standards and guidelines. The fundamentals were intended to ''establish clear national requirements for the preparation of State or regional standards and guidelines.'' (1994 Draft EIS, page 1–15.) BLM complies with these broad requirements in relevant laws and regulations through permit and lease terms and conditions.

Once the standards and guidelines were developed, they became the focus for assessing rangeland health, and for making determinations as to whether existing grazing management was a cause for not meeting standards and needed to be altered to achieve the locally applicable standards and guidelines. Since the adoption of state or regional standards and guidelines, BLM has relied on the standards and guidelines to evaluate rangeland health. BLM is not aware of instances where the standards and guidelines have not been relied upon. Before the regulatory deadline for completing state or regional standards and guidelines or the effective date of the fallback standards and guidelines (43 CFR 4180.2(f)), BLM could have invoked the requirement that it take ''appropriate action'' under section 4180.1 to make changes to grazing permits and leases. However, BLM has relied on the similar, so-called ''action forcing'' provision in section 4180.2 to change existing livestock management in order to achieve locally tailored state or regional standards and guidelines, or the fallback standards and guidelines, once state or regional standards and guidelines were implemented, or the fallbacks became effective as provided in the regulations. This is consistent with how BLM described the standards and guidelines when they were first proposed in 1994—i.e., as functioning to ''focus BLM's management direction, promote biological diversity, and improve agency efficiency in meeting management objectives.'' (1994 Draft EIS, page 4–39.)

Standards describe the biological and physical conditions that can be assessed to determine rangeland health, and guidelines are designed to aid BLM in determining appropriate grazing management. The fundamentals, in contrast, are designed as broad, overarching goals, and reflect such relevant laws as the Clean Water Act, TGA, FLPMA, and the Endangered Species Act. Compliance with these laws already occurs through appropriate terms and conditions.

Although the 1995 rule established requirements for ''appropriate action'' when either the fundamentals or established standards and guidelines were not being met because of existing grazing, the redundancy of requiring ''appropriate action'' in both circumstances is unnecessary and inefficient, and impedes implementation. The current regulations are inefficient and imprecise and, as a result, difficult to administer. The broad description of condition and general ecological processes set forth in the fundamentals make it very difficult to link these broad characteristics to a determination that livestock grazing is the cause of these watershed or ecological process conditions. As discussed previously, standards set forth a descriptive condition of expected rangeland health, and guidelines describe methods, practices, or techniques to meet standards. Fundamentals, on the other hand, are broad goals that are less susceptible to clear linkage to just one use.

Standards and guidelines have been developed in conformance with the fundamentals and adopted for all states and regions except southern California. These standards and guidelines provide the basis for the application of the broadly stated fundamentals to the management of public lands. In southern California, the fallback standards and guidelines provide for the application of the fundamentals to those public lands. Because the standards and guidelines are meant to provide specific measures for achieving healthy rangelands within the framework of the broad fundamentals, a duplicate

administrative mechanism to require ''appropriate action'' under the fundamentals is unnecessary.

The final rulemaking recognizes the relationship of the standards and guidelines to the fundamentals. We do not anticipate an adverse environmental impact from the fundamentals provision, as revised, but rather anticipate overall long-term improvements in rangeland conditions. This is based on the continued application of the standards and guidelines, continued relevance of the fundamentals when standards and guidelines are developed or revised, continued application of relevant laws that were the basis for the fundamentals, and continued use of the fundamentals to identify general characteristics of a functional rangeland ecosystem in broad land use plans and allotment management plans.

BLM will ensure that any standards and guidelines developed or revised are consistent with the fundamentals, which remain unchanged from 1995. By requiring newly developed or revised standards and guidelines to be consistent with the fundamentals, the final rule will provide clear guidance for any future effort to develop or revise the standards and guidelines. BLM will continue to utilize the standards and guidelines to assure that livestock grazing is conducted consistently and in accordance with principles already being used in rangeland ecosystems.

In the final rule, in response to public comments as discussed below, we have also amended paragraph (d) to remove the reference to ''at-risk'' species.

Some comments expressed concern that BLM was replacing the fundamentals of rangeland health in section 4180.1 with the rangeland health standards in section 4180.2. The reasons given for concern were: (1) BLM might no longer take action if we determined that conditions expressed as fundamentals of rangeland health did not exist; (2) BLM would not be able to evaluate the effectiveness of state or regional guidelines; and (3) land health standards would take precedence over the fundamentals.

Land health standards do not replace or take precedence over the fundamentals of rangeland health, but further define the conditions that must exist in order to achieve fundamentals of rangeland health at the local or regional level. The effectiveness of state or regional guidelines will be determined by evaluating whether or not standards are met when the guidelines are followed. The purposes of the change in section 4180.1 are—

- To make it clear that the fundamentals are the overarching principles that managers aspire to meet when devising standards and operating under guidelines in accordance with section 4180.2, and
- To remove an operational redundancy.

This redundancy in the current regulations requires BLM to do two things:

(1) To modify grazing practices or take other possible appropriate action when e determine that livestock grazing is a significant contributing factor to failing to meet one or more standards or conform with guidelines (the final rule retains this requirement), and

(2) To modify grazing practices or take other possible appropriate action when we determine that it is necessary to do so to ensure that the conditions described by the fundamentals exist (the final rule removes this requirement).

A comment suggested removing or revising section 4180.1 because, as framed in the current rules, the fundamentals do not conform to the concepts and parameters presented in the National Research Council's 1994 publication ''Rangeland Health, New Methods to Classify, Inventory, and Monitor Rangelands,'' and ''New Concepts for Assessment of Rangeland Condition'' (Journal of Range Management, SRM 48(3), May 1995). It also suggested that the Criteria and Indicators developed by the Sustainable Rangeland Roundtable be incorporated into subpart 4180.

BLM considered the National Research Council publication in 1995 in developing national requirements that describe the necessary physical components of healthy rangelands. (*Rangeland Reform '94 Final Environmental Impact Statement,* p13). These national requirements were retitled the ''fundamentals of rangeland health'' in the 1995 final rule (60 FR 9954). The Journal of Range Management article ''New Concepts for Assessment of Rangeland Condition'' provided a number of recommendations for assessing and reporting range condition based on ecological sites and ''Site Conservation Ratings.'' The fundamentals of rangeland health are not intended to describe a condition rating system; rather, they describe a threshold condition which either exists or does not exist. BLM has been a participant in the ''Sustainable Rangeland Roundtable,'' and the work of that group is ongoing. We have determined that further adjustments of the regulations to be consistent with the ''Sustainable Rangeland Roundtable'' products would be premature at this time.

Other comments suggested moving the fundamentals of rangeland health from the grazing regulations in subpart 4180 to the planning regulations in subpart 1610, stating that the fundamentals are clearly planning rather than management concepts. According to the comments, the move would accomplish the 3 criteria listed in the **Federal Register** (68 FR 68457): (1) Promoting cooperation with affected permittees, especially land owners; (2) promoting practical mechanisms for protecting rangeland health, and (3) improving administrative efficiencies.

As explained in the proposed rule (68 FR at 68457), we did not consider it appropriate to expand the scope of this rulemaking to address planning regulations at subpart 1610.

A number of comments addressed the references to ''at-risk and special status species'' and the ESA in subpart 4180. All suggested removing the term ''at risk species'' found in sections 4180.1(d), 4180.2(d)(4), 4180.2(e)(9), and 4180.2(f)(2)(viii) because it is not a term used or authorized in the ESA. Most expressed concern that including the term would lead to single species management when BLM should be managing for plant and animal communities and ecosystems. Some also suggested removing the term ''special status species'' for the same reasons.

FLPMA directs BLM to manage for multiple uses, including native vegetation communities, and food and habitat for wildlife as well as livestock. Even though it is preferable to manage native plant and animal communities or ecosystems, the ESA requires threatened and endangered species to be managed by BLM, species by species. ''Special status species'' is defined in BLM Manual 6840, Special Status Species Management, and includes listed, proposed and candidate species, state-listed species, and sensitive species. Considering ''other special status species'' in standards and guidelines (4180) will identify potential management opportunities to avoid future listing of state listed and sensitive species. Once a species is listed under the ESA, multiple use management becomes increasingly complex and uses of the public lands may become more restricted. Thus, BLM needs optimum habitat conditions for all special status species. However, because the term ''at-risk species'' is not defined in ESA or in BLM manuals or handbooks, we have removed it from the final rule. The rule retains the term ''special status species,'' because it is consistent with our

objectives in subpart 4180 and is clearly defined in BLM Manual 6840.

Section 4180.2 Standards and Guidelines for Grazing Administration

In the proposed rule we would have revised paragraph (c) of section 4180.2 to provide that we would require both assessments of standards attainment and monitoring to support a determination that grazing practices are a significant factor in failing to achieve, or not making significant progress towards achieving, rangeland health standards. We have amended this proposal in the final rule. Under the final rule, if a standards assessment indicates to the authorized officer that the rangeland is failing to achieve standards or that management practices do not conform to the guidelines, then he will use existing or new monitoring data to identify the significant factors that contribute to the failure or lack of conformance.

We also amended paragraph (c) in the proposed rule to provide that within 24 months following a determination that current grazing practices are a significant factor in failing to achieve or make progress towards achievement of standards and/or conform with guidelines, BLM will, in compliance with applicable law and with consultation requirements, analyze appropriate action and then issue a final decision regarding the appropriate action it intends to implement to remedy the failure to meet the standards and/or execute a documented agreement regarding the appropriate action with the permittee(s) or lessee(s) and the interested public. This change recognizes the decision process specified at subpart 4160 that BLM employs to implement management actions. This requirement to issue a ''final'' decision within 24 months recognizes that in most cases, in accordance with subpart 4160, BLM final decisions are preceded by proposed decisions that may be protested within 15 days of receipt, and that BLM then must address any protest in the final decision. The 24-month deadline within which BLM must issue a final decision (in the absence of, or in addition to, the execution of an agreement) is intended to accommodate both the 15-day protest period afforded to recipients of proposed decisions and the time needed for BLM then to address the protest and issue its final decision.

We are adopting the proposal in the final rule. BLM may extend the 24-month deadline when the legal responsibilities of another agency prevent completion of all legal obligations within the 24 months. We made this change to allow for the infrequent occasions when additional time is needed to fulfill required legal and consultation obligations that are outside BLM's purview and control. Upon executing the agreement, or in the absence of a stay of the final decision, BLM must implement the appropriate action as soon as practicable but not later than the start of the next grazing year. We made this change in recognition that legal proceedings can at times delay or halt implementation of actions deemed appropriate by BLM.

We also removed the phrase ''Category 1 or 2'' with respect to the designation of special status to candidate threatened and endangered (T&E) species because the FWS no longer uses these designations.

As in section 4180.1, in this section also we have removed references to ''at-risk'' species in the final rule.

Finally, we made changes in paragraph (c) that better reflect field practice. Both § 4180.2(c)(1)(i) and (c)(2), as proposed, erroneously implied that an agreement or a grazing decision are mutually exclusive. However, we often reach agreement and then issue a final decision to implement the agreement to ensure administrative finality. On the other hand, some field managers are comfortable with just an agreement and do not necessarily want to follow up with a decision. Such agreements, when they occur, must be signed by the interested public, in addition to the permittee/lessee. Also, at times, state agencies are signatory parties to agreements as well.

A number of comments supported the proposed rule provision that BLM will use a combination of monitoring and assessment information to determine whether existing grazing management practices or levels of grazing use on public land are significant factors in failing to achieve standards. The comments stated that the monitoring and assessment requirement would lead to BLM having more defensible data to support decisions, supply data from more than one point in time, ensure that partnerships are producing desired results, foster stable range condition and upward trend while maintaining custom and culture of the West, and enhance efforts to protect the health of the land. Supportive comments also referred to increasing credibility of determinations by using quantitative data to support qualitative observations and reducing the subjectivity involved in making a determination that leads to changing terms and conditions in grazing permits.

The use of existing or new monitoring data to identify what factors significantly contribute to not meeting standards or to conform to guidelines and to support determinations regarding such failure will focus and better inform the subsequent actions that BLM takes to improve rangeland health as compared with actions taken based solely on assessments. When monitoring data is used to identify livestock grazing as a significant contributing factor, the range management actions taken will be more effective and less vulnerable to appeal. The rule thus would result in expediting actions to improve rangeland health.

Some comments contained suggestions for implementing the rule. Many encouraged BLM to provide sufficient funding to collect the monitoring data needed under the rule, and one comment requested a funding strategy to show how BLM will provide the resources to complete the monitoring necessary to implement this rule. One comment suggested that permittees fund any monitoring above that currently required by BLM to make decisions. Some comments suggested priority-setting strategies so that high priority areas receive first consideration for monitoring.

Priority setting is also a policy issue addressed during the annual budget development along with determinations on appropriate funding levels. Funding sources and amounts for monitoring vary from year to year, and BLM plans to work with permittees and others to determine how data collection will be accomplished on high priority areas within the allocated budget amounts. The budgetary effects of the monitoring requirement in proposed section 4180.2(c) will be mitigated by the amendment in the final rule that limits the need to use existing or new monitoring data to those cases where a standards assessment indicates that the rangeland is failing to achieve standards or that management practices do not conform to guidelines.

Several comments expressed a desire for BLM to update policy and handbooks to clarify methods and levels of monitoring needed so that there would be consistency in data collection and interpretation. One comment requested incorporation of ''the Catlin *et al.* 2003 report and statistical tests (Grand Staircase/Escalante National Monument)'' into the EIS because the report and statistical tests provide tools to assist BLM staff in making rangeland health determinations. Comments offered monitoring indicators for all the land health standards, and suggested that monitoring should be focused on goals and objectives agreed upon using consultation, cooperation, and

coordination. It was recommended that monitoring should be conducted by qualified professional agency personnel working with permittees using approved agency methods to collect data relevant to the decisions being made.

BLM agrees that clear guidance on monitoring methodologies is desirable. Many of the suggestions are more appropriately addressed in the development of policy, handbooks, and technical references, rather than in regulations. This applies particularly to techniques and methods for collecting and interpreting data, which may be subject to modification as new findings are announced in the scientific literature. The suggestion to update policy and handbooks is appropriate, and BLM plans to do so. We anticipate that we will consider the information in the Catlin report as we develop and update guidance. In the meantime, BLM follows monitoring guidance at Manual Section 1734, and Manual Handbooks 1734–1 and 4180–1. BLM also monitors the status of objectives from land use plans and activity plans, and considers this monitoring information in evaluating land health standards. BLM receives and considers other data and information provided by affected permittees and others, to the extent practical, during the development of evaluation reports. These reports include evaluations of land health standards, evaluations of land use plan and activity plan objectives, and biological evaluations relating to consultation under Section 7 of the Endangered Species Act.

One comment suggested that BLM should add the following wording to section 4180.2(c)(2): ''If the appropriate action requires a change in active use, such change will be implemented in accordance with section 4110.3–3'' to clarify that timing conflicts are not intended between the implementation requirements of this section and those of section 4110.3–3 on implementing changes in active use under the changes recommended herein.

The regulations state in section 4180.2(c)(3), ''Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 of this part * * *''. How changes in preference and active use will occur is specified in section 4110.3–3, so we believe the suggested word change to section 4180.2 is unnecessary.

Some comments stated that the regulations in section 4180.2 should provide for individual allotment management plans with specific goals and objectives, and including monitoring plans, to be developed through consultation, cooperation, and coordination.

Section 4120.2, on allotment management plans, directs that such plans provide for monitoring to evaluate the effectiveness of management actions in achieving the resource objectives of the plan. These plans are to be developed in consultation, cooperation, and coordination with permittees, landowners, other agencies, and the interested public. Therefore, we believe the suggestion has already been addressed in the regulations.

A variety of comments opposed requiring both monitoring and assessments to make determinations that rangeland health standards are not being met because of current livestock grazing management. Most were concerned that BLM did not have the budgetary resources to provide adequate data collection and analysis and that the requirement would impose an unrealistic workload on the BLM staff, putting resources at risk by delaying appropriate actions. Setting priorities and assuring that low priority areas were not monitored at the expense of high priority areas was a concern.

As previously stated, BLM prioritizes expenditure of resources for monitoring as well as for other activities in the range program. For example, BLM assigns high monitoring priority to areas it believes to be at risk, are in degraded condition, or in downward trend and in danger of losing capability. BLM believes that it is more effective to expend resources to collect data in these high priority areas, and to use that data to ensure sustainable decisions from a resource and implementation perspective. Under the rule, monitoring would not be necessary on every allotment. The final rule requires that existing or new monitoring data be used to identify significant contributing factors and support determinations regarding the same only on those allotments that standards assessment indicates are failing to meet standards or conform to guidelines. This will ensure that subsequent corrective action is focused on remedying the factors that monitoring has verified are contributing to not achieving standards or not conforming to applicable guidelines.

BLM currently administers grazing on about 21,535 allotments (2005). We have established monitoring sites in nearly 11,500 allotments, and currently collect monitoring data to some degree on about 3,500 of those allotments each year. BLM uses these monitoring sites primarily to evaluate achievement of land use plan objectives, to ascertain changes in condition, and to determine trend. Information is collected at some of the monitoring sites more often than at others, depending on priority and purpose.

As of the end of Fiscal Year 2002, about 16 percent of 7,437 allotments evaluated by that time (1,213 allotments) were determined not to be meeting land health standards because of existing livestock grazing management. We focused our first round of assessments on areas with potential problems. Field offices were directed beginning in 1998 to prioritize allotments, watersheds, or other areas and ''to give highest priority to areas believed to be at risk—in degraded condition or downward trend and in danger of losing potential.'' (Washington Office Instruction Memorandum 98–91) Additional guidance for assessing high priority areas was provided in Manual Handbook 4180–1 and annual work plan directives since fiscal year 2001. This experience should be a good indicator of the proportion of allotments that are likely to fail to meet standards as a result of livestock grazing practices in the future. Thus, extrapolating from our experience leading up to the end of FY 2002, we expect to need monitoring data to support less than 16 percent of our determinations that we make after August 11, 2006. Under projected budgets, we fully expect to have appropriate monitoring data to support our determinations, regardless of whether they lead to a finding of failure to meet standards due to livestock grazing.

Other comments expressed opinions that monitoring was unnecessary and existing direction was adequate for making determinations and necessary adjustments, including flexibility to use existing data, that using follow-up monitoring to determine if the change was needed is an appropriate strategy, and that allowing immediate action when destructive grazing practices and abuse are obvious is essential to good management. One comment stated that requiring monitoring would lead to increased litigation.

Once a standards assessment indicates that the rangeland is failing to achieve standards or that management practices do not conform to guidelines, the level of new monitoring, if any, needed to determine what are the significant contributing factors in failing to achieve standards or conform to guidelines will vary depending on such variables as how obvious the causes are for not meeting standards, the quantity and quality of existing relevant monitoring data, presence of threatened or endangered species, conflicts between uses, and other criteria. While BLM cannot control the number of

appeals or the amount of litigation after issuing a grazing decision, we believe having a defensible basis for the decision will reduce the number of instances where appropriate action is delayed because of protracted administrative and judicial processes.

One comment, supporting the adoption of a comprehensive monitoring strategy to chronicle the effect of grazing on rangeland health and Federal trust species found on allotments, stated that rangeland health determinations are the first step in identifying a need, if any, for changes in livestock management to improve rangeland health conditions and to ensure the sustainability of fish and wildlife resources. Until such a determination is made, according to the comment, only limited management actions can be initiated, and under current management, again according to the comment, there are no specific requirements on how to make these determinations.

While the comment generally supports the provisions on monitoring in the proposed rule, it does not entirely accurately depict the situation regarding rangeland health determinations. There is no specific regulatory requirement that we must wait for a determination before we can take an action. However, although the regulations do not absolutely require a determination before BLM can take action, as a matter of practicality and workload prioritization, we find the determination process a useful tool. The comment also errs somewhat in stating that there are no specific requirements on how these determinations are made. It is true that there are no specific requirements in the regulations. However, guidance for making determinations appears in Manual Handbook H–4180–1.

Some comments stated that experience shows that monitoring of rangeland standards is not being completed in a timely, effective manner under current requirements due to BLM funding and staffing limitations, and recommended BLM remove this requirement from the rule. The comments suggested an alternative evaluation process, where an interagency (and interdisciplinary) team evaluates range conditions and determines management strategies in cases where adequate monitoring data are not available. A few comments supported a comprehensive monitoring strategy to chronicle the influence of grazing on rangeland health and federally-listed species.

BLM believes that monitoring is an important component of evaluating land health and making rangeland health standard determinations. The final rule will enable the authorized officer to have a solid factual basis for making decisions to adjust grazing use, and could reduce the number of instances where implementation is delayed because of protracted administrative appeal and judicial processes. The proposed rule would help focus BLM budgetary and staffing resources on monitoring where data are needed to determine the reasons for not meeting the land health standard(s). Under BLM procedures, interdisciplinary teams use existing monitoring data in the evaluation process to determine status of the current conditions relative to the land health standards. Where adequate monitoring information is not already available, BLM will focus its monitoring resources on gathering the needed information. The alternative evaluation process suggested in the comments closely mirrors the current process where existing monitoring data are not available. We believe that decisions will be implemented more efficiently on the ground when they are based on monitoring data, and may be less likely to be subjected to administrative or judicial challenge.

Another comment maintained that range monitoring as practiced by BLM consistently under-reports biological impacts of cattle grazing on desert environments, particularly riparian areas, and that some monitoring methods do not report loss of habitat function for wildlife, increased susceptibility of soils to erosion, invasion of exotic plants, or destruction of cryptobiotic crusts.

BLM does not agree with this comment. Monitoring is designed to document conditions of a particular attribute or set of attributes at the time data is collected. BLM uses a number of techniques and methods to measure wildlife habitat conditions (including cover, structure, and vegetation composition), ground cover, and presence of exotic plants. We rely on many BLM Technical References and Technical Notes, including TR 1734–4 ''Sampling Vegetation Attributes,'' 1996; TN–349 ''Terrestrial Wildlife Inventories: Some Methods and Concepts,'' 1981; ''Inventory & Monitoring of Wildlife Habitat,'' 1986, by Cooperider, Boyd, and Hansan; TN 395 ''Evaluation of Bighorn Habitat: A Landscape Approach,'' 1996; TR 1730–1 ''Measuring and Monitoring Plant Population,'' 1998; and TN 417 ''Identifying and Linking Multiple Scale Vegetation Components for Conserving Wildlife Species that Depend on Big Sagebrush Habitat: A case Example—Southeast Oregon,'' 2004. This monitoring provides BLM with information about the condition and trend in condition of resources. When monitoring the effects of livestock use, BLM commonly measures utilization, cover, and frequency of use, and relies on actual use reports and photographs. BLM then correlates data to various management activities to determine effectiveness of management in achieving objectives.

One comment stated that requiring monitoring before a rangeland health determination is made has implications for measures needed to conserve special status species in order to preclude listing. It stated that where proactive range-wide measures are needed, such as in the case of the sage-grouse, a requirement for monitoring before a remedial action can be initiated may amount to an inadequate regulatory mechanism. The comment recommended assessment and disclosure of the impacts of the monitoring requirement on BLM's ability to implement effective and timely conservation strategies to avoid the need to list special status species.

Requiring monitoring data to make a determination of the cause for not achieving a land health standard does not preclude BLM from modifying grazing use to meet other resource management objectives. Section 4130.3–3 provides that BLM may modify terms and conditions of a permit or lease either with or without a determination under subpart 4180. Subpart 4180 is not the sole regulatory mechanism for implementing measures that are needed to conserve special status species. Therefore, this regulatory change does not impair BLM's ability to take timely action to implement effective conservation strategies that preclude the need to list special status species.

Several comments recommended that the rule should allow BLM to use monitoring or assessment data or both for making determinations, as provided in Alternative 3 in the EIS. The comment stated that this flexibility would enhance efforts to protect rangeland health. A related comment stated that BLM should not unnecessarily place the burden of proof on itself to justify management changes by requiring years of monitoring data before management changes can be required.

We have not adopted this suggestion in the final rule. BLM believes that if determinations regarding the cause for not meeting one or more standards are supported by existing or new monitoring data, they are less likely to be challenged administratively or judicially. We believe that devoting

attention to areas with highest priority will allow us to address range health issues. In fact, at the end of Fiscal Year 2002, about 16 percent of the 7,437 allotments that had been evaluated were determined not to be achieving standards because of existing livestock grazing management. This indicates that monitoring should be focused on high priority areas where there is a risk of not achieving land health standards because of existing livestock grazing. The final rule does add a provision to section 4180.2(c) that limits the monitoring requirement to those cases where a standards assessment indicates that the rangeland is failing to achieve standards or that management practices do not conform to guidelines. In such cases, we will use existing or new monitoring data to identify and support a determination regarding the significant factors that contribute to the failure to achieve standards. The final rule only requires the use of monitoring data to determine causation in cases where assessment indicates that rangelands are failing to achieve the standards or conform to the guidelines. For the most part, BLM has been focusing its monitoring efforts on those allotments where there are concerns or problems. We believe that this requirement is reasonable and necessary to ensure that we have adequate data to formulate and analyze an appropriate action where we find that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines. Further, as we have stated, determinations that are supported by monitoring will make for better, more defensible decisions, especially when we need to change grazing practices on allotments. BLM is adding the requirement to use standards assessments and existing or new monitoring data to support determinations of failure to achieve standards and conform to guidelines because of existing grazing management practices or levels of grazing use because both the public and the livestock industry are concerned about a lack of adequate data for making determinations. Although we often make these determinations based on existing monitoring data, adding this requirement provides for a consistent approach to making determinations.

We do not expect this provision to have significant budgetary effects because, as described in section 4.3.1 of the EIS, only 16 percent of the allotments assessed over the last 5 years have failed standards because of existing livestock grazing practices. While this requirement may increase the ongoing data collection workload in the grazing program, we expect to continue to monitor in those areas we believe to be at risk, in degraded condition, or in downward trend and in danger of losing capability, within our funding allocation without needing additional funding. Further, the change in the final rule limiting the monitoring requirement to cases where standards assessments indicate rangeland failure to achieve standards or management failure to conform to guidelines should reduce the workload and budgetary effects of the final rule. Refocusing data collection priorities may affect watershed assessment schedules and could delay the permit renewal process in areas where relevant monitoring data is not available. Under projected budgets we expect to have appropriate monitoring data to support our determinations. The amount of monitoring data needed is likely to vary from case to case. We will continue to refine, as necessary, our guidance on monitoring to clarify such issues as timing and levels of monitoring.

A comment asserted that BLM does not have the monitoring data to show that their management practices are having any effect on improvement of water quality on public lands.

One of BLM's primary resource management objectives is to meet state water quality standards in water bodies affected by management activities on public lands. Achievement of state water quality standards is a rangeland health standard in each BLM region or state. BLM determines total maximum daily loads of pollutants and develops best management practices (BMPs), with coordination with and approval by each state's environmental quality office. We conduct water quality monitoring to assess the effectiveness of BMPs, as well as direct water column sampling to determine compliance with standards in cooperation with the appropriate state agencies. Streams and lakes are not removed from the states' lists of impaired water bodies without full verification and direct sampling data. Monitoring to determine the effectiveness of each change in management is not possible, but priority watersheds with existing water quality problems are monitored sufficiently to determine whether new management practices designed to improve water quality are effective.

Many comments supported the amendments of this section in the proposed rule to allow BLM 24 months after determining that grazing management practices or levels of use were significant factors in failing to meet standards or conform to guidelines to formulate, propose, and analyze appropriate action. They stated that providing adequate time to develop and analyze appropriate actions with adequate public and permittee involvement would result in better decisions appropriate to the need. They said that the longer time frames would allow a more accurate evaluation, and allowing 24 months instead of 12 months for initiating changing in grazing practices is more practical. BLM agrees and has not changed any of the pertinent provisions of the regulations in the final rule.

Another comment stated that the purpose of extending the time to take appropriate action is to allow BLM staff time to bring together the appropriate information and conduct necessary public involvement. The comment encouraged BLM to retain opportunities for public involvement. However, the comment stated, in this connection, that a timely response to changing resource conditions overrides this need.

The comment also suggested that the proposed rule be clarified, stating that some of the terms were confusing and made it difficult to determine the effect of the extended deadline on the viability of species. The comment stated that the wording ''to take action'' does not indicate whether the deadline of 2 years requires action to be ''initiated'' or ''completed'' by that date. The comment asked for a more thorough discussion in the FEIS describing the delays that may result with adoption of the 2-year deadline, and the potential effects on listed resources.

The comment is correct that the reason for extending the time allowed to initiate action is to allow BLM staff time to bring together the appropriate information and conduct necessary public involvement. This provision would enable BLM to develop a thorough action plan, consult with the FWS or the NMFS, and to solidify the decision to work through the NEPA process, which involves the public. The proposed rule would require an authorized officer to issue a final decision or execute an agreement to implement appropriate action within 24 months of a determination made under section 4180.2(c). The requirement to take action within 2 years means that appropriate action would need to be initiated via a final decision or agreement on or before that time, but not necessarily completed on or before that time.

Taking up to 24 months to develop a meaningful action and issue a decision less vulnerable to appeal will be more effective than issuing a decision and

waiting even longer for an appeal to IBLA to be heard and resolved.

Under the rule, the BLM field manager has discretion whether to allow 24 months for BLM to address failure to meet rangeland health standards. There is no language in the rule that precludes a shorter deadline, once BLM meets its consultation, cooperation, and coordination requirements. Allowing 24 months to develop appropriate action should improve the likelihood of determining the correct remedy for a vegetative resource problem. Also, if immediate action is needed to protect soil, vegetation, or other resources, BLM may invoke section 4110.3–3(b) and immediately close the area to grazing either totally or partially.

Those who made comments opposing the change in the amount of time to develop an appropriate action when livestock grazing was determined to be a significant factor in not achieving a land health standard focused on 3 areas. The first was that the extra time allowed is inconsistent with the objective of accelerating restoration and improving public rangelands and that it would create a delay leading to additional degradation of resources or harm to fish and wildlife, and detrimental to long-term range health. The second was that current rules provided adequate time to take action, and that a ruling of the 9th Circuit Court of Appeals upholding the current regulations should be continued as a management directive. The third area of focus was that the change would provide preferential treatment not given to other permitted uses.

With respect to the first concern, BLM believes that allowing up to 24 months (except in those cases where legally required processes that are the responsibility of another agency require additional time) to propose and analyze appropriate action needed to address the failure to meet a rangeland health standard will result in improvements rather than harm to resources, including wildlife. As stated in section 4.3.7 of the EIS, there may be limited short term adverse impacts if BLM needs 24 months or more to develop an appropriate action that involves extensive coordination and consultation. However, we expect the extra time taken to develop a meaningful action to provide greater long term benefits to other resources and an overall improvement in rangeland condition. For example, just reducing the level of use in a riparian area, rather than developing a management system that considers timing of use, is not likely to improve the riparian area condition. Taking the additional time to develop an appropriate action may actually reduce the amount of time taken to implement a decision, particularly if the decision is not appealed. Also, taking additional time should improve the quality of the BLM decisions and reduce the likelihood of successful appeal, and hopefully the number of appeals. Implementing decisions can be delayed by 18 to 36 months if they are appealed. At the end of FY2002, about 5 percent of grazing decisions issued after 1997 had been appealed. Labor and funds spent to address these appeals are diverted from developing and implementing workable plans. In many cases, the full 24 months may not be needed to develop appropriate actions. Based on determinations made through the end of Fiscal Year 2002, the number of allotments affected by this rule appears to be fairly limited. Of the 7,437 allotments (out of 21,535) assessed prior to October 1, 2002, BLM determined that 16 percent did not meet standards with at least one of the significant causal factors identified as existing livestock grazing management or levels of use. Of the 10,455 allotments assessed from 1998 through 2005, existing livestock grazing or levels of use were determined to be a significant causal factor for not meeting standards on about 15%, or 1537 allotments.

Regarding the second area of concern, BLM has determined that the additional time is needed to enable us to develop and implement better action strategies. We assume the ruling noted in the comments is *Idaho Watersheds Project* v. *Hahn*, 187 F.3d 1035 (9th Cir. 1999). In the proceedings that led up to that appellate decision, the district court provided a schedule for completing evaluations of land health standards and NEPA documents for 68 allotments, and issued interim management guidelines pending completion of the NEPA documents and issuing grazing permits. The decision referred to interprets the current regulations, the effects of which are analyzed as part of the No Action Alternative in the EIS. The final rule gives managers and partners an opportunity to develop, as a result of the additional time, better alternatives that will result in more positive long-term environmental effects. The fact that the 9th Circuit upheld the current regulations does not preclude BLM from proposing to amend the regulations to improve our grazing management program. BLM's experience implementing the existing regulations is that the regulatory requirement to take appropriate action no later than the start of the next grazing season did not always provide sufficient time to ensure compliance with relevant laws and regulations, including requirements in the grazing regulations to undertake consultation and coordination to develop an appropriate action, NEPA, and, if applicable, ESA consultation.

The proposed rule does not change BLM's discretion to implement decisions to adjust grazing use immediately if continued grazing use poses an imminent likelihood of significant soil, vegetation, or other resource damage, including immediate threats to listed or other sensitive species. The proposed rule also contains provisions that allow BLM and the permittee to enter into an agreement for shorter time frames for implementation (section 4110.3–3). The final rule provides sufficient time for BLM to comply with all applicable legal requirements, while protecting fish and wildlife resources.

We do not agree that the changes in the regulations give preferential treatment to grazing interests by extending the allowable timeframe for developing and implementing corrective actions. Grazing permittees are the only users required by these regulations to change management in a specified period of time if that management is a significant factor for not achieving rangeland health standards. If other activities are determined to be the cause for not meeting those standards, these regulations do not impose deadlines on making changes in such activities, or even require changes in them.

The comments provided suggestions for changing the proposed rule. One was to increase the time given to develop an appropriate action to more than 24 months, because climate, weather, or other conditions might require longer studies to determine rangeland health. Another was to provide for a variable time frame on a case by case basis, because different problems required varying time periods for initiating and scheduling improvements. A third suggestion was to identify problems associated with grazing practices within 3 to 6 months, and devise measures to correct them within 2 to 4 months after they are identified, including (a) planning an appropriate action with appropriate consultation and coordination, (b) completing NEPA and Section 7 ESA requirements, and (c) issuing a final decision to implement the action.

We have revised the final rule to provide additional time to develop appropriate actions when legally required processes outside BLM's purview prevent completion of all legal obligations within the 24 month time period. In most cases, 24 months is an

adequate period of time to develop appropriate action. Sometimes a corrective action is as simple as changing a grazing period or rotation. In other circumstances, corrective actions are more complex and difficult to conceive and implement, such as when multiple permittees in large allotments with multiple resource issues are involved. When the process includes numerous legal requirements, such as ESA Section 7 consultation, or extensive consultation and coordination with numerous interests, we may need additional time to complete the process. Developing appropriate action to implement remedial grazing management can vary greatly in complexity depending on the management circumstances of the allotment. In more complex circumstances, just developing the appropriate action(s) is often not straightforward. Time is needed for planning and budget considerations, such as developing and coordinating a workable proposal, engineering survey and design if range projects are a part of the corrective action, consulting with Tribes and complying with Section 106 of the National Historic Preservation Act (NHPA), NEPA analysis including consultation with multiple entities and agencies, and securing moneys to support these processes. In practice, when faced with more complex circumstances, the relatively short period allowed by the current regulation within which to devise and implement the appropriate action(s) may not allow BLM time for internal alignment of the planning and budget needed for timely implementation of the corrective action. Current resources available to BLM to assess rangeland conditions on 160 million acres make it impractical for BLM to implement and maintain a program to identify problems associated with grazing within ''3–6 months.'' In light of these operational realities, BLM cannot adopt recommendations to shorten this time frame. We have therefore not adopted these comments in the final rule.

One comment expressed concern that the effect of allowing up to 24 months to develop and analyze an action to make needed adjustments in grazing would be to protect poor stewards and uncooperative ranchers.

The rule change is intended to provide adequate time ''to formulate, propose, and analyze actions in an environment of consultation, cooperation and coordination.'' Rather than protecting poor management, this rule provides opportunity to develop an appropriate action. BLM may still take appropriate action to modify livestock grazing management where changes are needed to achieve land health standards before the end of the 24-month period authorized in the regulations. We recognize that, in the case of an uncooperative rancher, it is unlikely that we would be able to obtain agreement regarding the necessary appropriate action, and if that was the case, the proposed change to grazing management would be implemented by a grazing decision under subpart 4160. BLM is responsible for initiating a change in management regardless of the cooperativeness of the permittees or lessees or their management abilities. Additionally, section 4110.3–3(b)(1) includes the phrase ''reasonable attempt to consult with'' to allow BLM to implement immediate actions to address resource conditions in situations where an entity is uncooperative.

Some comments included requests to provide BLM State Directors authority to petition the Secretary for additions or changes to current land health standards, stating that providing this authority would allow BLM to modify standards based on current conditions or needs and desires of local working groups.

The final regulations retain the provisions in section 4180.2(b) that give the State Director the responsibility and authority to develop or modify regional standards and guidelines, following consideration of RAC recommendations. The Secretary of the Interior must approve state or regional standards or guidelines developed by the State Director prior to implementing them.

One comment urged BLM to find ways to reward ranchers who achieve 100 percent compliance with the standards for rangeland health, and to manage permittees who fail to achieve compliance with the standards in order to improve conditions on public lands.

The grazing regulations provide sufficient incentives for good stewardship. Successful rangeland management may enable ranchers to reap rewards in the form of sustainable levels of forage from year to year. Ranchers who have a demonstrated record of good stewardship may become eligible for additional forage if it becomes available, or may want to explore with BLM the possibility of developing an allotment management plan that potentially could result in greater operational flexibility. However, BLM will not abrogate its responsibility to manage public lands, regardless of whether grazing management practices conform with applicable guidelines and/or an allotment achieves all standards.

Several comments suggested that BLM include a ''social and economic'' land health standard to demonstrate consistency with the proposed requirement that BLM consider relevant social, economic, and cultural effects in their NEPA analyses of the effects of changing levels of grazing use.

We have not adopted this idea in the final rule. BLM believes that land health standards should focus on the biotic and physical components of the ecosystem, and that ''human dimension'' considerations are best dealt with in the NEPA analyses that we conduct. In order to ensure consistent disclosure and consideration of social and economic impacts, we have included requirements in section 4110.3(c) to analyze and, if appropriate, document relevant social, economic, and cultural effects as required by NEPA before changing grazing preference.

One comment stated that BLM grazing regulations should have provisions in subpart 4180 that ensure protection of rangelands from further degradation, improvement of water quality, and restoration of areas adversely affected by grazing.

BLM, in consultation with RACs, has developed and approved regional standards for rangeland health and guidelines for grazing administration under section 4180.2 in all areas that BLM manages for livestock grazing, except for the California Desert District. In the California Desert District the fallback standards and guidelines in section 4180.2(f) currently apply. Section 4130.3–1(c) requires that permits and leases incorporate terms and conditions to require conformance to standards and guidelines. BLM believes that these standards and guidelines adequately provide for the protection of rangelands from degradation, improvement of water quality, and restoration of areas adversely affected by livestock grazing.

One comment urged BLM to eliminate completely the use of the ''rapid assessment'' or indicators of rangeland health (Tech. Ref. 1734–6) in assessing rangeland condition, stating that this is nothing more than the old apparent-trend scorecard that the range management and scientific community abandoned 70 years ago as being too subjective.

The authors of the 1994 National Research Council's (NRC) publication *Rangeland Health: New Methods to Classify, Inventory, and Monitor Rangelands* proposed an approach to assess rangeland health that uses integrity of soil and ecological process as measures of rangeland health (p. 95). They recommended the use of 3 criteria

upon which to base an evaluation of rangeland health: (1) Degree of soil stability and watershed function, (2) integrity of nutrient cycling and energy flow, and (3) presence of functioning recovery mechanisms (p. 97, 98). The report suggests a number of indicators that can be used to measure and assess rangeland health. The report also describes the use of indicators (soil and vegetation characteristics) that are used by the Natural Resources Conservation Service (NRCS—formerly the Soil Conservation Service, SCS) to indicate apparent trend (USDA, SCS, 1976). The majority of indicators listed in Technical Reference (TR) 1734–6 (jointly developed by United States Geological Survey, NRCS, Agricultural Research Service and Bureau of Land Management, 2000) are those listed in the NRC publication. BLM recognizes that the process for assessing and interpreting indicators of rangeland health as described in TR 1734–6 is qualitative, but is extremely useful for providing an initial assessment of land health. This initial assessment can then be substantiated by collection of quantitative data through monitoring on those areas where concerns are identified (BLM Manual Handbook H–4180–1 *Rangeland Health Standards*, chapter III). BLM expects to continue to use the method described in TR 1734–6, *Interpreting Indicators of Rangeland Health*, in conjunction with monitoring to make determinations of rangeland health and whether or not existing livestock grazing is a significant causal factor where land health standards are not achieved. We have made no change in the final rule in response to this comment.

One comment requested that we restrict the fallback guideline in section 4180.2(f)(2)(x) to the use of native plants and eliminate the use of non-native plant species for rehabilitation or restoration projects. Another comment encouraged us to retain the use of non-native plants for restoration and rehabilitation projects under the conditions listed in the fallback guideline in section 4180.2(f)(2)(x).

It is BLM policy to use native plant species in range improvement and other projects intended to re-establish vegetation where they are available and if we expect them to be effective. The current fallback guideline at section 4180.2 (f)(2)(x) recognizes that at times native plant materials are in short supply and in certain circumstances native plant species cannot compete with established exotic invasive species. Section 4180.2(d)(12) also continues to provide that state or regionally developed standards for rangeland health ''[i]ncorporat[e] the use of non-native plant species only in those situations in which native species are not available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health.'' State or regionally-developed standards created under this regulation have recognized that, on some sites, native species are incapable of successfully competing with invasive exotics. Where this occurs, BLM uses non-natives in rehabilitation projects.

One comment asserted that it may be misleading to state that most BLM states have completed establishment of standards. The comment went on to state that, in many of these states, the grazing industry controls state legislatures or has influence over them out of proportion to the contribution of the industry to the economy and to society, and that this brings into question the validity of state rangeland health standards. BLM should have ultimate responsibility for making this determination on lands entrusted to it by the public, the comment concluded, and these determinations should be made using techniques of rangeland science, by qualified individuals, either employed by or under contract to BLM.

The comment misinterpreted what we meant by ''BLM states.'' BLM is organized into different administrative levels and boundaries. One of those levels is by state and at the state level there is a state office. Some of the administrative states actually include more than one state. For example, the Montana State Office includes the states of Montana, North Dakota and South Dakota. In the DEIS in Section 2.2.8, when we stated ''Most BLM States have completed establishment of standards and guidelines * * *,'' we were referring to the BLM administrative State Offices.

BLM professionals, along with many of our interested publics, including but not limited to RACs, ranchers, and various organizations and individuals, were involved with the development of BLM's rangeland standard and guidelines. In most states, BLM coordinated or consulted with state agencies or the state Governor's Office during the development of land health standards, but not with state legislatures. All rangeland standards and guidelines are based on current rangeland science. BLM is responsible for implementing the standards and guidelines and determining the condition of the public rangelands that we administer.

VI. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget determined that this final rule is a significant regulatory action and therefore subject to review under Executive Order 12866. The final rule would not have an effect of $100 million or more on the economy. The regulatory changes would 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.

The final rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. BLM is aware that there are differences between its grazing program and the program administered by the U.S. Forest Service (USFS). For example, USFS regulations and procedures do not include a temporary suspension category, unlike the BLM provision in section 4110.3–2. The regulations at 36 CFR 222.9(b)(2) provide that title to permanent structural range improvements on National Forest System lands such as pipelines and water troughs remains with the United States, unlike the BLM provision in section 4120.3–2 that allows for the sharing of the title to some improvements with permittees and lessees. The USFS regulations may provide for a more streamlined process to modify grazing permits, particularly in situations where grazing activities need to be restricted.

Despite these and other differences, BLM believes that any inconsistencies between BLM's grazing program and that of the USFS are not serious and will not interfere with actions taken or planned by the agencies. They merely represent differences in management approach and philosophy.

The final rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor does it raise novel legal issues. However, the rule raises novel policy issues by reversing or otherwise changing policy established in a 1995 final rule.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic

impact, either detrimental or beneficial, on a substantial number of small entities. BLM has prepared a Final Regulatory Flexibility Act Analysis to address the changes in this rule and has concluded that the rule will not have significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This document is available for review at 1620 L Street, NW., Washington, DC 20036 and on the Internet at *www.blm.gov.grazing*.

The final rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor does it raise novel legal or policy issues, except as discussed in the previous section of the preamble.

Small Business Regulatory Enforcement Fairness Act

This final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). The changes BLM is making in the current grazing regulations would not result in an effect on the economy of $100 million or more, in an increase in costs or prices, or in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The changes BLM is making will clarify existing requirements and qualifications. These changes will positively affect all applicants, whether small entities or not.

Unfunded Mandates Reform Act

This amendment of 43 CFR part 4100 will not result in any unfunded mandate to state, local, or Tribal governments, or to the private sector, in the aggregate, of $100 million or more. The rule continues and strengthens requirements for BLM to consult with all of these governmental and other entities whenever our actions relating to livestock grazing are likely to affect them.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights

The final rule does not represent a government action capable of interfering with constitutionally-protected property rights. The relevant statutes and regulations governing grazing on Federal land and case law interpreting these statutes and regulations have consistently recognized grazing on Federal land as a revocable license and not a property interest. Therefore, the Department of the Interior has determined that the rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

One comment suggested that BLM should provide for payment to the permittee or lessee for any cuts in permit numbers at the prevailing appraised rate, in order to curtail cutting permits under the pretense of the ESA.

As stated above, a grazing permit or lease authorizes a privilege or revocable license, not a property right protected under the Constitution.

Executive Order 13132, Federalism

The final rule 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. The rule would continue and strengthen requirements for BLM to consult with all of these governmental and other entities whenever our actions relating to livestock grazing are likely to affect them. Therefore, in accordance with Executive Order 13132, BLM has determined that this final rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In the proposed rule, we included a statement that, in accordance with Executive Order 13175, we determined that the rule does not include policies that have Tribal implications. We stated that the rule expressly does not apply to, and these regulations expressly exclude, Indian lands set aside or held for the benefit of Indians from the effects of the rule. Comments challenged this determination.

While BLM does not manage grazing on Indian trust land, such land can serve as base property, so that grazing management on public land for which such Indian land serves as base property could have an effect on the value of such land. Also, Indian cultural sites on public land could be affected by grazing activities and BLM management of those activities. In such circumstances, BLM consults with Tribal interests on a case-by-case basis.

In recognition of these potential effects of grazing management on Indian Tribal interests, BLM contacted Tribal government representatives for input into the grazing rulemaking and Draft EIS. It began with the initiation of the public scoping process. Issues raised by Tribal governments, Tribal entities, and Native American individuals during meetings and received in letters were considered in the development of the Draft EIS and proposed rule.

Once the Draft Environmental Impact Statement and proposed rule were ready for release and public review, including review by Tribal governments, over 300 Tribes west of the Mississippi River (excluding Alaska) were sent a letter soliciting their comments to the Draft EIS and proposed rule. Enclosed was a copy of the Draft EIS and proposed rule on a compact disk, as well as website information to find the document on the internet.

The executive order requires any Federal policy that may have Tribal implications to be guided by three fundamental principles, namely, recognition of the United States' unique legal relationship with Indian Tribal governments, recognition of the Tribes' right to self-government, and support for Tribal sovereignty and self-determination. For clarification, this final rule does not change or have any effect on BLM's fiduciary responsibilities, the agency's Tribal consultation and coordination requirements and processes, BLM's government-to-government obligations, or the distribution of power and responsibilities between BLM and Indian Tribes.

BLM will continue to analyze effects on heritage resources, at the land use planning or allotment management planning level, or on a case-by-case basis as appropriate. Besides the requirements for heritage resource inventories and/or surveys, Tribal consultation will begin as soon as possible in any case where it appears likely that the nature or location or both of the activity could affect Native American interests or concerns. BLM will give due consideration to Indian Tribal rights established by treaties, and to requests by Tribes, consistent with such rights, in the administration of grazing management and range improvement programs.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this final rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

The information collection requirements contained in Group 4100 have been approved by the OMB under 44 U.S.C. 3501 *et seq.* and assigned the following clearance numbers: 1004–0019 and 1004–0041. The information collected will permit BLM to determine whether to approve an application to utilize public lands for grazing or other purposes. This rule does not contain any new information collection requirements that the Office of Management and Budget (OMB) must approve under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act (NEPA)

Under NEPA, section 102(2)(C) (42 U.S.C. 4332(2)(C)), a Federal agency must prepare an Environmental Impact Statement (EIS) when a proposed major Federal action may result in significant impacts to the quality of the human environment. BLM prepared a Final EIS dated October 2004 and made available on June 17, 2005 (70 FR 35299 and 35251), in compliance with the procedures for implementing NEPA, for these changes to the grazing regulations. On the same date, BLM released an ''Errata and Revisions'' document, making corrections in the EIS, and on March 31, 2006 (71 FR 16274 and 16302), an Addendum to the FEIS. The EIS stated that many of the proposed changes are largely administrative and are intended to improve agency administrative efficiency and effectiveness, improve consistency across BLM, or meet other non-environmental objectives, and would have little direct or indirect effect on the environment. The EIS also indicated that although most of the proposed regulatory changes have little or no adverse impacts on the human environment, some short-term adverse effects may occur because of increases in timeframes associated with several components of the rule. These include the provision for a 5-year phase-in of changes in use of more than 10 percent, the requirement that existing or new monitoring data be used to support a determination that livestock grazing significantly contributes to not meeting one or more standards or does not conform to guidelines, and the allowance of 24 months for analysis, formulation and initiation of appropriate remedial action following a determination that that livestock grazing significantly contributes to not meeting one or more standards or does not conform to guidelines. The EIS stated also, however, that implementing these changes would result in the development of better and more sustainable decisions, because determinations would be based on monitoring information. Also, the rule provides a more reasonable time (up to 24 months) following a determination for satisfying legal consultation requirements and analyzing, formulating, and beginning implementation of appropriate action to ensure progress towards standards attainment or to conform with guidelines. In the long-term, we expect that implementing these provisions will be beneficial to rangeland health.

Since publication of the existing regulations in 1995, we found that some sections of the regulations resulted in unforeseen problems. As BLM continued to gain experience in implementing the regulations, we found that some of the difficulties could be resolved by minor clarifications or changes in the regulations. We refined the list of sections of the regulations that we believed would benefit from a change, and reduced the number of changes. As we worked with the public, it became clear there would be some controversy over impacts of the changes. As we continued working with the public, we expected there would be controversy over impacts of the changes. We decided early in the process to prepare an EIS because we wanted to develop the rule in a way that solicited continued public involvement and comment in a manner typical of an EIS. We believed that such an open public process would provide helpful added exposure resulting from using an EIS as the environmental document soliciting public review and comment. BLM published an Advance Notice of Proposed Rulemaking (ANPR) and Notice of Intent to Prepare an EIS (NOI) in the **Federal Register** on March 3, 2003 (68 FR 9964–9966 and 10030–10032).

BLM's Final EIS is on file and available in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The EIS considers the impacts of these changes to the grazing regulations. You may review the EIS and related documents via the interactive ePlanning Web site at *www.blm.gov/grazing.*

Many comments raised questions about the adequacy of the Draft EIS, specifically with regard to the range of alternatives considered in the EIS. We considered these comments and responded to the concerns earlier in this Preamble (Section IV. General Comments, under the headings ''Purpose and Need'' and ''Range of Alternatives''). We responded to comments regarding the adequacy of the NEPA analysis associated with specific regulatory amendments in Section V. ''Section-by-Section Analysis and Response to Comments.''

One comment stated that BLM ''subverted'' the NEPA process by issuing the DEIS after the proposed rule was published.

The DEIS was available to the public as of January 6, 2004 (69 FR 569), approximately one month after the proposed rule was published in the **Federal Register.** BLM extended the public comment period to take this time lag into account and to afford the public sufficient time to comment on the proposed rule and DEIS. The fact that the DEIS was published after the proposed rule in no way interfered with or ''subverted'' the NEPA process. The DEIS was available early enough in the process to be useful to BLM in its deliberations.

Executive Order 13211, Action Concerning Regulations That Significantly Effect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, BLM finds that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule has no bearing on the distribution or use of energy.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

Author

The principal author of this rule is Ken Visser, Rangeland Management Specialist; Rangeland, Soil, Water and Air Division, assisted by Richard Mayberry of that division, and Ted Hudson of the Regulatory Affairs Division, Washington Office, BLM.

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and recordkeeping requirements.

Dated: June 21, 2006.

Julie A. Jacobson,

Deputy Assistant Secretary of the Interior.

■ For the reasons stated in the preamble, and under the authorities cited below, Title 43, Subtitle B, Chapter II, Subchapter D, Part 4100, is amended as follows:

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

■ 1. The authority citation for part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1181d, 1740.

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

■ 2. Amend § 4100.0–2 by redesignating the first sentence as paragraph (a) and the second sentence as paragraph (b), and by revising newly designated paragraph (b) to read as follows:

§ 4100.0–2 Objectives.

* * * * *

(b) These objectives will be realized in a manner consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a–315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901(b)(2)).

■ 3. Amend § 4100.0–3 by revising paragraphs (c), (d), and (f) to read as follows:

§ 4100.0–3 Authority.

* * * * *

(c) Executive orders that transfer land acquired under the Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended (7 U.S.C. 1012), to the Secretary and authorize administration under the Taylor Grazing Act.

(d) Section 4 of the Oregon and California Railroad Land Act of August 28, 1937 (43 U.S.C. 1181d);

* * * * *

(f) Public land orders, Executive orders, and agreements that authorize the Secretary to administer livestock grazing on specified lands under the Taylor Grazing Act or other authority as specified.

■ 4. Amend § 4100.0–5 by removing the definitions of ''conservation use'' and ''permitted use'', and revising the definitions of ''active use,'' ''district,'' ''ephemeral rangelands,'' ''grazing lease,'' ''grazing permit,'' ''grazing preference or preference,'' ''interested public,'' ''suspension,'' and ''temporary nonuse,'' and adding a definition of ''preference,'' to read as follows:

§ 4100.0–5 Definitions.

* * * * *

Active use means that portion of the grazing preference that is:

(1) Available for livestock grazing use under a permit or lease based on livestock carrying capacity and resource conditions in an allotment; and

(2) Not in suspension.

* * * * *

District means the specific area of public lands administered by a District Manager or a Field Manager.

Ephemeral rangelands means areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation, but from time to time produce sufficient forage to accommodate livestock grazing.

* * * * *

Grazing lease means a document that authorizes grazing use of the public lands under Section 15 of the Act. A grazing lease specifies grazing preference and the terms and conditions under which lessees make grazing use during the term of the lease.

Grazing permit means a document that authorizes grazing use of the public lands under Section 3 of the Act. A grazing permit specifies grazing preference and the terms and conditions under which permittees make grazing use during the term of the permit.

Grazing preference or *preference* means the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee, or an applicant for a permit or lease. Grazing preference includes active use and use held in suspension. Grazing preference holders have a superior or priority position against others for the purpose of receiving a grazing permit or lease.

Interested public means an individual, group, or organization that has:

(1)(i) Submitted a written request to BLM to be provided an opportunity to be involved in the decisionmaking process as to a specific allotment, and

(ii) Followed up that request by submitting written comment as to management of a specific allotment, or otherwise participating in the decisionmaking process as to a specific allotment, if BLM has provided them an opportunity for comment or other participation; or

(2) Submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.

* * * * *

Preference means grazing preference (see definition of ''grazing preference'').

* * * * *

Suspension means the withholding from active use, through a decision issued by the authorized officer or by agreement, of part or all of the grazing preference specified in a grazing permit or lease.

Temporary nonuse means that portion of active use that the authorized officer authorizes not to be used, in response to an application made by the permittee or lessee.

* * * * *

■ 5. Revise § 4100.0–9 to read as follows:

§ 4100.0–9 Information collection.

The information collection requirements contained in Group 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The information is collected to enable the authorized officer to determine whether to approve an application to utilize public lands for grazing or other purposes.

Subpart 4110—Qualifications and Preference

■ 6. Amend § 4110.1 by removing paragraphs (b)(1), (b)(2), and (c), by redesignating paragraph (d) as paragraph (c), and by revising paragraph (b) to read as follows:

§ 4110.1 Mandatory qualifications.

* * * * *

(b) Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance under § 4130.1–1(b).

* * * * *

■ 7. Amend § 4110.2–1 by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and by redesignating the last two sentences of paragraph (c) as paragraph (d).

■ 8. Revise § 4110.2–2 to read as follows:

§ 4110.2–2 Specifying grazing preference.

(a) All grazing permits and grazing leases will specify grazing preference, except for permits and leases for designated ephemeral rangelands, where BLM authorizes livestock use based upon forage availability, or designated annual rangelands. Preference includes active use and any suspended use. Active use is based on the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer under § 4110.3–3, except, in the case of designated ephemeral or annual rangelands, a land use plan or activity plan may alternatively prescribe vegetation standards to be met in the use of such rangelands.

(b) The grazing preference specified is attached to the base property supporting the grazing permit or grazing lease.

(c) The animal unit months of grazing preference are attached to:

(1) The acreage of land base property on a pro rata basis, or

(2) Water base property on the basis of livestock forage production within the service area of the water.

■ 9. Amend § 4110.2–3 by revising paragraphs (b) and (c) to read as follows:

§ 4110.2–3 Transfer of grazing preference.

* * * * *

(b) If base property is sold or leased, the transferee shall within 90 days of the date of sale or lease file with BLM a properly executed transfer application showing the base property and the grazing preference, in animal unit months, attached to that base property.

(c) If a grazing preference is being transferred from one base property to another base property, the transferor shall own or control the base property from which the grazing preference is being transferred and file with the authorized officer a properly completed transfer application for approval. No transfer will be allowed without the written consent of the owner(s), and any person or entity holding an encumbrance of the base property from which the transfer is to be made.

* * * * *

■ 10. Revise § 4110.2–4 to read as follows:

§ 4110.2–4 Allotments.

After consultation, cooperation, and coordination with the affected grazing permittees or lessees and the state having lands or responsibility for managing resources within the area, the authorized officer may designate and adjust grazing allotment boundaries. The authorized officer may combine or divide allotments, through an agreement or by decision, when necessary for the proper and efficient management of public rangelands.

■ 11. Revise § 4110.3 to read as follows:

§ 4110.3 Changes in grazing preference.

(a) The authorized officer will periodically review the grazing preference specified in a grazing permit or lease and make changes in the grazing preference as needed to:

(1) Manage, maintain, or improve rangeland productivity;

(2) Assist in making progress toward restoring ecosystems to properly functioning condition;

(3) Conform with land use plans or activity plans; or

(4) Comply with the provisions of subpart 4180 of this part.

(b) The authorized officer will support these changes by monitoring, documented field observations, ecological site inventory, or other data acceptable to the authorized officer.

(c) Before changing grazing preference, the authorized officer will undertake the appropriate analysis as required by the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Under NEPA, the authorized officer will analyze and, if appropriate, document the relevant social, economic, and cultural effects of the proposed action.

■ 12. Revise § 4110.3–1 to read as follows:

§ 4110.3–1 Increasing active use.

When monitoring or documented field observations show that additional forage is available for livestock grazing, either on a temporary or sustained yield basis, BLM may apportion additional forage to qualified applicants for livestock grazing use consistent with multiple-use management objectives specified in the applicable land use plan.

(a) *Additional forage temporarily available.* When the authorized officer determines that additional forage is temporarily available for livestock, he may authorize its use on a nonrenewable basis under § 4130.6–2 in the following order:

(1) To permittees or lessees who have preference for grazing use in the allotment where the forage is available, in proportion to their active use; and

(2) To other qualified applicants under § 4130.1–2.

(b) *Additional forage available on a sustained yield basis.* When the authorized officer determines that additional forage is available for livestock use on a sustained yield basis, he will apportion it in the following manner:

(1) First, to remove all or a part of the suspension of preference of permittees or lessees with permits or leases in the allotment where the forage is available; and

(2) Second, if additional forage remains after ending all suspensions, the authorized officer will consult, cooperate, and coordinate with the affected permittees or lessees, the state having lands or responsibility for managing resources within the area, the interested public, and apportion it in the following order:

(i) Permittees or lessees in proportion to their contribution to stewardship efforts that result in increased forage production;

(ii) Permittees or lessees in proportion to the amount of their grazing preference; and

(iii) Other qualified applicants under § 4130.1–2.

■ 13. Revise § 4110.3–2 to read as follows:

§ 4110.3–2 Decreasing active use.

(a) The authorized officer may suspend active use in whole or in part on a temporary basis due to reasons specified in § 4110.3–3(b)(1), or to facilitate installation, maintenance, or modification of range improvements.

(b) When monitoring or documented field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180 of this part, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory, or other acceptable methods, the authorized officer will reduce active use, otherwise modify management practices, or both. To implement reductions under this paragraph, BLM will suspend active use.

■ 14. Revise § 4110.3–3 to read as follows:

§ 4110.3–3 Implementing changes in active use.

(a)(1) After consultation, cooperation, and coordination with the affected permittee or lessee and the state having lands or responsibility for managing resources within the area, the authorized officer will implement changes in active use through a documented agreement or by a decision. The authorized officer will implement changes in active use in excess of 10 percent over a 5-year period unless:

(i) After consultation with the affected permittees or lessees, an agreement is reached to implement the increase or decrease in less than 5 years, or

(ii) The changes must be made before 5 years have passed in order to comply with applicable law.

(2) Decisions implementing § 4110.3–2 will be issued as proposed decisions pursuant to § 4160.1, except as provided in paragraph (b) of this section.

(b)(1) After consultation with, or a reasonable attempt to consult with, affected permittees or lessees and the state having lands or responsibility for managing resources within the area, the authorized officer will close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph (a) of this

section when the authorized officer determines and documents that—

(i) The soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, or insect infestation; or

(ii) Continued grazing use poses an imminent likelihood of significant resource damage.

(2) Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions will remain in effect pending the decision on appeal unless the Office of Hearings and Appeals grants a stay in accordance with § 4.472 of this title.

■ 15. Amend § 4110.4–2 by revising the first sentence of paragraph (a)(2) to read as follows:

§ 4110.4–2 Decrease in land acreage.

(a) * * *

(2) Grazing preference may be canceled in whole or in part. * * *

* * * * *

Subpart 4120—Grazing Management

■ 16. Amend § 4120.2 by revising the final sentence of paragraph (c) to read as follows:

§ 4120.2 Allotment management plans and resource activity plans.

* * * * *

(c) * * * The decision document following the environmental analysis will be issued in accordance with § 4160.1.

* * * * *

■ 17. Amend § 4120.3–1 by revising paragraph (f) to read as follows:

§ 4120.3–1 Conditions for range improvements.

* * * * *

(f) The authorized officer will review proposed range improvement projects as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). The decision document following the environmental analysis shall be issued in accordance with § 4160.1.

■ 18. Amend § 4120.3–2 by revising paragraph (b) to read as follows:

§ 4120.3–2 Cooperative range improvement agreements.

* * * * *

(b) Subject to valid existing rights, cooperators and the United States will share title to permanent structural range improvements such as fences, wells, and pipelines where authorization is granted after August 11, 2006 in proportion to their contribution to on-the-ground project development and construction costs. The authorization for all new permanent water developments, such as spring developments, wells, reservoirs, stock tanks, and pipelines, shall be through cooperative range improvement agreements. The authorized officer will document a permittee's or lessee's interest in contributed funds, labor, and materials to ensure proper credit for the purposes of §§ 4120.3–5 and 4120.3–6(c).

* * * * *

■ 19. Amend § 4120.3–3 by revising the introductory text of paragraph (c) to read as follows:

§ 4120.3–3 Range improvement permits.

* * * * *

(c) If forage available for livestock is not or will not be used by the preference permittee or lessee, BLM may issue nonrenewable grazing permits or leases to other qualified applicants to use it under §§ 4130.6–2 and 4130.4(d), or § 4110.3–1(a)(2). The term ''forage available for livestock'' does not include temporary nonuse that BLM approves for reasons of natural resource conservation, enhancement, or protection, or use suspended by BLM under § 4110.3–2(b). Before issuing a nonrenewable permit or lease, BLM will consult, cooperate, and coordinate as provided in § 4130.6–2. If BLM issues such a nonrenewable permit or lease, the preference permittee or lessee shall cooperate with the temporary authorized use of forage by another operator.

* * * * *

■ 20. Amend § 4120.3–8 by removing the misspelling ''whith'' from where it appears in the last sentence of paragraph (b) and adding in its place the word ''which''.

■ 21. Revise § 4120.3–9 to read as follows:

§ 4120.3–9 Water rights for the purpose of livestock grazing on public lands.

Any right that the United States acquires to use water on public land for the purpose of livestock watering on public land will be acquired, perfected, maintained, and administered under the substantive and procedural laws of the state within which such land is located.

■ 22. Amend § 4120.5–2 by removing the word ''and'' after the semicolon at the end of paragraph (a), removing the period at the end of paragraph (b) and adding in its place a semicolon and the word ''and'', by revising the section heading and the second sentence of the introductory text, and by adding paragraph (c), to read as follows:

§ 4120.5–2 Cooperation with Tribal, state, county, and Federal agencies.

* * * The authorized officer will cooperate with Tribal, state, county, and Federal agencies in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds, including—

* * * * *

(c) Tribal, state, county, or local government-established grazing boards in reviewing range improvements and allotment management plans on public lands.

■ 23. Revise § 4130.1–1 to read as follows:

§ 4130.1–1 Filing applications.

(a) Applications for grazing permits or leases (active use and nonuse), free-use grazing permits and other grazing authorizations shall be filed with the authorized officer at the local Bureau of Land Management office having jurisdiction over the public lands involved.

(b) The authorized officer will determine whether applicants for the renewal of permits and leases or issuance of permits and leases that authorize use of new or transferred preference, and any affiliates, have a satisfactory record of performance. The authorized officer will not renew or issue a permit or lease unless the applicant and all affiliates have a satisfactory record of performance.

(1) *Renewal of permit or lease.* (i) The authorized officer will deem the applicant for renewal of a grazing permit or lease, and any affiliate, to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.

(2) *New permit or lease or transfer of grazing preference.* The authorized officer will deem applicants for new permits or leases or transfer of grazing preference, including permits or leases that arise from transfer of preference, and any affiliates, to have a record of satisfactory performance when—

(i) The applicant or affiliate has not had any Federal grazing permit or lease

canceled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; and

(ii) The applicant or affiliate has not had any state grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, canceled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; and

(iii) A court of competent jurisdiction has not barred the applicant or affiliate from holding a Federal grazing permit or lease.

(c) In determining whether affiliation exists, the authorized officer will consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

■ 24. Amend § 4130.2:

■ a. By adding the word ''and'' after the semicolon at the end of paragraph (e)(2);

■ b. By removing paragraphs (g) and (h) and redesignating paragraphs (i) and (j) as paragraphs (g) and (h), respectively;

■ c. In redesignated paragraph (g), by revising the reference ''(see § 4130.3–2)'' to read ''(see § 4130.3–2(g))''; and

■ d. By revising paragraphs (a), (b), and (f) to read as follows:

§ 4130.2 Grazing permits and leases.

(a) Grazing permits and leases authorize use on the public lands and other BLM-administered lands that are designated in land use plans as available for livestock grazing. Permits and leases will specify the grazing preference, including active and suspended use. These grazing permits and leases will also specify terms and conditions pursuant to §§ 4130.3, 4130.3–1, and 4130.3–2.

(b) The authorized officer will consult, cooperate, and coordinate with affected permittees and lessees, and the state having lands or responsibility for managing resources within the area, before issuing or renewing grazing permits and leases.

* * * * *

(f) A permit or lease is not valid unless both BLM and the permittee or lessee have signed it.

* * * * *

■ 25. Amend § 4130.3 by redesignating the existing text as paragraph (a) and adding paragraphs (b) and (c) to read as follows:

§ 4130.3 Terms and conditions.

* * * * *

(b) Upon a BLM offer of a permit or lease, the permit or lease terms and conditions may be protested and appealed under part 4 and subpart 4160 of this part.

(c) If any term or condition of a BLM-offered permit or lease is stayed pending appeal, BLM will authorize grazing use as provided in § 4160.4 with respect to the stayed term or condition.

■ 26. Revise § 4130.3–3 to read as follows:

§ 4130.3–3 Modification of permits or leases.

(a) Following consultation, cooperation, and coordination with the affected lessees or permittees and the state having lands or responsibility for managing resources within the area, the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices:

(1) Do not meet management objectives specified in:

(i) The land use plan;

(ii) The pertinent allotment management plan or other activity plan; or

(iii) An applicable decision issued under § 4160.3; or

(2) Do not conform to the provisions of subpart 4180 of this part.

(b) To the extent practical, during the preparation of reports that evaluate monitoring and other data that the authorized officer uses as a basis for making decisions to increase or decrease grazing use, or otherwise to change the terms and conditions of a permit or lease, the authorized officer will provide the following with an opportunity to review and offer input:

(1) Affected permittees or lessees;

(2) States having lands or responsibility for managing resources within the affected area; and

(3) The interested public.

■ 27. Revise § 4130.4 to read as follows:

§ 4130.4 Authorization of temporary changes in grazing use within the terms and conditions of permits and leases, including temporary nonuse.

(a) The authorized officer may authorize temporary changes in grazing use within the terms and conditions of the permit or lease.

(b) For the purposes of this subpart, ''temporary changes in grazing use within the terms and conditions of the permit or lease'' means temporary changes in livestock number, period of use, or both, that would:

(1) Result in temporary nonuse; or

(2) Result in forage removal that—

(i) Does not exceed the amount of active use specified in the permit or lease; and

(ii) Occurs either not earlier than 14 days before the begin date specified on the permit or lease, and not later than 14 days after the end date specified on the permit or lease, unless otherwise specified in the appropriate allotment management plan under § 4120.2(a)(3); or

(3) Result in both temporary nonuse under paragraph (b)(1) of this section and forage removal under paragraph (b)(2) of this section.

(c) The authorized officer will consult, cooperate, and coordinate with the permittees or lessees regarding their applications for changes within the terms and conditions of their permit or lease.

(d) Permittees and lessees must apply if they wish—

(1) Not to use all or a part of their active use by applying for temporary nonuse under paragraph (e) of this section;

(2) To use forage previously authorized as temporary nonuse; or

(3) To use forage that is temporarily available on designated ephemeral or annual ranges.

(e)(1) Temporary nonuse is authorized—

(i) Only if the authorized officer approves in advance; and

(ii) For no longer than one year at a time.

(2) Permittees or lessees applying for temporary nonuse use must state on their application the reasons supporting nonuse. The authorized officer may authorize nonuse to provide for:

(i) Natural resource conservation, enhancement, or protection, including more rapid progress toward meeting resource condition objectives or attainment of rangeland health standards; or

(ii) The business or personal needs of the permittee or lessee.

(f) Under § 4130.6–2, the authorized officer may authorize qualified applicants to graze forage made available as a result of temporary nonuse approved for the reasons described in paragraph (e)(2)(ii) of this section. The authorized officer will not authorize anyone to graze forage made available as a result of temporary nonuse approved under paragraph (e)(2)(i) of this section.

(g) Permittees or lessees who wish to obtain temporary changes in grazing use within the terms and conditions of their permit or lease must file an application in writing with BLM on or before the date they wish the change in grazing use to begin. The authorized officer will assess a service charge under § 4130.8–3 to process applications for changes in grazing use that require the issuance of a replacement or supplemental billing notice.

■ 28. Amend § 4130.5 by removing the words ''authorized'' and ''or conservation use'' from where they appear in paragraph (b)(1).

■ 29. Revise § 4130.6–2 to read as follows:

§ 4130.6–2 Nonrenewable grazing permits and leases.

(a) Nonrenewable grazing permits or leases may be issued on an annual basis, as provided in § 4110.3–1(a), to qualified applicants when forage is temporarily available, provided this use is consistent with multiple-use objectives and does not interfere with existing livestock operations on the public lands. The authorized officer shall consult, cooperate, and coordinate with affected permittees or lessees, and the state having lands or responsibility for managing resources within the area, before issuing nonrenewable grazing permits and leases.

(b) Notwithstanding the provisions of § 4.21(a)(1) of this title, when BLM determines that it is necessary for orderly administration of the public lands, the authorized officer may make a decision that issues a nonrenewable grazing permit or lease, or that affects an application for grazing use on annual or designated ephemeral rangelands, effective immediately or on a date established in the decision.

■ 30. Amend § 4130.8–1 by redesignating paragraphs (d), (e), and (f) as paragraphs (f), (g), and (h), respectively, by revising paragraph (c), adding new paragraphs (d) and (e), and revising the last sentence of redesignated paragraph (h), to read as follows:

§ 4130.8–1 Payment of fees.

* * * * *

(c) Except as provided in § 4130.5, the full fee will be charged for each animal unit month of grazing use. For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of range by 1 cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats:

(1) Over the age of 6 months at the time of entering the public lands or other lands administered by BLM;

(2) Weaned regardless of age; or

(3) Becoming 12 months of age during the authorized period of use.

(d) BLM will not charge grazing fees for animals that are less than 6 months of age at the time of entering BLM-administered lands, provided that they are the progeny of animals upon which fees are paid, and they will not become 12 months of age during the authorized period of use.

(e) In calculating the billing, the authorized officer will prorate the grazing fee on a daily basis and will round charges to reflect the nearest whole number of animal unit months.

* * * * *

(h) * * * Failure to make payment within 30 days after the due date is a violation of § 4140.1(b)(1) and may result in action by the authorized officer under § 4150.1 and subpart 4160 of this part.

■ 31. Revise § 4130.8–3 to read as follows:

§ 4130.8–3 Service charge.

(a) Under section 304(a) of the Federal Land Policy and Management Act of 1976, BLM may establish reasonable charges for various services such as application processing. BLM may adjust these charges periodically to account for cost changes. BLM will inform the public of any changes by publishing a notice in the **Federal Register**.

(b) The following table of service charges is applicable until changed through a **Federal Register** notice as provided in paragraph (a) of this section. Except when the action is initiated by BLM, the authorized officer will assess the following service charges:

Action	Service charge
Issue crossing permit	$75
Transfer grazing preference	145
Cancel and replace or supplement a grazing fee billing	50

Subpart 4140—Prohibited Acts

■ 32. Amend § 4140.1 by—

■ a. Removing the introductory text; and

■ b. Revising paragraphs (a)(2), (a)(3), the introductory text of paragraph (b), paragraph (b)(1)(i), and paragraph (c) to read as follows:

§ 4140.1 Acts prohibited on public lands.

(a) * * *

(2) Failing to make substantial grazing use as authorized by a permit or lease for 2 consecutive fee years. This does not include approved temporary nonuse or use temporarily suspended by the authorized officer;

(3) Placing supplemental feed on these lands without authorization, or contrary to the terms and conditions of the permit or lease;

* * * * *

(b) Persons performing the following prohibited acts on BLM-administered lands are subject to civil and criminal penalties set forth at §§ 4170.1 and 4170.2:

(1) * * *

(i) Without a permit or lease or other grazing use authorization (see § 4130.6) and timely payment of grazing fees;

* * * * *

(c)(1) A grazing permittee or lessee performing any of the prohibited acts listed in paragraphs (c)(2) or (c)(3) of this section on an allotment where he is authorized to graze under a BLM permit or lease may be subject to the civil penalties set forth at § 4170.1–1, if:

(i) The permittee or lessee performs the prohibited act while engaged in activities related to grazing use authorized by his permit or lease;

(ii) The permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations; and

(iii) No further appeals are outstanding.

(2) Violation of Federal or state laws or regulations pertaining to the:

(i) Placement of poisonous bait or hazardous devices designed for the destruction of wildlife;

(ii) Application or storage of pesticides, herbicides, or other hazardous materials;

(iii) Alteration or destruction of natural stream courses without authorization;

(iv) Pollution of water sources;

(v) Illegal take, destruction, or harassment, or aiding and abetting in the illegal take, destruction, or harassment of fish and wildlife resources; and

(vi) Illegal removal or destruction of archaeological or cultural resources.

(3)(i) Violation of the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), ESA (16 U.S.C. 1531 *et seq.*), or any provision of part 4700 of this chapter concerning the protection and management of wild free-roaming horses and burros; or

(ii) Violation of State livestock laws or regulations relating to the branding of livestock; breed, grade, and number of bulls; health and sanitation requirements; and violating State, county, or local laws regarding the straying of livestock from permitted public land grazing areas onto areas that have been formally closed to open range grazing.

Subpart 4150—Unauthorized Grazing Use

■ 33. Amend § 4150.2 by revising the last sentence of paragraph (d) to read as follows:

§ 4150.2 Notice and order to remove.

* * * * *

(d) * * * Such notices of closure may be issued as final decisions effective upon issuance or on the date specified in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.472(d).

■ 34. Amend § 4150.3 by revising the second sentence of paragraph (e) and adding paragraph (f) to read as follows:

§ 4150.3 Settlement.

* * * * *

(e) * * * The authorized officer may take action under subpart 4160 of this part to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid. * * *

(f) Upon a stay of a decision issued under paragraph (e) of this section, the authorized officer will allow a permittee or lessee to graze in accordance with this part 4100 pending completion of the administrative appeal process.

Subpart 4160—Administrative Remedies

■ 35. Amend § 4160.1 by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 4160.1 Proposed decisions.

* * * * *

(c) The authorized officer may elect not to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with §§ 4110.3–3(b), 4130.6–2(b), 4150.2(d), or 4190.1(a).

(d) A biological assessment or biological evaluation prepared by BLM for purposes of an ESA consultation or conference is not a proposed or final decision for purposes of protest or appeal.

■ 36. Amend § 4160.3 by removing paragraphs (c), (d), and (e), by redesignating paragraph (f) as paragraph (c), and by revising redesignated paragraph (c) to read as follows:

§ 4160.3 Final decisions.

* * * * *

(c) Notwithstanding the provisions of § 4.21(a) of this title pertaining to the period during which a final decision will not be in effect, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision, and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals when the authorized officer has made a determination in accordance with §§ 4110.3–3(b), 4130.6–2(b), 4150.2(d), or 4190.1(a). Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals, the Interior Board of Land Appeals, or an administrative law judge to provide that the decision becomes effective immediately as provided in §§ 4.21(a)(1) and 4.479(c) of this title.

■ 37. Revise § 4160.4 to read as follows:

§ 4160.4 Appeals.

(a) Any person whose interest is adversely affected who wishes to appeal or seek a stay of a final BLM grazing decision must follow the requirements set forth in § 4.472 of this title. The appeal and any petition for stay must be filed with the BLM office that issued the decision within 30 days after its receipt or within 30 days after the proposed decision becomes final as provided in § 4160.3(a).

(b) When OHA stays all or a portion of a BLM grazing decision that affects a grazing permit or lease, BLM will authorize grazing use as follows:

(1) When OHA stays implementation of all or part of a grazing decision that cancels or suspends a permit or lease, changes any term or condition of a permit or lease during its current term, or renews a permit or lease, BLM will continue to authorize grazing under the permit or lease, or the relevant term or condition thereof, that was in effect immediately before the decision was issued, subject to any relevant provisions of the stay order. This continued authorization will expire upon the resolution of the administrative appeal. Such continued authorization is not subject to protest or appeal.

(2) When OHA stays implementation of a grazing decision that issues or denies issuance of a permit or lease to a preference transferee, BLM will issue the preference applicant a permit or lease with terms and conditions that are the same as the terms and conditions of the most recent permit or lease applicable to the allotment or portion of the allotment in question, subject to any relevant provisions of the stay order. This temporary permit will expire upon the resolution of the administrative appeal. Issuance of the temporary permit is not a decision subject to protest or appeal.

(3) When OHA stays implementation of a grazing decision that issues a permit or lease to a preference transferee with terms and conditions different from terms and conditions of the most recent permit or lease applicable to the allotment or portion of the allotment in question, BLM will issue the preference applicant a permit or lease that, with respect to any stayed term or condition, is the same as the terms and conditions of the most recent permit or lease applicable to the allotment or portion of the allotment in question, subject to any relevant provisions of the stay order. This temporary permit will expire upon the resolution of the administrative appeal. Issuance of the temporary permit is not a decision subject to protest or appeal.

Subpart 4170—Penalties

■ 38. Revise § 4170.1–2 to read as follows:

§ 4170.1–2 Failure to use.

If a permittee or lessee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the lease or permit, or has failed to maintain or use water base property in the grazing operation, the authorized officer, after consultation, cooperation, and coordination with the permittee or lessee and any lienholder of record, may cancel whatever amount of active use the permittee or lessee has failed to use.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

■ 39. Amend § 4180.1 by revising the introductory text and paragraph (d) to read as follows:

§ 4180.1 Fundamentals of rangeland health.

Standards and guidelines developed or revised by a Bureau of Land Management State Director under § 4180.2(b) must be consistent with the following fundamentals of rangeland health:

* * * * *

(d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal proposed or candidate threatened and endangered species, and other special status species.

■ 40. Amend § 4180.2 by—

■ a. Removing the third sentence of paragraph (b);

■ b. Removing the semicolon at the end of paragraph (e)(12) and adding in its place a period;

■ c. Revising paragraph (c), the introductory text of paragraph (d), paragraph (d)(4), paragraph (e)(9), the introductory text of paragraph (f), and paragraph (f)(2)(viii), to read as follows:

§ 4180.2 Standards and guidelines for grazing administration.

* * * * *

(c)(1) If a standards assessment indicates to the authorized officer that the rangeland is failing to achieve standards or that management practices do not conform to the guidelines, then the authorized officer will use monitoring data to identify the significant factors that contribute to failing to achieve the standards or to conform with the guidelines. If the authorized officer determines through standards assessment and monitoring that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section, the authorized officer will, in compliance with applicable laws and with the consultation requirements of this part, formulate, propose, and analyze appropriate action to address the failure to meet standards or to conform to the guidelines.

(i) Parties will execute a documented agreement and/or the authorized officer will issue a final decision on the appropriate action under § 4160.3 as soon as practicable, but not later than 24 months after a determination.

(ii) BLM may extend the deadline for meeting the requirements established in paragraph (c)(1)(i) of this section when legally required processes that are the responsibility of another agency prevent completion of all legal obligations within the 24-month time frame. BLM will make a decision as soon as practicable after the legal requirements are met.

(2) Upon executing the agreement and/or in the absence of a stay of the final decision, the authorized officer will implement the appropriate action as soon as practicable, but not later than the start of the next grazing year.

(3) The authorized officer will take appropriate action as defined in this paragraph by the deadlines established in paragraphs (c)(1) and (c)(2) of this section. Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 of this part that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines. Practices and activities subject to standards and guidelines include the development of grazing-related portions of activity plans, establishment of terms and conditions of permits, leases, and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction, and development of water.

(d) At a minimum, state and regional standards developed or revised under paragraphs (a) and (b) of this section must address the following:

* * * * *

(4) Habitat for endangered, threatened, proposed, candidate, and other special status species; and

* * * * *

(e) * * *

(9) Restoring, maintaining or enhancing habitats of Federal proposed, Federal candidate, and other special status species to promote their conservation;

* * * * *

(f) Until such time as state or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in paragraph (f)(2) of this section will apply and will be implemented in accordance with paragraph (c) of this section.

* * * * *

(2) * * *

(viii) Conservation of Federal threatened or endangered, proposed, candidate, and other special status species is promoted by the restoration and maintenance of their habitats;

* * * * *

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