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Rules and Regulations

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27222; Airspace Docket No. 07–AAL–02]

Revision of Class E Airspace; Port Heiden, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Port Heiden, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Two new Standard Instrument Approach Procedures (SIAPs) are being developed, and two procedures are being amended for the Port Heiden Airport. A Departure Procedure (DP) is also being amended. This action revises existing Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Port Heiden Airport, Port Heiden, AK.

DATES: *Effective Date:* 0901 UTC, July 5, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Friday, March 16, 2007, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from the surface, from 700 ft. above the surface and from 1,200 ft. above the surface at Port Heiden, AK (72 FR 12579). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing SIAPs for the Port Heiden Airport. Class E controlled airspace extending upward from 700 ft. above the surface and from 1,200 ft. above the surface, in the Port Heiden Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received endorsing the action. The rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9P, *Airspace Designations and Reporting Points*, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Port Heiden Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing new and amended DPs and SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at the Port Heiden Airport, Port Heiden, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Port Heiden Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

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 amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Port Heiden, AK [Revised]

Port Heiden Airport, AK
(Lat. 56°57′33″ N., long. 158°38′00″ W.)
Port Heiden NDB
(Lat. 56°57′14″ N., long. 158°38′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Port Heiden Airport, AK, and within 4 miles north and 8 miles south of the 248° bearing of the Port Heiden NDB, AK, extending from the Port Heiden NDB to 20 miles west of the NDB, and within 4 miles east and 8 miles west of the 339° bearing of the Port Heiden NDB, AK, extending from the Port Heiden NDB to 20 miles north of the NDB, and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Port Heiden NDB, AK.

* * * * *

Issued in Anchorage, AK, on May 3, 2007.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E7–9155 Filed 5–11–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27221; Airspace Docket No. 07–AAL–01]

Revision of Class E Airspace; Kodiak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Kodiak, AK to provide adequate controlled airspace to contain aircraft executing Standard Instrument Approach Procedures (SIAPs). Four Standard Instrument Approach Procedures (SIAPs) are being amended for the Kodiak Airport. A Standard Instrument Departure (SID) and a Departure Procedure (DP) are also being amended. This action revises existing Class E airspace upward from the surface, from 700 feet (ft.) and 1,200 ft. above the surface at Kodiak Airport, Kodiak, AK.

DATES: *Effective Date:* 0901 UTC, July 5, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Friday, March 16, 2007, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise Class E airspace upward from the surface, from 700 ft. above the surface and from 1,200 ft. above the surface at Kodiak, AK (72 FR 12578). The action was proposed in order to create Class E airspace sufficient in size to contain aircraft while executing SIAPs for the Kodiak Airport. Class E controlled airspace extending upward from the surface, from 700 ft. above the surface and from 1,200 ft. above the surface, in the Kodiak Airport area is revised by this action.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received. However, the comment was unrelated to any aeronautical issues related to this action. The rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as extensions to Class D airspace areas are published in paragraph 6004 of FAA Order 7400.9P, *Airspace Designations and Reporting Points*, dated September 1, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9P, *Airspace Designations and Reporting Points*, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at the Kodiak Airport, Alaska. This Class E airspace is revised to accommodate aircraft executing amended DPs and SIAPs, and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at the Kodiak Airport, Kodiak, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Kodiak Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

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 amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 Federal Aviation

Administration Order 7400.9P, *Airspace Designations and Reporting Points,* dated September 1, 2006, and effective September 15, 2006, is amended as follows:

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area.

* * * * *

AAL AK E4 Kodiak, AK [Revised]

Kodiak Airport, AK
(Lat. 57°45′00″ N., long. 152°29′38″ W.)

That airspace extending upward from the surface within 1.3 miles either side of the 072° bearing from the Kodiak Airport, AK, extending from the 3.1-mile radius from the airport, to 4.8 miles east of the airport, and within 1 mile either side of the 091° bearing from the Kodiak Airport, AK, extending from the 3.1-mile radius from the airport, to 6.7 miles east of the airport.

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Kodiak, AK [Revised]

Kodiak Airport, AK
(Lat. 57°45′00″ N., long. 152°29′38″ W.)

That airspace extending upward from 700 feet above the surface within an 6.9-mile radius of the Kodiak Airport, AK, and within 3.1 miles either side of the 072° bearing from the Kodiak Airport, AK, extending from the 6.9-mile radius from the airport, to 12.2 miles east of the airport, and within 1 mile either side of the 091° bearing from the Kodiak Airport, AK, extending from the 6.9-mile radius from the airport, to 8.2 miles east of the airport, and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Kodiak Airport, AK.

* * * * *

Issued in Anchorage, AK, on May 3, 2007.

Anthony M. Wylie,

Manager, Alaska Flight Services Information Area Group.

[FR Doc. E7–9154 Filed 5–11–07; 8:45 am]

BILLING CODE 4910–13–P

PEACE CORPS

22 CFR Part 303

RIN 0420–AA21

Freedom of Information Act Administration

AGENCY: Peace Corps.

ACTION: Direct final rule.

SUMMARY: The Peace Corps is amending its Freedom of Information Act (FOIA) regulations, to permit requesters to use electronic mail when submitting requests, and to increase copy fees to 15 cents per page. The first revision will provide the public with more efficient FOIA responses, and the second revision will cover the costs of materials and upkeep for photocopying services.

DATES: This final rule is effective on June 28, 2007. Without further action, unless adverse comment is received by Peace Corps by June 13, 2007. If adverse comment is received, Peace Corps will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments by e-mail to *sglasow@peacecorps.gov.* Include RIN 0420–AA21 in the subject line of the message. You may also submit comments by mail to Suzanne Glasow, Office of the General Counsel, Peace Corps, Suite 8200, 1111 20th Street, NW., Washington, DC 20526. Contact Suzanne Glasow for copies of comments.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Associate General Counsel, 202–692–2150, *sglasow@peacecorps.gov.*

SUPPLEMENTARY INFORMATION: The revisions to the Peace Corps' FOIA regulations include a change in the manner of making FOIA requests, and an increased fee for copying documents released under FOIA. First, consistent with the E-Government Act, Peace Corps proposes to begin allowing FOIA requesters to make FOIA requests through e-mail. Second, Peace Corps is revising its FOIA regulations to increase the standard copying charge from 10 cents to 15 cents per page. By increasing fees, the agency will be able to fully cover the costs of paper and machine maintenance associated with providing a large quantity of photocopies.

Section-by-Section Analysis

Section 308.8 Requests for Records

Subpart (b) is amended to permit requesters to make FOIA requests through e-mail.

Section 303.13 Fees

Subpart (e) is amended to increase the reasonable standard charge for duplication by paper copy from 10 cents to 15 cents.

Executive Order 12866

This regulation has been determined to be non-significant within the meaning of Executive Order 12866.

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

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

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

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

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

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

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 22 CFR Part 303

Freedom of Information.

■ For reasons set out in the preamble, the Peace Corps amends 22 CFR part 303 as follows:

PART 303—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 5 U.S.C. 552; 22 U.S.C. 2501, et seq.; E.O. 12137, 44 FR 29023, 3 CFR, 1979 Comp., p. 389; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

■ 2. In § 303.8, paragraph (b) is revised to read as follows:

§ 303.8 Requests for records.

* * * * *

(b) *Requests.* Requests for records under this section shall be made in writing via regular mail, e-mail, or facsimile and, as applicable, the envelope, letter or subject line shall be clearly marked ''Freedom of Information Request.'' All requests shall be addressed to the FOIA Officer. Requests by letter shall use the address given in § 303.5(a) and requests by e-mail must be sent to the FOIA electronic mailbox address *foia@peacecorps.gov.* Any request not marked and addressed as specified in this paragraph will be so marked by Peace Corps personnel as soon as the request is properly identified. The request will then be forwarded immediately to the FOIA Officer. A request improperly addressed will not be deemed to have been

received for purposes of the time period set out in paragraph (h) of this section until it has been received by the FOIA Officer. Upon receipt of an improperly addressed request, the FOIA Officer shall notify the requester of the date on which the time period began. The request shall be stamped ''received'' on the date it is received by the FOIA Office. Any request received by e-mail shall be printed on paper and stamped on the date it is received by the FOIA Office.

* * * * *

■ 3. In § 303.13, paragraph (e)(3) is revised to read as follows:

§ 303.13 Fees.

* * * * *

(e) * * *

(3) Duplication by paper copy: 15 cents per page;

* * * * *

Dated: May 8, 2007.

Tyler S. Posey,

General Counsel.

[FR Doc. 07–2349 Filed 5–11–07; 8:45 am]

BILLING CODE 6051–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–0015; FRL–8312–5]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) submission by the state of Iowa which revises the air quality rules to include portions of the Federal New Source Review (NSR) regulations promulgated by EPA in December 2002. These revisions do not include the portion of the rules for nonattainment areas as there are currently no nonattainment areas in the state of Iowa. The definitions and applicability portions of the Prevention of Significant Deterioration (PSD) program were written into the state rules while the remaining portions of the PSD program were adopted by reference. All references to clean units and pollution control projects are not adopted by reference. Iowa has also not adopted portions of the Federal rule relating to exceptions from recordkeeping requirements.

DATES: This rule is effective on June 13, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2007–0015. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a State regulation mean to me?
What is the background for this action?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the federally-enforceable SIP.

Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What is the Federal approval process for a SIP?

In order for State regulations to be incorporated into the Federally-enforceable SIP, States must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State rule, regulation, or control strategy is adopted, the State submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the final Federal action on the State submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All State regulations and supporting information approved by EPA under section 110 of the Clean Air Act (CAA or Act) are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What does Federal approval of a State regulation mean to me?

Enforcement of the State regulation before and after it is incorporated into the Federally-approved SIP is primarily a State responsibility. However, after the regulation is Federally-approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What is the background of this action?

The 2002 NSR Reform rules are part of EPA's implementation of parts C and D of title I of the CAA, 42 U.S.C. 7470–7515. Part C of title I of the CAA, 42 U.S.C. 7470–7492, is the Prevention of Significant Deterioration (PSD) program, which applies in areas that meet the National Ambient Air Quality Standards (NAAQS), also known as ''attainment areas'' and in areas for which there is insufficient information to determine whether the area meets the NAAQS, also known as ''unclassifiable'' areas.

Part D of Title I of the CAA, 42 U.S.C. 7501–7515, is the nonattainment New Source Review (NNSR) program, which applies in areas that are not in attainment of the NAAQS, also known as ''nonattainment areas.'' Collectively, the PSD and NNSR programs are referred to as the ''New Source Review'' or NSR programs. EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21 52.24 and part 51, appendix S. The SIP submittal from the State of Iowa does not include the portion of the rules relating to NSR reform provisions for nonattainment areas as the State of Iowa currently has no areas designated nonattainment.

The 2002 NSR Reform rules made changes to five areas of the NSR programs. In summary, the 2002 rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with plantwide applicability limits (PALs) to avoid having a significant emission increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs).

After the 2002 NSR Reform rules were finalized and effective, various petitioners challenged numerous aspects of the 2002 NSR Reform rules, along with portions of EPA's 1980 NSR rules (45 FR 5276, August 7, 1980). On June 24, 2005, the District of Columbia Court of Appeals issued a decision on the challenges to the 2002 NSR Reform Rules. *New York* v. *United States,* 413 F.3d (DC Cir. 2005). In summary, the Court of Appeals for the District of Columbia vacated portions of the rules pertaining to clean units and pollution control projects, remanded a portion of the rules regarding exemption from recordkeeping, *e.g.*, 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and let stand the other provisions included as part of the 2002 NSR Reform rules. EPA has not yet responded to the Court's remand regarding recordkeeping provisions.

What is being addressed in this document?

The final action described in this section is identical to the action we proposed in the **Federal Register** February 26, 2007, notice of proposed rulemaking (72 FR 8329). We received no comments on any aspect of the proposal, and we are taking final action based on the rationale in the proposal and in this final rule.

EPA is revising the Iowa SIP to include the PSD portion of the NSR regulations. In general, the Iowa revisions consist of incorporation by reference of substantial portions of the Federal Prevention of Significant Deterioration (PSD) rule and inclusion of other portions of the Federal rule almost verbatim. Iowa has not adopted provisions of the 2002 reform rule which were either vacated or remanded by the Court, as previously described. The Iowa Department of Natural Resources (IDNR) has identified portions of its rule which are at variance with the Federal rule and has provided conclusions with respect to equivalency of the State rule with the Federal requirements.

Revisions to the Iowa Administrative Code (567–20.1 and 567–22.4) add language to reference the new Chapter 33 entitled ''Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality.'' These revisions are informational in nature and do not include substantive requirements.

Chapter 33 of the Iowa rules contains the substantive PSD rule revisions which include EPA's NSR reform rules as previously described. The Federal provisions are adopted as follows: (1) The definitions, applicability provisions, public participation procedures, and source obligation provisions (the requirements in section 52.21(r) of the Federal rule with the exception of the provision in section 52.21(r)(6) which exempts certain emissions changes from the recordkeeping requirements) are set forth in language which tracks the relevant language of the corresponding Federal rules; and, (2) the remainder of the Federal PSD rules upheld by the Court are adopted by reference.

The State's definition section (567–33.3(1)) contains several definitions with wording which differs from the wording in the Federal rule, but the differences are either not substantive or do not affect the stringency of the rule. These differences are described in the technical support document, and EPA believes that the differences do not affect the approvability of the rule. Another example of a difference is that the State does not incorporate by reference the Federal definitions relating to the clean unit exemption and pollution control project exclusion, which provisions were vacated by the court.

The applicability section (567–33.3(2)) discusses the application of PSD program requirements as they apply to the construction of any new major stationary source, or any project at an existing major stationary source in an area designated as attainment or unclassifiable. This section extracts the language from 40 CFR 51.166(a)(7), including the actual-to-projected-actual test for determining whether a modification is subject to the rule and other provisions of the Federal rule.

The public participation procedures in the State rule (567–33.3(17)) are substantially the same as the rules in the existing SIP. EPA believes that these procedures meet the corresponding requirements in 40 CFR 51.166.

The following sections were adopted by reference as specified in 40 CFR 52.21: Ambient air increments; Ambient air ceilings; Restrictions on area classifications; Redesignation; Stack heights; Exemptions; Control technology review; Source impact analysis; Air quality models; Air quality analysis; Source information, and Additional impact analyses.

The provisions of the State rule relating to exclusions from increment consumption, sources impacting Federal Class I areas—additional requirements, and innovative control technology adopt by reference the relevant portions of 40 CFR 51.166 except for the phrases that contain ''the plan may provide that,'' ''the plan provides that,'' ''it shall also provide that,'' and ''mechanism whereby.'' These phrases are excluded to convert the language of section 51.166 to substantive rules rather than minimum program requirements. The EPA provisions for plantwide applicability limitations are adopted by reference except that the term ''Administrator'' used in the Federal rule means ''the department of natural resources'' in the State rule. These provisions were reviewed by EPA for consistency with the Federal requirements and are acceptable.

The reference to Clean Units and Pollution Control Projects as set forth in 40 CFR 52.21 and 40 CFR 51.166 are not adopted by reference. In addition, the provision of the Federal rule (40 CFR 52.21(r)(6)), which exempts certain projects from recordkeeping, is not adopted, so that recordkeeping requirements apply to all modifications which use the actual-to-projected-actual test to show nonapplicability. Iowa intended these deviations from the Federal rule to address the Court ruling on EPA's reform rules, and EPA believes they are approvable.

Have the requirements for approval of a SIP revision been met?

The State submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document that is part of this docket, EPA believes that the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What action is EPA taking?

We are approving revisions to Iowa's rule at Chapter 20, ''Scope of Title—Definitions—Forms—Rules of Practice,'' and Chapter 22, ''Controlling Pollution,'' as the revisions relate to the NSR regulations. We are also approving new Chapter 33, ''Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality.'' It should be noted that Iowa has no nonattainment areas so those portions of the NSR reform rules are not being addressed with this rulemaking.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final 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 final action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that the final approvals in this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This final rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This final rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. 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 final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 13, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 2, 2007.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Q—Iowa

■ 2. In § 52.820(c) the table is amended by:

■ a. Revising the entries for 567–20.1 and 567–22.4.

■ b. Adding in numerical order a heading for Chapter 33 and entries for 567–33.1, 567–33.2, 567–33.3, 567–33.4 to 567–33.8, 567–33.9 and 567–33.10.

The revisions and additions read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources Environmental Protection Commission [567]				
* * *	*	*	*	*
Chapter 20—Scope of Title—Definitions—Forms—Rule of Practice				
567–20.1	Scope of Title	N/A	5/14/07 [*insert FR page number where the document begins*].	This rule is a non-substantive description of the Chapters contained in the Iowa rules. EPA has not approved all of the Chapters to which this rule refers.
* * *	*	*	*	*
Chapter 22—Controlling Pollution				
* * *	*	*	*	*
567–22.4	Special Requirements for Major Stationary Sources Located in Areas Designated Attainment or Unclassified (PSD).	11/1/2006	5/14/07 [*insert FR page number where the document begins*].	
* * *	*	*	*	*
Chapter 33—Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality				
567–33.1	Purpose	11/1/06	5/14/07 [*insert FR page number where the document begins*].	
567–33.2	Reserved	11/1/06	5/14/07 [*insert FR page number where the document begins*].	
567–33.3	Special construction permit requirements for major stationary sources in areas designated attainment or unclassified (PSD).	11/1/06	5/14/07 [*insert FR page number where the document begins*].	
567–33.4 to 567–33.8	Reserved	11/1/06	5/14/07 [*insert FR page number where the document begins*].	
567–33.9	Plantwide applicability limitations (PALs).	11/1/06	5/14/07 [*insert FR page number where the document begins*].	
567–33.10	Exceptions to adoption by reference	11/1/06	5/14/07 [*insert FR page number where the document begins.*	
* * *	*	*	*	*

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[FR Doc. E7–9131 Filed 5–11–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2006–0692; FRL–8314–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the Weirton, WV Portion of the Steubenville-Weirton, OH-WV 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a redesignation request and a State Implementation Plan (SIP) revision submitted by the State of West Virginia. The West Virginia Department of Environmental Protection (WVDEP) is requesting that the Brooke and Hancock County, West Virginia (Weirton) portion of the Steubenville-Weirton, OH-WV area (herein referred to as the ''Area'') be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). In conjunction with its redesignation request, the State submitted a SIP revision consisting of a maintenance plan for Weirton that provides for continued attainment of the 8-hour ozone NAAQS for the next 12 years, until 2018. EPA is also approving the adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Weirton 8-hour ozone maintenance plan for purposes of transportation conformity, and is approving those MVEBs. EPA is approving the redesignation request and the maintenance plan revision to the West Virginia SIP in accordance with the requirements of the CAA.

DATES: *Effective Date:* This final rule is effective on June 13, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2006–0692. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., 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 either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, WV 25304.

FOR FURTHER INFORMATION CONTACT: Amy Caprio, (215) 814–2156, or by e-mail at *caprio.amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 2, 2006 (71 FR 57905), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. The NPR proposed approval of West Virginia's redesignation request and a SIP revision that establishes a maintenance plan for Weirton that sets forth how Weirton will maintain attainment of the 8-hour ozone NAAQS for the next 12 years. The formal SIP revision was submitted by the WVDEP on August 3, 2006. Other specific requirements of West Virginia's redesignation request SIP revision for the maintenance plan and the rationales for EPA's proposed actions are explained in the NPR and will not be restated here. On October 19, 2006, EPA received a comment, from the West Virginia Division of Highways, in support of its October 2, 2006 NPR. Also, on October 28, 2006, EPA received adverse comments on the said October 2, 2006 NPR. A summary of the comments submitted and EPA's responses are provided in Section II of this document. However, errata were found on page 57912 of the NPR. On page 57912 (Table 4), an error occurred in EPA's calculation of the 2018 Ohio NO_X point sources. The correct 2018 Ohio NO_X point source should read 46.4 tons per day (tpd) instead of 41.0 tpd. This error adversely affects the total NO_X point sources and the 2018 Ohio total NO_X emissions. The correct total NO_X point sources should read 52.0 tpd instead of 46.6 tpd. Lastly, the 2018 Ohio total NO_X emissions should read 55.3 tpd instead of 49.9 tpd. It should be noted that these errata do not affect the attainment of the 8-hour ozone standard or the demonstration of maintenance in the Area.

II. Summary of Public Comments and EPA Responses

Comment: The commenter stated that on behalf of the West Virginia Division of Highways, they would like to go on record as supporting the redesignation of Weirton from nonattainment to attainment.

Response: EPA acknowledges the comment of support for our final action.

Comment: The commenter notes that although there are no electrical generating units (EGUs) in the Weirton portion of the Area, ''significant'' NO_X emissions reductions are expected from 2002—2018 at two EGU's located in Steubenville. The commenter requests specific information on the controls at these plants and measures making these emissions reductions enforceable.

Response: The Redesignation of Jefferson County, Ohio to Attainment of the 8-Hour Ozone Standard, 72 FR 711 (January 8, 2007) notes that Ohio's EGU NO_X emissions control rules stemming from EPA's NO_X SIP Call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR) May 12, 2005 (70 FR 25162), to be implemented beyond 2006, will further lower NO_X emissions in upwind areas, resulting in decreased ozone and ozone precursor transport into Jefferson County and the Steubenville-Weirton Area. This will also support maintenance of the ozone standard in this Area, which particularly benefits from the NO_X SIP Call and CAIR. These two regulations focus on utility emissions in the Eastern United States and impose a permanent cap on overall emissions from affected sources. This cap is likely to minimize growth of this very important component of emissions in the Area.

The emission projections for Jefferson County and the Steubenville-Weirton Area as a whole, coupled with the expected impacts of the States' EGU NO_X rules and CAIR, lead to the conclusion that the Area should maintain the 8-hour ozone NAAQS throughout the required 10-year maintenance period and through 2018. The projected decreases in local VOC and local and regional NO_X emissions indicate that peak ozone levels in the Area may actually further decline during the maintenance period.

Based on the comparison of the projected emissions and the attainment year emissions, we conclude that the West Virginia Department of Environmental Protection (WVDEP) and the Ohio EPA have successfully demonstrated that the 8-hour ozone standard should be maintained throughout the Area.

In addition, in this action EPA is approving the Maintenance Plan for Weirton and in a separate action has proposed approval of the Maintenance Plan for the Jefferson County

(Steubenville) portion of the Area. Collectively, the Ohio and West Virginia Maintenance Plans demonstrate why those states believe that the Area will continue to maintain the 8-hour ozone standard for at least 10 years from the date of redesignation. Furthermore, the Contingency Plans, which are components of the Maintenance Plans, set forth the steps that the States will undertake to preserve attainment of the 8-hour ozone standard if air quality indicators show that the air quality of the Area has declined to the point when contingency measures to reverse that deterioration of air quality should begin being implemented. Therefore, continued maintenance of the 8-hour ozone standard will be assured independent of whether or not enforceable reductions are currently called for at the two Jefferson County EGUs. In short, if projected reductions from the Jefferson County EGUs do not occur, and if the measures from the NO_X SIP call, CAIR and other ozone control measures that are currently implemented or will be implemented in the near future, fail to maintain the 8-hour ozone standard in the Area, the States of West Virginia and Ohio nevertheless will have, with the Contingency Plan provisions of their Maintenance Plans, a SIP-approved process for assuring that air quality in Steubenville-Weirton Area will continue to maintain the 8-hour ozone standard.

Comment: The commenter states that the Weirton redesignation is based on 2002–2004 air quality data, and should instead be based on the most recent three years of air quality data, 2004–2006.

Response: EPA disagrees that the 2006 data was available as a basis for redesignating Weirton to attainment, and also disagrees with the comment that the redesignation cannot be based on the quality assured 2002–2004 air quality data. EPA may redesignate an area to attainment of the 8-hour ozone NAAQS if three years of quality assured data indicate that the area has attained the standard and the most recent quality assured air quality data indicates that the area is still attaining the standard at the time of the redesignation. EPA has determined that Weirton has attained compliance with the 8-hour ozone NAAQS subsequent to the calendar year 2004 ozone season (April–October) based on three years (2002–2004) of quality assured data. It is also worth noting that while our determination that the Area has attained the standard is based on the 2002–2004 data, the 2005 calendar year quality assured data and the newly available quality assured data from 2006, indicate that the Area continues to attain the standard. The 2005 and 2006 data supports our conclusion in the NPR on October 2, 2006 (71 FR 57905) that emissions reductions in the Area can be contributed to permanent and enforceable measures throughout the Area and that air quality monitoring data indicate that the Area continues to attain the 8-hour ozone NAAQS.[1]

Comment: The commenter asks why the monitoring site in Jefferson County, Ohio was moved at the end of 2003, where the new site is in relation to the old one, and an explanation as to the acceptability of combining the data from the two sites.

Response: The monitoring site in Jefferson County was relocated to a site ⅓ mile from the original site after 2003 because Ohio EPA lost site access to the original site. The new site was approved by EPA Region 5 and meets all siting criteria described in 40 CFR 58 Appendix E. The original and final sites are sufficiently close together and removed from sources of ozone precursors such that the two sites represent the same air quality. Therefore, the data from the two sites can be combined when calculating the three-year average ozone concentration. See Redesignation of Jefferson County, Ohio to Attainment of the 8-Hour Ozone Standard, 72 FR 711 (January 8, 2007).

Comment: The commenter asserts that cold and wet summers, rather than enforceable emissions reductions are a significant cause of improvement of air quality in Weirton, although the commenter also asserts based on the number of days exceeding 84 ppb 2005 that the air quality is actually not improving.

Response: In accordance with Appendix I to 40 CFR Part 50, compliance with the 8-hour ozone NAAQS is met at an ambient air monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm; it is not based on the number of days which exceed the 8-hour ozone standard. Additionally, EPA uses the three-year averaging period to minimize year to year variations in the summer (*i.e.*, ozone season) weather. *See* Redesignation of Pittsburgh, Pennsylvania, 66 FR 53094, 53100 (October 19, 2001). Therefore, the number of days exceeding 84 ppb are not relevant to a determination of whether an area (or portion thereof), has attained the 8-hour ozone NAAQS. Information relative to long term trends of West Virginia summer temperatures and rainfall-based data was obtained from the National Oceanic and Atmospheric Administration's (NOAA) National Climate Data Center (please see attached). Based on EPA's review, this information shows that the summers 2000 through 2006 experienced year to year variations in average summer temperature and rainfall typical of the summer seasons in the State of West Virginia. Thus the improvement in air quality is not due to unusually cold and wet summers. Rather, the improvement in air quality is due to the implementation of permanent and enforceable measures as explained in the NPR. The permanent and enforceable measures listed in the Weirton NPR include the National Low Emissions Vehicle (NLEV), motor vehicle fleet turnover with new vehicles meeting the Tier 2 standards, and the Clean Diesel Program. These federal vehicle programs along with the NO_X SIP Call resulted in a 3.0 tons per year (tpy) decrease in VOC emissions and a 37.2 tpy decrease in NO_X emissions throughout the Steubenville-Weirton Area between 2002 and 2004. Therefore, EPA believes that the improvement in 8-hour ozone air quality is a result of identifiable, permanent and enforceable reductions in ozone precursor emissions, not unusually cold and wet summers.

Comment: The commenter requests 2006 monitoring data for the Weirton Area.

Response: Preliminary (not quality assured) data is publicly available at the following Web sites: *http://www.epa.gov/air/data/* and/or *http://www.airnow.gov. See also,* footnote 1.

Additionally, the United States Court of Appeals for the District of Columbia Circuit recently vacated EPA's April 30, 2004 ''Final Rule to Implement the 8-Hour Ozone National Ambient Standard'' (the Phase 1 implementation rule). *South Coast Air Quality Management District* v. *EPA*, 472 F.3d 882 (D.C. Cir. 2007). EPA issued a supplemental proposed rulemaking that set forth its views on the potential effect of the Court's ruling on this and other proposed redesignation actions. 72 FR 13452 (March 22, 2007). EPA proposed to find that the Court's ruling does not alter any requirements relevant to the

[1] The fourth highest 8-hour ozone monitoring values at the Hancock County, West Virginia (Weirton) monitor for 2006 were 0.085 ppm, 0.079 ppm, 0.079 ppm, and 0.077 ppm. The fourth highest 8-hour ozone monitoring values at the Jefferson County, Ohio (Steubenville) monitor for 2006 were 0.089, 0.083, 0.080 ppm, and 0.080 ppm. Thus the design values at both Area monitors for monitoring years 2004–2006 are still showing attainment of the 8-hour NAAQS with a value of 0.075 ppm at the Weirton monitor and 0.078 ppm at the Steubenville monitor.

proposed redesignations that would prevent EPA from finalizing these redesignations, for the reasons fully explained in the supplemental notice. EPA provided a 15-day review and comment period on this supplemental proposed rulemaking. The public comment period closed on April 6, 2007. EPA received six comments, all supporting EPA's supplemental proposed rulemaking, and supporting redesignation of the affected areas. EPA recognizes the support provided in these comments as well, but again, we do not believe any specific response to comments is necessary with respect to these comments. In addition, several of these comments included additional rationale for proceeding with these proposed redesignations. EPA had not requested comment on any additional rationale, does not believe any additional rationale is necessary, and similarly does not believe any specific response to these comments is necessary, and thus has not provided any.

III. Final Action

EPA is approving the State of West Virginia's August 3, 2006 redesignation request and maintenance plan because the requirements for approval have been satisfied. EPA has evaluated West Virginia's redesignation request, submitted on August 3, 2006, and determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that Weirton has attained the 8-hour ozone standard. The final approval of this redesignation request will change the designation of the Weirton, West Virginia portion of the Area from nonattainment to attainment for the 8-hour ozone standard. EPA is approving the associated maintenance plan for Weirton, submitted on August 3, 2006, as a revision to the West Virginia SIP. EPA is approving the maintenance plan for Weirton because it meets the requirements of section 175A.

EPA is also approving the MVEBs submitted by West Virginia in conjunction with its redesignation request. In this final rulemaking, EPA is notifying the public that we have found that the MVEBs for NO_X and VOCs in the Weirton 8-hour ozone maintenance plan are adequate and approved for conformity purposes. As a result of our finding, Brooke and Hancock Counties must use the MVEBs from the submitted 8-hour ozone maintenance plan for future conformity determinations. The adequate and approved MVEBs are provided in the following table:

ADEQUATE AND APPROVED MOTOR VEHICLE EMISSIONS BUDGETS (MVEBS) IN TONS PER DAY (TPD)

Budget year	NO_X	VOC
2009	2.8	2.0
2018	1.2	1.0

Weirton is subject to the CAA's requirements for basic ozone nonattainment areas until and unless it is redesignated to attainment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This final rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it affects the status of a geographical area, does not impose any new requirements on sources, or allow the state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This final rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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. Redesignation is an action that affects the status of a geographical area and does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

B. Submission to Congress and the Comptroller General

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

the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 13, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, to approve the redesignation request, maintenance plan and adequacy determination for MVEBs for Weirton, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 4, 2007.

James W. Newsom,

Acting Regional Administrator, Region III.

■ 40 CFR parts 52 and 81 are 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 XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (e) is amended by adding an entry for the 8-Hour Ozone Maintenance Plan, Steubenville-Weirton, OH-WV Area at the end of the table to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
8-Hour Ozone Maintenance Plan for the Steubenville-Weirton, OH-WV Area.	Brooke and Hancock Counties	08/03/06	05/14/07 [Insert page number where the document begins].	

PART 81—[AMENDED]

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

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

■ 4. In § 81.349 the table entitled ''West Virginia—Ozone (8-Hour Standard)'' is amended by revising the entry for the Steubenville-Weirton, OH-WV Area to read as follows:

§ 81.349 West Virginia

* * * * *

WEST VIRGINIA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/Classification	
	Date [1]	Type	Date [1]	Type
*	*	*	*	*
Steubenville-Weirton, OH-WV Area				
Brooke County	05/14/07	Attainment.		
Hancock County	05/14/07	Attainment.		
*	*	*	*	*

[a] Includes Indian country located in each county or area except otherwise noted.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. E7–9208 Filed 5–11–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 060427113–6113–01]

RIN 0648–XA16

Fisheries Off West Coast States and in the Western Pacific; Modifications of the West Coast Commercial Salmon Fishery

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

ACTION: Modification of fishing seasons, landing and possession limits; request for comments.

SUMMARY: NOAA Fisheries announces that the commercial fishery in the area from Cape Falcon, Oregon to the Oregon/California border and in the area from Horse Mountain to Point Arena, California was modified by two inseason actions. Inseason action #1 modified the previously scheduled open period in the area from Cape Falcon, Oregon to the Oregon/California border. This action also modified the open dates in the area from Horse Mountain to Point Arena, California. Inseason action #2 increased the landing and possession limit in the Fort Bragg subarea from April 23–27. All other restrictions and regulations remained in effect as announced for the 2006 Ocean Salmon Fisheries and previous inseason actions.

DATES: Inseason action #1, in the area from Cape Falcon, Oregon to the Oregon/California border was effective from 0001 hours local time (l.t.) Tuesday, April 10, 2007, through 2359 hours l.t., Sunday, April 29, 2007. Inseason action #1 in the area from Horse Mountain to Point Arena, California was effective 0001 hours l.t. on April 9–13, 16–20, and 23–27 and remained open until the close of the last open period at 2350 l.t. Friday, April 27, 2007. Inseason action #2 in the area from Horse Mountain to Point Arena California was effective 0001 hours l.t. Monday April 23 through 2359 l.t. Friday April 27.

After this time the fisheries remained closed until reopened subject to the 2007 management measures and regulations which were are announced, and published in the **Federal Register** (72 FR 24539, May 3,2007).

Comments will be accepted through May 29, 2007.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376. Comments can also be submitted via e-mail at the *2007salmonIA1.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include [0648–XA16] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Sarah McAvinchey 206–526–4323.

SUPPLEMENTARY INFORMATION: In the 2006 annual management measures for ocean salmon fisheries (71 FR 26254, May 4, 2006), NMFS announced the commercial fisheries in the area from Cape Falcon, Oregon to the Oregon/California border and from Horse Mountain to Point Arena, California. The 2006 management measures listed a March 15, 2007, opening date for the Newport, Coos Bay, Oregon Klamath Management Zone (KMZ)and Fort Bragg areas unless modified at the March 2007 Council meeting. The Newport, Coos Bay and Oregon KMZ subareas had fishing regulations that stated fishing was for all salmon except coho, with a 28–inch (71.1–cm) total length Chinook minimum size limit. The Fort Bragg area had the same requirements except that the Chinook total length minimum size limit was 27 inches (68.6 cm).

On March 8, 2007, for Inseason action #1 and April 20, 2007 for Inseason action #2 the Regional Administrator (RA) consulted with representatives of the Pacific Fishery Management Council, Oregon Department of Fish and Wildlife and California Department of Fish and Game. Information related to catch to date, 2007 projections, Chinook and coho catch rates, and effort data were reported. Inseason action #1 was taken because the data indicated that the lower abundance projections warranted shortening the fishing season from what was announced in the 2006 regulations. By reducing the open period and moving the opening date of the fishery to April the Council limited the fishery in these areas in order to provide more opportunity later in the 2007 season. Inseason action #2 was taken because adequate quota remained and an increase in the landing and possession limit from 20 fish per vessel per day to 30 fish per vessel per day would afford more fishing opportunity.

As a result, on March 8, 2007, the states recommended, and the RA concurred, that effective from Tuesday, April 10 to Sunday, April 29 in the area from Cape Falcon, Oregon, to the Oregon/California border the fishery would be open for all salmon except coho, with a 100–fish per vessel per calendar week (Sunday through Saturday) landing and possession limit, with a requirement that fish caught in the area must be landed in the State of Oregon. The RA also concurred that in the area from Horse Mountain to Point Arena, California, the fishery would be open April 9–13, 16–20, and 23–27 for all salmon, except coho, with a 2000–fish total quota. For this area there was also a 20- fish per day per vessel landing and possession limit and a requirement that fish caught in the area must be landed in the area. Subsuquently, on April 20, 2007, the states recommended and the RA concurred that in the area from Horse Mountain to Point Arena, California, the landing and possession limit was 30 fish per vessel per day. These actions were necessary to conform to the 2006 management goals. The intended effect was to allow the fishery to operate within the seasons and quotas specified in the 2006 annual management measures and provide more harvest opportunity during the 2007 season. Modification in quota and/or fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i).

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice of the described regulatory actions was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. These actions do not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory actions was provided to fishers through telephone hotline and

radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (71 FR 26254, May 4, 2006), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA also finds good cause to waive the 30-day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would limit fishers appropriately controlled access to available fish during the scheduled fishing season by unnecessarily restricting the fishery. These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: May 9, 2007.

James P. Burgess,

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

[FR Doc. E7–9223 Filed 5–11–07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 070418089–7089–01; I.D. 040507G]

RIN 0648–AV49

Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Closed Season

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

ACTION: Temporary rule; request for comments.

SUMMARY: This interim rule closes Federal waters in the main Hawaiian Islands to commercial and recreational fishing for seven deepwater bottomfish species during May 15 through September 30, 2007. This action is intended to immediately address overfishing for these species in the Hawaiian Archipelago while a long-term management program is developed for the bottomfish multi-species complex.

DATES: Effective 12:01 a.m. (0001 hrs) Hawaii-Aleutian Standard Time (HST) on May 15, 2007, until 11:59 p.m. (2359 hrs) HST on September 30, 2007. Comments must be received on or before June 13, 2007.

ADDRESSES: You may submit comments, identified by ''0648–AV49'' by any of the following methods:

- E-mail: *AV49Bottomfish@noaa.gov*. Include ''AV49'' in the subject line of the message. Comments sent via e-mail, including all attachments, must not exceed a file size of 10 megabytes.
- Federal e-Rulemaking Portal: *www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: William L. Robinson, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd. 1110, Honolulu, HI 96814.

In accordance with NEPA, an Environmental Assessment (EA) was prepared for this interim action, and is available from William L. Robinson (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Bob Harman, NMFS PIR, 808–944–2271.

SUPPLEMENTARY INFORMATION:

Electronic Access

This interim rule is accessible via the World Wide Web at the Office of the **Federal Register**'s web site *www.gpoaccess.gov/fr/index.html*.

Background

Bottomfish in Hawaii are managed according to the Fishery Management Plan for Bottomfish and Seamount Groundfish in the Western Pacific Region (Bottomfish FMP), which was developed by the Western Pacific Fishery Management Council (Council) and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Hawaii bottomfish are managed as a single archipelagic-wide multi-species stock complex (bottomfish complex). The bottomfish complex comprises certain deep-slope snappers, groupers, and jacks. Fisheries and management programs for Hawaiian bottomfish occur in two large geographic areas, the Northwestern Hawaiian Islands (NWHI) and the main Hawaiian Islands (MHI).

Pursuant to Presidential Proclamation 8031 (June 15, 2006), commercial fishing in the area of the NWHI that is encompassed by the Papah naumoku kea Marine National Monument is limited to the eight valid Federal bottomfish permits effective on June 15, 2006. Bottomfish landings under these permits are limited to 350,000 lb (158,757 kg) annually, and may continue until June 15, 2011. Regulations codifying the terms of the Proclamation are found at 50 CFR 400.10. Regulations governing bottomfish fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and subpart E of 50 CFR part 665.

NMFS, on behalf of the Secretary of Commerce, determined that overfishing was occurring on the bottomfish complex around the Hawaiian Archipelago, with the primary problem being excess fishing effort in the MHI. On May 27, 2005, NMFS requested the Council to take appropriate action to end overfishing (70 FR 34452, June 14, 2005).

About 300 commercial vessels participate in the MHI bottomfish fishery, and recreational vessels are estimated at over 1,000. Fishermen use hooks and lines to target bottomfish over deep bottom slopes. Fishing trips are usually a day or less, and most fishermen participate in both bottomfish and pelagic (e.g., troll) fisheries. Except for a few full-time commercial bottomfish fishermen, most fish for bottomfish no more than 60 days a year. Many fishermen who fish for recreation also sell part of their catch to offset fishing expenses, making the distinction between recreational and commercial activities difficult. The total 2003 ex-vessel revenue from commercial bottomfish fishing in the MHI was an estimated $1,460,000 for landings of 273,000 lb (123,831 kg). Data from the MHI commercial fishery are collected through the State of Hawaii commercial fishing report program. There is no data reporting requirement for recreational fishing; recreational data are collected through surveys.

Based on 2003 data, NMFS had estimated that fishing mortality needed to be decreased by 15 percent from 2003 levels in the MHI to end overfishing in the Hawaiian Archipelago. Accordingly, the Council began preparation of an amendment to the Bottomfish FMP that would have proposed prohibiting recreational and commercial fishermen from fishing for seven deep-water bottomfish management unit species in Federal waters of Hawaii's Penguin Bank and Middle Bank. Historically, those areas represented 16–20 percent of MHI bottomfish landings, and would have ended the overfishing. The deep-water species are onaga *Etelis coruscans*, ehu *E. carbunculus*, gindai *Pristipomoides zonatus*, kalekale *P. sieboldii*, opakapaka *P. filamentosus*,

lehi *Aphareus rutilans*, and hapu´upu´u (also hapu´u) *Epinephelus quernus*.

In September 2006, NMFS updated the status of stocks using 2004 data, and concluded that overfishing was still occurring, but that fishing effort in the MHI would have to be reduced by 24 percent from the 2004 level (greater than the 15 percent as targeted in the amendment being development) to bring archipelago-wide fishing mortality down to the maximum fishing mortality threshold. Although the Council had initially developed an FMP amendment to close Penguin and Middle Banks to bottomfish fishing, those management measures would be insufficient to reduce fishing effort by the required 24 percent.

To immediately reduce fishing mortality while long-term management measures are developed, the Council requested at its 137th meeting in Honolulu, Hawaii, on March 15, 2007, that NMFS implement this interim rule to close all Federal waters around the MHI to commercial and recreational bottomfish fishing for the seven deep-water bottomfish management unit species during May through September 2007. This time period will maximize protection for bottomfish during their spawning season and minimize social and economic impacts to fishery participants, as other fishing opportunities are available during the summer, e.g., trolling for pelagic fishes. The closed season applies only in the MHI and will not affect importation of bottomfish into Hawaii.

This interim action is intended to immediately reduce fishing mortality in the short term, and provide a sufficient time period for the Council to develop an FMP amendment containing management measures designed to prevent overfishing in the long term. The effectiveness of this interim action would be enhanced by a complementary closure of State waters by the State of Hawaii, as collaborative Federal and State actions would facilitate the immediate cessation of fishing mortality in both Federal and State waters on the bottomfish stock complex that is experiencing overfishing.

During the interim closed season from May through September 2007, Council and NMFS staffs will develop the management measures to be proposed in an FMP amendment. Such measures may include, but are not limited to, additional seasonal closures; a Total Allowable Catch (TAC) based on a reducing fishing mortality by 24 percent, the value from the most recent stock assessment, with a TAC mechanism that responds to necessary mortality reductions identified in future assessments; and a new Federal permit and data collection program for recreational bottomfish fishing. The revised recommendations are anticipated to be finalized by Council action in June 2007.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as this requirement is impracticable and contrary to the public interest. The Council previously took action to prepare a plan amendment to address the overfishing by reducing fishing effort by 15 percent. Before that amendment could be implemented, however, updated information indicated that effort must be reduced by 24 percent from 2004 effort levels. To respond to the new information, the Council must prepare a revised FMP amendment. In the meantime, no action has been taken to reduce fishing effort, and overfishing on bottomfish continues. There is a need to implement the seasonal closure immediately so that overfishing of the bottomfish stock complex can be addressed, and adverse impacts to public fishery resources can be reduced as soon as possible. These same reasons constitute good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day delay in the effective date of this action.

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

A regulatory flexibility analysis has not been prepared for this interim rule pursuant to the Regulatory Flexibility Act because NMFS is not required by section 553 of Title 5 of the United States Code, or any other law, to publish a general notice of proposed rulemaking for this rule.

List of Subjects in 50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian Natives, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: May 9, 2007

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 665 is amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for part 665 reads as follows:

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

■ 2. In § 665.62, add new paragraphs (j) and (k) to read as follows:

§ 665.62 Prohibitions.

* * * * *

(j) Fish for or possess any Hawaii Prohibited Bottomfish Management Unit Species, as specified in § 665.71, in the Main Hawaiian Islands Management Subarea during a closed season in violation of § 665.72(a).

(k) Sell or offer for sale any Hawaii Prohibited Bottomfish Management Unit Species, as specified in § 665.71, in violation of § 665.72(a) or (b).

■ 3. Under subpart E, add a new § 665.71 to read as follows:

§ 665.71 Hawaii Prohibited Bottomfish Management Unit Species.

Hawaii Prohibited Bottomfish Management Unit Species means the following species:

Common name	Local Name	Scientific Name
Silver jaw jobfish	Lehi	*Aphareus rutilans.*
Squirrelfish snapper	Ehu	*Etelis carbunculus.*
Longtail snapper	Onaga	*Etelis coruscans.*
Pink snapper	Opakapaka	*Pristipomoides filamentosus.*
Snapper	Kalekale	*Pristipomoides sieboldii.*
Snapper	Gindai	*Pristipomoides zonatus.*
Sea bass	Hapuʻupuʻu	*Epinephelus quernus.*

■ 4. Under subpart E, add a new § 665.72 to read as follows:

§ 665.72 Closed seasons.

(a) All fishing for, or possession of, any Hawaii Prohibited Bottomfish Management Unit Species, as specified in § 665.71, is prohibited in the Main Hawaiian Islands Management Subarea during May 15, 2007, through September 30, 2007, inclusive. All such species possessed in the Main Hawaiian Islands Management Subarea are presumed to have been taken and retained from that subarea, unless otherwise demonstrated by the person in possession of those species.

(b) Hawaii Prohibited Bottomfish Management Unit Species, as specified in § 665.71, may not be sold or offered for sale during May 15, 2007, through September 30, 2007, inclusive, except as otherwise authorized by law.

[FR Doc. E7–9213 Filed 5–11–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XA23

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processor Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 second seasonal allowance of the Pacific cod total allowable catch (TAC) specified for catcher processor vessels using trawl gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 10, 2007, through 1200 hrs, A.l.t., June 10, 2007.

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

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

The 2007 second seasonal allowance of the Pacific cod TAC specified for catcher processor vessels using trawl gear in the BSAI is 11,133 metric tons (mt) as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007), for the period 1200 hrs, A.l.t., April 1, 2007, through 1200 hrs, A.l.t., June 10, 2007. See § 679.20(c)(3)(iii), § 679.20(c)(5), and § 679.20(a)(7)(i)(B).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2007 second seasonal allowance of the Pacific cod TAC specified for catcher processor vessels using trawl gear in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,933 mt, and is setting aside the remaining 2,200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using trawl gear in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher processor vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 8, 2007.

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

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: May 9, 2007.

James P. Burgess

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

[FR Doc. 07–2364 Filed 5–9–07; 1:57 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 92
Monday, May 14, 2007

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[Docket No. PRM–51–12]

State of California; Receipt of Petition for Rulemaking

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated March 16, 2007, which was filed with the NRC by Edmund G. Brown, Jr., Attorney General for the State of California. The petition was docketed by the NRC on March 21, 2007, and has been assigned Docket No. PRM–51–12. The petitioner requests that NRC rescind its regulations that declare the potential environmental effects of the approval, construction, and operation of high-density pool storage of spent nuclear fuel are not and cannot be significant for purposes of the National Environmental Policy Act (NEPA) and NEPA analysis; adopt and issue a generic determination that approval of such storage at a nuclear power plant or any other facility does constitute a major Federal action that may have a significant effect on the human environment; and order that no NRC licensing decision that approves high-density pool storage of spent nuclear fuel at a nuclear power plant or other storage facility may issue without the prior adoption and certification of an environmental impact statement (EIS) that complies with NEPA in all respects, including full identification, analysis, and disclosure of the potential environmental effects of such storage, including the potential for accidental or deliberately caused release of radioactive products to the environment, whether by accident or through acts of terrorism, as well as full and adequate discussion of potential mitigation for such effects, and full discussion of an adequate array or alternatives to the proposed storage project.

DATES: Submit comments by July 30, 2007. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments on this petition by any one of the following methods. Please include PRM–51–12 in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

A copy of the petition can be found in ADAMS under accession number ML070811132. A paper copy of the petition may be obtained by contacting Betty Golden, Office of Administration, Nuclear Regulatory Commission, Washington DC, 20555–0001, telephone 301–415–6863, toll-free 1–800–368–5642, or by e-mail *bkg2@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

The Petition

The petitioner seeks to have the NRC: (1) Consider new and significant information about threats to the environment caused by dense storage of spent nuclear fuel; (2) rescind regulations that bar the consideration of spent fuel storage impacts in NEPA documents, regardless of the reasonable foreseeability of such effects; (3) make a generic determination that environmental impacts from spent fuel storage are significant; and (4) order that any decision to permit high density pool storage of nuclear fuel at any facility be accompanied by an Environmental Impact Statement (EIS) that complies with NEPA. The petitioner specifically requests that the NRC amend its regulations under 10 CFR 51.23(a) and (b) that concern a generic determination of no significant environmental impact in regard to the temporary storage of spent fuel after cessation of reactor operation.

The petitioner asserts that the requested rulemaking actions are

mandated by NEPA, the regulations of the Council on Environmental Quality (CEQ), and in particular, the Ninth Circuit decision in *San Luis Obispo Mothers for Peace* v. *NRC*, 449 F.3d 1016 (9th Cir. 2006), *cert. denied* 127 S. Ct. 1124 (2007). The petitioner further asserts that the requested rulemaking actions are warranted by the facts and legal arguments set forth in the rulemaking petition filed by the Attorney General of the Commonwealth of Massachusetts, docketed by the NRC as Docket No. PRM–51–10 on September 19, 2006, followed by a subsequent publication of a notice of receipt of a petition for rulemaking on November 1, 2006 (71 FR 64169), which the petitioner incorporates by reference.

The petitioner requests that NRC's current regulations be amended as these regulations, in the petitioner's view, determine that the effects of high density storage of spent fuel rods may never be significant for purposes of NEPA. The petitioner asserts that the NRC has not properly evaluated the significance of storing spent fuel assemblies in pools that were designed for a smaller number of spent nuclear fuel assemblies, thereby, increasing the possibility of catastrophic accidents involving fire. In this regard, the petitioner asserts that there is new and significant information showing that significant impacts can occur from high density pool storage of spent nuclear fuels, namely, a 2006 National Academy of Sciences study (NAS Committee on the Safety and Security of Commercial Spent Nuclear Fuel Storage, Safety and Security of Commercial Spent Fuel Storage (the National Academies Press 2006)). The petitioner also asserts that current regulations bar a finding of significance for high density storage despite the threats posed by potential acts of terrorism, as the President of the United States and various other Federal officials have articulated those threats after the September 11, 2001 attacks.

Conclusion

The petitioner asserts that the current NRC regulations preclude the NRC from carrying out its obligations under NEPA by forbidding it from disclosing and analyzing reasonably foreseeable significant risks that will affect the environment. The petitioner states that under NEPA and the Administrative Procedure Act, the NRC has a duty to amend those regulations as requested by the State of California.

Consolidation With Docket No. PRM–51–10

The NRC has determined that this petition raises issues that are substantially similar to those raised by the petition of the Attorney General of the Commonwealth of Massachusetts, which was docketed by the NRC as PRM–51–10 on September 19, 2006, followed by a subsequent publication of a notice of receipt of a petition for rulemaking on November 1, 2006 (71 FR 64169). Therefore, the NRC, after the public comment period, may consolidate its response to both petitions in one action.

Dated at Rockville, Maryland, this 8th day of May 2007.

For the U.S. Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E7–9211 Filed 5–11–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Chapter VII

RIN 1029–AC54

Placement of Coal Combustion Byproducts in Active and Abandoned Coal Mines

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

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: We are extending the comment period for the advance notice of proposed rulemaking (ANPR) published in the March 14, 2007 **Federal Register** for 30 days. The ANPR is related to the placement of coal combustion byproducts (CCBs) in active and abandoned coal minesites.

DATES: To ensure consideration, we must receive your comments on or before June 13, 2007.

ADDRESSES: You may submit comments, identified by docket number 1029–AC54, by any of the following methods to the indicated address:

- *E-mail: rules_comments@osmre.gov*. Please include docket number 1029–AC54 in the subject line of the message.
- *Mail/Hand-Delivery/Courier to the OSM Administrative Record Room:* Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 252–SIB, 1951 Constitution Avenue, NW., Washington, DC 20240.
- *Federal e-Rulemaking Portal: http://www.regulations.gov*. The notice is listed under the agency name ''SURFACE MINING RECLAMATION AND ENFORCEMENT OFFICE.'' Click ''Add Comments'' to submit comments.

FOR FURTHER INFORMATION CONTACT: John Craynon, P.E., Chief, Division of Regulatory Support, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., MS–202, Washington, DC 20240; Telephone 202–208–2866; E-mail: *jcraynon@osmre.gov*.

SUPPLEMENTARY INFORMATION: On March 14, 2007, we published the ANPR that invited comment on how we should revise the regulations implementing Titles IV and V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) to regulate the placement of CCBs on active and abandoned coal minesites and what type of guidance documents we should issue, if any. (72 FR 12026). We also sought comment on whether section 405(i) of the Act provides sufficient latitude to require that abandoned mine land reclamation project submissions include site-specific plans and requirements concerning the placement of CCBs. The comment period was originally scheduled to close May 14, 2007.

After publishing the ANPR, we received requests from several parties to extend the comment period. We reviewed the requests and have decided to extend the public comment period for the ANPR for 30 days. The public comment period will now close June 13, 2007.

Comments received in response to the ANPR will help us scope and frame the proposed rule. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Dated: May 4, 2007.

C. Stephen Allred,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 07–2359 Filed 5–11–07; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Juan 07–039]

RIN 1625–AA00

Safety Zone; San Juan Harbor Swim, Bahìa de San Juan, San Juan, PR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for an annual swimming event held in San Juan Harbor. This safety zone is necessary to protect swimmers and provide for the safety of life on navigable waters by excluding vessels from transiting the swim area.

DATES: Comments and related material must reach the Coast Guard on or before June 13, 2007.

ADDRESSES: You may mail comments and related material to Commander, Sector San Juan, Attn: Prevention Operations Department (spw), 5 Calle La Puntilla, San Juan, PR 00901–1819. Sector San Juan Prevention Operations Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Coast Guard Sector San Juan, Prevention Operations Department, Facilities & Waterways Division, between 7:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant junior grade Alison M. Schmidt, Sector San Juan, Prevention Operations Department, Facilities & Waterways Division, at (787) 289–2086.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Juan 07–039), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector San Juan at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This rule is required to provide for the safety of life in the port of San Juan because each year numerous swimmers cross the navigable channel during an organized cross-harbor swim. To prevent injury or loss of life, a safety zone is required to maintain a safe distance between the swimmers and vessel traffic. This rule creates a safety zone that will prohibit entry by non-participating vessels during the event without the authorization of the Captain of the Port (COTP) San Juan.

Discussion of Proposed Rule

This proposed rule would establish a Safety Zone around the course of the cross-harbor swim. The safety zone includes all waters bound by an imaginary line connecting the following points: Point 1, La Puntilla Final, Coast Guard Base at position 18–27′33″ N, 066–07′00″ W, then south to Point 2, Cataño Ferry Pier at position 18–26′36″ N, 066–07′00″ W, then east along the Cataño shoreline to Point 3, Punta Cataño at position 18–26′40″ N, 066–06′48″ W, then north to Point 4, Pier 1 in San Juan at position 18–27′40″ N, 066–06′49″ W, then back along the shoreline to origin at Point 1. This rule will be effective during daylight hours, defined as the hours between sunrise and sunset, on Sunday, July 22, 2007, or on a designated rain date. Specific hours of the event, as well as any rain date, will be published in a Marine Safety Information Bulletin and announced on VHF–FM in a Broadcast Notice to Mariners. Persons and vessels may request permission to enter the safety zone on VHF–FM channel 16 or via phone at (787) 289–2041.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This rule would only affect those vessels that would attempt to transit that portion of San Juan Harbor during daylight hours on that day. Vessels may receive permission to transit the safety zone area on a case-by-case basis with the permission of the COTP San Juan.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Although the safety zone will apply to an area of the harbor encompassing the entire width of the Anegado Channel, it will only be in effect for a portion of one day and traffic will be allowed to pass through the zone with the permission of the Coast Guard COTP San Juan. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the channel.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the office under **ADDRESSES** explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the office under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about

this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T07–039 to read as follows:

§ 165.T07–039 Safety Zone; San Juan Harbor Swim, Bahía de San Juan, San Juan, PR.

(a) *Regulated Area.* The Coast Guard is establishing a temporary safety zone on the navigable waters of San Juan Harbor for an organized, cross-harbor swim. The safety zone is rectangular in shape, starting at Point 1, La Puntilla Final, Coast Guard Base at position 18–27′33″ N, 066–07′00″ W, then south to Point 2, Cataño Ferry Pier at position 18–26′36″ N, 066–07′00″ W, then east along the Cataño shoreline to Point 3, Punta Cataño at position 18–26′40″ N, 066–06′48″ W, then north to Point 4, Pier 1 in San Juan at position 18–27′40″ N, 066–06′49″ W, then back along the shoreline to origin at Point 1.

(b) *Definitions.* The following definitions apply to this section:

(1) *Designated representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels and federal, state, and local officers designated by or assisting the Captain of the Port (COTP) San Juan in the enforcement of the safety zone.

(2) *Daylight hours* means the hours between sunrise and sunset.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entering, anchoring, mooring or transiting in the Regulated Area is prohibited during daylight hours on Sunday, July 22, 2007, or on a

designated rain date unless specifically authorized by the Coast Guard COTP San Juan or a designated representative. If necessary, a rain date for the event shall be designated and publicized in a Marine Safety Information Bulletin and announced on VHF-FM in a Broadcast Notice to Mariners. The specific hours of the event shall be publicized in the same manner. Persons and vessels may request permission to enter the safety zone on VHF-FM channel 16 or via phone at (787) 289–2041.

(d) *Effective Date.* This rule is effective during daylight hours on Sunday, July 22, 2007, or a designated rain date. If necessary, the rain date will be announced at least 48 hours prior to being effective.

Dated: April 22, 2007.

J.E. Tunstall,

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

[FR Doc. E7–9166 Filed 5–11–07; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 72, No. 92
Monday, May 14, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 2006 Through June 30, 2007; Correction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice; correction.

The Food and Nutrition Service, USDA, published a document on July 17, 2006, announcing the national average value of donated foods or, where applicable, cash in lieu of donated foods, to be provided in school year 2007 (July 1, 2006 through June 30, 2007) for each lunch served by schools participating in the National School Lunch Program (NSLP), and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program (CACFP). This document contained an error in the announced national average value of donated foods of 16.75 cents, which resulted from incorrect rounding of the index used to make the legislatively mandated annual adjustment in such value. The correct value is 17.00 cents. The correct per-meal value of donated food assistance has been provided to schools and institutions, and the correct per-meal value of cash or commodity letter of credit in lieu of such assistance will be provided to schools participating in CASH/CLOC sites. The correct per-meal value of cash in lieu of donated food assistance will also be provided to the State of Kansas for lunches served by schools participating in NSLP in that State, and to the appropriate States for lunches and suppers served by institutions in CACFP.

Correction

In notice document E6–11214, published on July 17, 2006 at 71 FR 40470, make the following corrections: On page 40471, in the 1st column, in the 27th line under the heading ''National Average Minimum Value of Donated Foods for the Period July 1, 2006 Through June 30, 2007,'' change ''16.75 cents'' to ''17.00 cents''. On page 40471, in the 2nd column, in the 3rd line, change ''16.75 cents'' to ''17.00 cents''. On page 40471, in the 2nd column, in the 4th line, change ''0.75 cents'' to ''0.50 cents''.

Dated: May 7, 2007.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. E7–9194 Filed 5–11–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Eldorado National Forest, USDA Forest Service.

ACTION: Notice of a proposed new fee site.

SUMMARY: The Eldorado National Forest is planning to charge a $5 fee for the day use at the Woods Lake Picnic Area, located on the Amador Ranger District Ranger District. This existing picnic area has been available for use without a fee prior to this time. Funds from the new standard amenity day use fee will be used for the continued operation and maintenance of Woods Lake Picnic Area. The Eldorado National Forest currently has five other day use areas at which fees are charged under the Recreation Enhancement Act, including the nearby Carson Pass, Meiss, and Woods Lake Trailheads that provide access into the Carson Pass Management Area. A business analysis of Woods Lake Picnic Area has shown that people desire having this sort of recreation experience on the Eldorado National Forest. A market analysis indicates that the $5/per vehicle fee is both reasonable and acceptable for this sort of recreation experience. Fees will be collected at the site using a self pay fee tube. The following annual passes will be accepted in lieu of a daily fee: Eldorado National Forest/Lake Tahoe Basin Management Unit Annual Pass, or one of the following Federal Passes: Interagency Annual Pass, Interagency Senior Pass, Interagency Volunteer Pass, or Interagency Access Pass.

DATES: The new fees at Woods Lake Picnic Area will become effective May 1, 2008.

ADDRESSES: Forest Supervisor, Eldorado National Forest, 100 Forni Road, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Diana Erickson, Recreation Fee Coordinator, (530) 621–5214.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: May 8, 2007.

Ramiro Villalvazo,

Eldorado National Forest Supervisor.

[FR Doc. 07–2351 Filed 5–11–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site, Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Eldorado National Forest, USDA Forest Service.

ACTION: Notice of proposed new fee site.

SUMMARY: The Eldorado National Forest is planning to charge a $10 fee for the overnight camping and a $5 fee for extra vehicles at the Lovers Leap Campground, located on the Placerville Ranger District. This existing campground has been available for use without a fee prior to this time. Funds from the new campground fees will be used for the continued operation and maintenance of Lovers Leap Campground. The Eldorado National Forest currently has 14 other campgrounds at which fees are charged under the Recreation Enhancement Act. These campgrounds are often fully booked throughout the use season. A business analysis of Lover's Leap Campground has shown that people desire having this sort of recreation experience on the Eldorado National

Forest. A market analysis indicates that the $10/per night fee and $5/per extra vehicle is both reasonable and acceptable for this sort of unique recreation experience. Use of the campground will remain on a first come/first serve basis. Advance reservations will not be available.

DATES: The new fees at Lovers Leap Campground will become effective May 1, 2008.

ADDRESSES: Forest Supervisor, Eldorado National Forest, 100 Forni Road, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Diana Erickson, Recreation Fee Coordinator, (530) 621–5214.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: May 8, 2007.

Ramiro Villalvazo,

Eldorado National Forest Supervisor.

[FR Doc. 07–2352 Filed 5–11–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Eldorado National Forest, USDA Forest Service.

ACTION: Notice of a proposed new fee site.

SUMMARY: The Eldorado National Forest is planning to charge a $65.00 fee for the overnight rental of Sly Guard Cabin. This historic structure has been recently restored, and has not been available for recreation use prior to this date. Rentals of other cabins on the Eldorado National Forest have shown that people appreciate and enjoy the availability of historic rental cabins. Funds from the rental will be used for the continued operation and maintenance of Sly Guard Cabin.

The Eldorado National Forest currently has four other cabin rentals. These rentals are often fully booked throughout their rental season. A business analysis of Sly Guard Cabin has shown that people desire having this sort of recreation experience on the Eldorado National Forest. A market analysis indicates that the $50/per night fee is both reasonable and acceptable for this sort of unique recreation experience.

DATES: It is anticipated that Sly Guard Cabin will be available for rent June, 2007.

ADDRESSES: Forest Supervisor, Eldorado National Forest, 100 Forni Road, Placerville, CA 95667.

FOR FURTHER INFORMATION CONTACT: Diana Erickson, Recreation Fee Coordinator, (530) 621–5214.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

People wanting to rent Sly Guard Cabin will need to do so through the National Recreation Reservation Service, at *http://www.reserveusa.com* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for reservations.

Dated: May 8, 2007.

Ramiro Villalvazo,

Eldorado National Forest Supervisor.

[FR Doc. 07–2353 Filed 5–11–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–827

Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') published its preliminary results of administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China (''PRC'') on December 7, 2006.[1] The period of review (''POR'') is December 1, 2004, through November 30, 2005. We invited interested parties to comment on our Preliminary Results. Based on our analysis of the comments received, we made certain changes to our calculations. The final dumping margins for this review are listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: May 14, 2007.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Drew Jackson, 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) 482–4162 or (202) 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

In response to requests by the petitioners,[2] and several exporter/producers, on February 1, 2006, the Department initiated this administrative review with respect to the following companies: Beijing Dixon Stationery Company Ltd. (''Dixon''), Orient International Holding Shanghai Foreign Trade Co., Ltd. (''OIHSFTC''), Shandong Rongxin Import and Export Co., Ltd. (''Shandong Rongxin''), Tianjin Custom Wood Processing Co., Ltd. (Tianjin), and China First Pencil Company, Ltd. and its affiliates, China First Pencil Fang Zheng Co., Shanghai First Writing Instrument Co., Ltd., Shanghai Great Wall Pencil Co., Ltd. (collectively ''CFP''), and Shanghai Three Star Stationery Industry Corp. (''Three Star''[3]).[4] On August 10, 2006, the Department rescinded the instant review with respect to OIHSFTC and Tianjin.[5]

On December 7, 2006, the Department published the *Preliminary Results* of this review in the **Federal Register**. The following events occurred after the Department published the Preliminary

[1] *See Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 70949 (December 7, 2006) (''Preliminary Results'').

[2] The petitioners include Sanford L.P., Musgrave Pencil Company, RoseMoon Inc., and General Pencil Company (collectively ''the petitioners'').

[3] Consistent with prior reviews in this proceeding, the Department has treated CFP and Three Star as a single entity (''CFP-Three Star''). *See e.g., Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612, 48613 (July 25, 2002). This treatment has been upheld by the Court of International Trade. *See China First Pencil Co. Ltd. v. United States*, 427 F. Supp 2d 1236 (March 7, 2006).

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 5241 (February 1, 2006).

[5] *See Certain Cased Pencils from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 47169 (August 16, 2006).

[1] *See Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 71 FR

Results. In response to a supplemental questionnaire, CFP–Three Star submitted additional factual information to the Department on December 15, 2006. In response to an invitation to comment on the Preliminary Results, the petitioners, CFP–Three Star, and Dixon submitted case briefs to the Department on January 22, 2007. The petitioners and CFP–Three Star submitted rebuttal briefs to the Department on January 29, 2007. During January 2007, the petitioners, CFP–Three Star, and Dixon filed additional surrogate information with the Department. On February 2, 2007, the Department gave interested parties an opportunity to comment on the most recently calculated wage rate posted on the Department's website. CFP–Three Star responded to this opportunity by submitting comments to the Department on February 7, 2007.

We have conducted this administrative review in accordance with Section 751 of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213.

Period of Review

The POR is December 1, 2004, through November 30, 2005.

Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as described below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man–made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non–cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above–referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: (1) length: 13.5 or more inches; (2) sheath diameter: not less than one–and-one quarter inches at any point (before sharpening); and (3) core length: not more than 15 percent of the length of the pencil.

In addition, pencils with all of the following physical characteristics are excluded from the scope of the order: novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three–and-one eighth inches in circumference, composed of turned wood encasing one–and-one half inches of sharpened lead on one end and a rubber eraser on the other end.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the parties' case and rebuttal briefs commenting on this administrative review are addressed in the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, ''*Issues and Decision Memorandum* for the Final Results of the 2004–2005 Administrative Review of the Antidumping Duty Order on Certain Cased Pencils from the People's Republic of China,'' which is dated concurrently with, and hereby adopted by, this notice (''*Issues and Decision Memorandum*''). A list of the issues that parties have raised and to which we have responded, all of which are in the *Issues and Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review, and the corresponding recommendations, in the public *Issues and Decision Memorandum* that is on file in the Central Records Unit, Room B–099 of the main Department of Commerce building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the internet at http://ia.ita.doc.gov/frn/index.html. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made the following changes in calculating dumping margins: (1) we adjusted the surrogate value for slats to reflect wood loss in producing slats from lumber; (2) we valued labor using the most recently calculated wage rate found on the Department's website; and (3) we valued brokerage and handling services using a different surrogate source. In addition, based on the additional information provided by CFP–Three Star in its December 15, 2006 submission, we recalculated supplier distances for foil and erasers. For further details, see the ''CFP–Three Star Calculation Memorandum for Final Results of Administrative Review,'' dated May 7, 2007.

Surrogate Country

In the *Preliminary Results*, we stated that we treat the PRC as a non–market economy (''NME'') country and, therefore, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries. Also, we stated that we selected India as the appropriate surrogate country to use in this review for the following reasons: (1) it is a significant producer of merchandise comparable to subject merchandise; and (2) it is at a level of economic development comparable to the PRC, pursuant to section 773(c)(4) of the Act. *See Preliminary Results*, 71 FR at 70953–70954. For the final results of review, we have continued to use the same surrogate country that we used in the *Preliminary Results*.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the *Preliminary Results*, we found that Dixon, Shandong Rongxin, and the collapsed entity CFP–Three Star demonstrated their eligibility for separate–rate status. In these final results of review, we continue to find that the evidence placed on the record of this review by the above–referenced companies demonstrates an absence of government control, both in law and in fact, with respect to their exports of the merchandise under review. Thus, we have determined that Dixon, Shandong Rongxin, and CFP–Three Star are eligible for separate–rates.

Final Results of Review

We determine that the following weighted–average dumping margins exist for the period December 1, 2004, through November 30, 2005:

Manufacturer/exporter	Margin (percent)
China First Pencil Company, Ltd.	2.66
(which includes its affiliates China First Pencil Fang Zheng Co.,	2.66
Shanghai First Writing Instrument Co., Ltd.,	2.66
Shanghai Great Wall Pencil Co., Ltd., and	2.66
Shanghai Three Star Stationery Industry Corp.)[6]	2.66
Beijing Dixon Stationery Company, Ltd.	2.66
Shandong Rongxin Import & Export Co., Ltd.	2.66

[6] As noted in the *Preliminary Results* for this review, we have determined China First Pencil Company, Ltd., China First Pencil Fang Zheng Co., Shanghai First Writing Instrument Co., Ltd., Shanghai Great Wall Pencil Co., Ltd., and Shanghai Three Star Stationery Industry Corp. constitute a single entity. *See also Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 42301 (July 22, 2005) (no change in amended final determination).

Assessment Rates

The Department has determined, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. For CFP–Three Star, we calculated customer–specific antidumping duty assessment amounts based on the ratio of the total amount of antidumping duties calculated for the examined sales of subject merchandise to the total quantity of subject merchandise sold in those transactions. We calculated assessment amounts in this fashion, as opposed to calculating importer–specific *ad valorem* rates in accordance with 19 CFR 351.212(b)(1), because the entered values and importers of record for CFP–Three Star's reported U.S. sales are not on the record. Where the customer–specific assessment rate is above *de minimis*, we will instruct CBP to assess the customer–specific rate uniformly on the entered customs value of all POR entries of subject merchandise sold to the customer. To determine whether the per–unit duty assessment rates were *de minimis (i.e.*, less than 0.50 percent *ad valorem*), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated customer–specific *ad valorem* ratios based on the export prices. For Dixon and Shandong Rongxin (respondents that are being assigned the dumping margin calculated for CFP–Three Star), we will instruct CBP to assess antidumping duties on entries of merchandise from these companies equal to the dumping margin these companies have received in these final results of review, regardless of the importer of, or customer who purchased, their subject merchandise. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

Cash–Deposit Requirements

The following deposit requirements will apply to all shipments of certain cased pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice of final results of administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the companies listed in the ''Final Results of Review'' section above will be the rates for those firms established in the final results of this administrative review; (2) for any previously reviewed or investigated PRC or non–PRC exporter, not covered in this review, with a separate rate, the cash deposit rate will be the company–specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will be the PRC–wide rate, which is 114.9 percent; and (4) the cash deposit rate for any non–PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These cash deposit requirements shall remain in effect until further notice.

Reimbursement of Duties

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 subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''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 terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 3, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

APPENDIX

List of Issues in the Issues and Decision Memorandum

Comment 1: Whether the Department Used the Appropriate Size of Lumber as a Surrogate for Pencil Slats
Comment 2: Whether the Department Should Adjust the Pencil Slat Surrogate Value to Account for Wood Loss
Comment 3: Whether the Department Should Use the Price of Kiln–Dried or Green Lumber to Value Pencil Slats
Comment 4: Whether the Department Used the Appropriate Surrogate Financial Ratios
Comment 5: Whether the Department Properly Accounted for Labor–Related Expenses in Calculating Financial Ratios
Comment 6: Whether the Department Used an Appropriate Labor Rate
Comment 7: Whether the Department Used an Appropriate Surrogate Value for Brokerage and Handling Services
Comment 8: Whether the Department Used an Appropriate Surrogate Value for Paper Wrap
Comment 9: Selection of the Appropriate Rate to Assign to a Separate Rate/Section A Respondent

[FR Doc. E7–9217 Filed 5–11–07; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we

invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before June 4, 2007. Address written comments to Statutory Import Programs Staff, Room 2104, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 2104.

Docket Number: 07–023. Applicant: University of Miami, Biology Department, 1301 Memorial Drive, Room 215, Coral Gables, FL 33146. Instrument: Electron Microscope, Model JEM–1400. Manufacturer: JEOL, USA, Inc., Japan. Intended Use: The instrument is intended to be used to study the ultrastructure of defensive glandular structures in the sea hare. Aplysia californica is to be studied. Structures to be examined include the ink gland, opaline gland and white skin vesicles. Also, studied will be the digestive gland and gill ultrastructure. The objectives are to attempt to determine if there is a link between food sources and the structure of the various glands described above. Application accepted by Commissioner of Customs: April 18, 2007.

Docket Number: 07–024. Applicant: Shriners Hospitals for Children, 3101 S.W. Sam Jackson Park Road, Portland, OR 97239. Instrument: Transmission Electron Microscope. Manufacturer: FEI, Company, The Netherlands. Intended Use: The instrument is intended to be used to examine sections from normal and diseased tissues, particularly in connective tissue, in an effort to determine the consequence of disease. Molecules and tissues will be analyzed in two and three dimensions using electron tomography for a better understanding of their structure and relationships to neighboring tissues and molecules. The distribution of molecules in normal and diseased tissues and the dimensional structure within cells and tissues will provide a better understanding of how they react in a tissue environment with other matrix molecules. Application accepted by Commissioner of Customs: April 27, 2007.

Docket Number: 07–027. Applicant: University of Missouri-Columbia, Veterinary Medicine Building, Room W122, 1600 East Rollins, Columbia, MD 65211. Instrument: Transmission Electron Microscope, Model JEM–1400. Manufacturer: JEOL, Japan. Intended Use: The instrument is intended to be used in a central facility by an average of 50 different groups per year including faculty, staff and students to study the ultrastructure of a wide variety of biological and material samples including animal and plant tissues, microorganisms, and geological and engineering samples. The majority of use will be for biomedical research, agricultural questions and engineering problems. Materials developed for nanomedicine, pathogenic organisms, animal models of human disease, gene therapy and new devices and processes in engineering will be highlighted by 3D tomography. Application accepted by Commissioner of Customs: April 27, 2007.

Docket Number: 07–028. Applicant: Vanderbilt University, Center for Structural Biology, 465 21st Avenue South, MRB III, Suite 5140, Nashville, TN 37232. Instrument: Transmission Electron Microscope, Model FP 5005/05. Manufacturer: FEI, Brno, Czech Republic. Intended Use: The instrument is intended to be used to study purified biological macromolecular complexes such as the spliceosome and the anaphase promoting complex, composed of protein and RNA components. The objective is to determine the three dimensional structures of large macromolecular complexes. Application accepted by Commissioner of Customs: April 27, 2007.

Faye Robinson,

Director, Statutory Import Programs Staff.

[FR Doc. E7–9214 Filed 5–11–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041307A]

Small Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction and Operation of an LNG Facility Off Massachusetts

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to construction and operation of an offshore liquefied natural gas (LNG) facility in the Massachusetts Bay, has been issued to Northeast Gateway Energy Bridge™ L.L.C. (Northeast Gateway) and Algonquin Gas Transmission, L.L.C. (Algonquin) for a period of 1 year.

DATES: This authorization is effective from May 8, 2007, until May 7, 2008.

ADDRESSES: A copy of the application, IHA, and a list of references used in this document may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. A copy of the application may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha*. The Maritime Administration (MARAD) and U.S. Coast Guard (USCG) Final Environmental Impact Statement (Final EIS) on the Northeast Gateway Energy Bridge LNG Deepwater Port license application is available for viewing at *http://dms.dot.gov* under the docket number 22219.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713-2289, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from

the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On October 30, 2006, NMFS received an application from Northeast Gateway and Algonquin for an IHA to take small numbers of several species of marine mammals, by Level B (behavioral) harassment, for a period of 1 year, incidental to construction and operation of an offshore LNG facility.

Description of the Project

Northeast Gateway is proposing to construct, own, and operate the Northeast Gateway Deepwater Port (Port or Northeast Port) to import LNG into the New England region. The Port, which will be located in Massachusetts Bay, will consist of a submerged buoy system to dock specifically designed LNG carriers approximately 13 mi (21 km) offshore of Massachusetts in federal waters approximately 270 to 290 ft (82 to 88 m) in depth.

This facility will deliver regasified LNG to onshore markets via new and existing pipeline facilities owned and operated by Algonquin. Algonquin will build and operate a new, 16.06–mile (25.8 km) long, 24–in (61–cm) diameter natural gas pipeline (called the Northeast Gateway Pipeline Lateral or Pipeline Lateral) to connect the Port to Algonquin's existing offshore natural gas pipeline system in Massachusetts Bay, called the HubLine.

The Port will consist of two subsea Submerged Turret Loading (STL™) buoys, each with a flexible riser assembly and a manifold connecting the riser assembly, via a steel flowline, to the subsea Pipeline Lateral. Northeast Gateway will utilize vessels from its current fleet of specially designed Energy-Bridge™ Regasification Vessels (EBRVs), each capable of transporting approximately 2.9 billion ft^3 (Bcf; 82 million m^3) of natural gas condensed to 4.9 million ft^3 (138,000 m^3) of LNG. Northeast Gateway will add vessels to its fleet that will have a cargo capacity of approximately 151,000 m^3. The proposed mooring system to be installed at the Port is designed to handle both the existing vessels and any of the larger capacity vessels that may come into service in the future. The EBRVs will dock to the STL™ buoys which will serve as both the single-point mooring system for the vessels and the delivery conduit for natural gas. Each of the STL™ buoys will be secured to the seafloor using a series of suction anchors and a combination of chain/cable anchor lines.

The Pipeline Lateral joins the existing HubLine pipeline in waters approximately 3 mi (4.8 km) to the east of Marblehead Neck in Marblehead, Massachusetts. From the HubLine connection, the Pipeline Lateral route extends towards the northeast, crossing the outer reaches of territorial waters of the Town of Marblehead, the City of Salem, the City of Beverly, and the Town of Manchester-by-the-Sea for approximately 6.3 mi (10.1 km). The Pipeline Lateral route curves to the east and southeast, exiting Manchester-by-the-Sea territorial waters and entering waters regulated by the Commonwealth of Massachusetts. The Pipeline Lateral route continues to the south/southeast for approximately 6.2 mi (10 km), where it exits state waters and enters federal waters. The Pipeline Lateral route then extends to the south for another approximately 3.5 mi (5.7 km), terminating at the Port.

On June 13, 2005, Northeast Gateway submitted an application to the USCG and MARAD seeking a federal license under the Deep-Water Port Act to own, construct, and operate a deepwater port for the import and regasification of LNG in Massachusetts Bay, off of the coast of Massachusetts. Simultaneous with this filing, Algonquin filed a Natural Gas Act Section 7(c) application with the Federal Energy Regulatory Commission for a Certificate of Public Convenience and Necessity for the Pipeline Lateral that would connect the Northeast Gateway Port with the existing HubLine natural gas pipeline for transmission throughout New England. Because, as described later in this document, there is a potential for marine mammals to be taken, by harassment, incidental to construction of the facility and its pipeline and by the transport of LNG, Northeast Gateway/Algonquin have applied for a 1-year IHA for activities commencing around May, 2007. Detailed information on these activities can be found in the MARAD/USCG Final EIS on the Northeast Gateway Project (see ADDRESSES for availability). Detailed information on the LNG facility's pipeline and port construction, operation, and maintenance activities; and noise generated from construction and operations was published in the **Federal Register** on March 13, 2007 (72 FR 11328). No changes have been made to these proposed activities.

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on March 13, 2007 (72 FR 11328). During the 30-day public comment period, NMFS received the following comments from the Marine Mammal Commission (Commission), the Provincetown Center for Coastal Studies (PCCS), the PCCS Aerial Survey Team, the Whale Center of New England (WCNE), the Humane Society of the United States (HSUS), and 18 private citizens.

Comment 1: The Commission states that in general, the mitigation, monitoring, and reporting measures appear appropriate and prudent. The Commission recommends that NMFS condition the IHA to include all of them, including the installation of a near-real-time passive acoustic array.

Response: NMFS agrees with the Commission's recommendation. The IHA requires the installation of a near-real-time passive acoustic array in the vicinity of the proposed project.

Comment 2: The Commission recommends that the IHA explicitly identify which construction and operation activities (e.g., operation of vessel thrusters) would be suspended when whales are detected within specified distances. The Commission states that since the operators may not know which activities produce sounds that exceed certain specified levels (i.e., 120 dB re 1 microPa), there is a need to specify which construction and operation activities would need to be suspended in the event that a right whale is detected within 457 m (500 yd) or another protected species is detected within 91 m (100 yd).

Response: NMFS does not agree with the Commission's recommendation of setting specified shut down criteria for each construction and operation activity for a specified received level. Due to the complexity of oceanographical and ocean bottom topographical features, as well as a wide range of construction and operation equipment being used for the proposed project, it is virtually impossible to set specified shut down criteria for each construction and operation activity. For example, the ensonified area where intermittent noise received levels reach 120 dB re 1 microPa or above from the same bow thruster use associated with dynamic positioning of vessels during either construction or operation (docking) could range between 15 km^2 (5.8 mi^2) and 34 km^2 (13.1 mi^2), or 2.18 km (1.35 mi) and 3.31 km (2.06 mi) radii, respectively, depending on water depth between 120 m (394 ft) or deeper and 40 m (131 ft) or shallower.

Nonetheless, the Northeast Gateway proposed to adopt the most conservative estimates of ''take'' by using the largest zone of influence (ZOI; 34 km^2, or 13.1 mi^2) for 120 dB re 1 microPa in shallow water (40 m, or 131 ft) in their calculation, regardless of the type of construction and operation activities. The type of construction activity that would produce the highest noise level would be from the construction vessel movements, with source levels reaching up to 180 dBL re 1 microPa at 1 m for vessel thrusters used for dynamic positioning. In addition, as detailed in the **Federal Register** notice (72 FR 11328, March 13, 2007), during construction and operations, a 0.8 km (0.5 mi) radius zone will be monitored by marine mammal observers (MMOs). If any marine mammals are visually detected within the 0.8 km (0.5 mi) radius zone, the vessel supervisor would be notified immediately. The vessel's crew would be put on a heightened state of alert. The marine mammal would be monitored constantly to determine if it is moving toward the construction or operation area. Construction or operational vessel(s) in the vicinity would be directed to cease any movement and/or stop noise emitting activities that exceed a received level of 120 dB re 1 microPa at 100 yd (91 m) (approximately 139 dB re 1 microPa at the source) if a marine mammal other than a right whale comes to within such a range. For right whales, the cut-off distance would be established at 500 yd (457 m) when the received level reaches 120 dB re 1 microPa at 100 yd (91). NMFS considers this measure conservative.

Comment 3: The Commission, the PCCS, and the HSUS note that construction and operation activities producing loud noise would occur at night and under poor sighting conditions (e.g., foggy weather) when visual detection of animals would not be possible. The Commission recommends that NMFS require the use of passive acoustic monitoring (PAM) at all times during the construction period and develop criteria and procedures for suspending and resuming activities that generate sounds above specified levels when protected species are detected near the construction site. The HSUS recommends that during low-light hours, Northeast Gateway should cease all construction activities until adequate sighting conditions prevail.

Response: NFMS agrees with the Commission that PAM will be used at all times during the construction period. A detailed description of how PAM will be used to assist visual monitoring is provided in the draft *Marine Mammal Detection, Monitoring, and Response Plan for the Construction and Operation of the Northeast Gateway Energy Bridge™ Deepwater Port and Pipeline Lateral* (NEG, 2007). The PAM primarily serves as an early warning and supplemental measure for marine mammal visual monitoring provided by two MMOs on each construction vessel. The Northeast Gateway will equip MMOs with night vision devices for marine mammal monitoring during low-light hours.

Comment 4: The Commission and the HSUS note that the **Federal Register** notice (72 FR 11328, March 13, 2007) identifies several measures intended to mitigate collision risks, including commitments by the port operator to require that vessels using the port:

- use the Boston Traffic Separation Scheme (TSS);
- travel at 10 knots or slower when outside those lanes approaching or leaving the port;
- travel at 10 to 12 knots when in the vicinity of the port; and
- reduce their transit speeds to 10 to 14 knots between March 1 and April 30, or if required by NMFS, throughout the entire year in the proposed Race Point ship strike management area.

The Commission and the HSUS request NMFS to describe specifically what is ''in the vicinity of the port,'' and provide an explanation as to why speeds of up to 12 knots would be allowed under this condition when, appropriately, the speeds of vessels approaching from or departing for the traffic lanes would be limited to 10 knots. In addition, the Commission and the HSUS believe that 14 knots is too fast and requests NMFS to set an upper speed limit. The Commission and the HSUS are concerned that a high proportion of vessel strikes causing serious or lethal injuries to whales occurred at 14 knots, as supported by ship collision data compiled by the Commission and NMFS. The Commission recommends that, consistent with navigational safety, 10 knots be required as a maximum speed for all vessels at all times of year within the Stellwagen Bank National Marine Sanctuary (SBNMS), and between March 1 and April 30 outside the SBNMS but still within the Race Point ship strike management area. The HSUS recommends that NMFS impose a speed limit of 10 knots to be consistent with what NMFS currently advises on its notices to mariners on the Ship Advisory System (SAS) in the Northeast.

Response: NMFS agrees with the Commission's comments and requires in the IHA a maximum speed of 10 knots for all vessels at all times of year within the SBNMS, and between March 1 and April 30 outside the SBNMS but still within the Race Point ship strike management area. To be consistent with NMFS Biological Opinion, the IHA requires that for construction activities, all construction vessels 300 gross tons or greater maintain a speed of 10 knots or less, and vessels transiting through the Cape Cod Canal and Cape Cod Bay between January 1 and May 15 reduce speed to 10 knots or less, follow the recommended routes charted by NOAA to reduce interactions between right whales and shipping traffic and avoid identified aggregations of right whales in the eastern portion of Cape Cod Bay.

In response to active right whale sightings (detected acoustically or reported through other means such as the MSR (Mandatory Ship Reporting) or SAS), and taking into account safety and weather conditions, EBRVs will take appropriate actions to minimize the risk of striking whales, including reducing speed to 10 knots or less and alerting personnel responsible for navigation and lookout duties to concentrate their efforts.

For operational activities, IHA requires that the Energy Bridge Regasification Vessels (EBRVs) maintain speeds of 12 knots or less while in the Boston TSS until reaching the vicinity of the buoys (except during the seasons and areas defined below, when speed will be limited to 10 knots or less). At 3 km (1.86 mi) from the Northeast Gateway Port, speed will be reduced to 3 knots, and to less than 1 knot at 500 m (1,640 ft) from the Port.

EBRVs will reduce transit speed to 10 knots or less (unless hydrographic, meteorological, or traffic conditions dictate an alternative speed to maintain the safety or maneuverability of the vessel) from March 1 - April 30 in all waters Off Race Point Seasonal Management Area (SMA). Please refer to the Monitoring, Mitigation, and Reporting section below for a detailed description.

Comment 5: The Commission recommends that vessels of less than 300 gross tons carrying supplies or crew between the shore and the construction site contact the appropriate authority before leaving shore or the construction site for reports of recent right whale sightings and, consistent with navigational safety, restrict speeds to 10 knots or less within five miles of any recent sighting locations. The Commission states that vessels smaller than 300 gross tons pose a risk of ship strikes to right whales and other large cetaceans.

Response: NMFS agrees with the Commission recommendation that vessels of less than 300 gross tons carrying supplies or crew between the shore and the construction site contact the appropriate authority before leaving shore or the construction site for reports of recent right whale sightings and, consistent with navigational safety, restrict speeds to 10 knots or less within five miles of any recent sighting locations. NMFS has adopted this recommendation and made it a requirement in the IHA issued to the Northeast Gateway.

Comment 6: The HSUS points out that in the **Federal Register** notice (72 FR 11328, March 13, 2007), it states that ''Northeast Gateway has voluntarily agreed to follow any speed restrictions that may become mandatory for all vessel traffic.'' The HSUS requests NMFS to clarify the statement.

Response: The Northeast Gateway voluntarily agreed to keep its EBGVs maximum speed at 12 knots within the Boston TSS (except during specified seasons and areas when speed will be limited to 10 knots or less, please refer to Monitoring, Mitigation, and Reporting section below for a detailed description), which is not a mandatory maximum speed for all vessel traffic.

Comment 7: The HSUS requests that the applicant be required to halt activities in the event of the death or serious injury of an endangered species (e.g., right, fin or humpback whale) in or around the project area.

Response: NMFS agrees with the HSUS' comment. The applicant is required to suspend all activities if a dead or injured marine mammal is found in the vicinity of the project area and the death or injury of the animal could be attributable to the activity.

Comment 8: The WCNE, the PCCS, and the HSUS point out that the numbers of marine mammals that would be harassed incidentally from May through November were grossly underestimated by NMFS in the **Federal Register** notice (72 FR 11328, March 13, 2007). The WCNE states that the use of large whale survey data provided by the PCCS in Cape Cod Bay to extrapolate the number of animals that would be exposed to sound levels of over 120 dB re 1 microPa is flawed. The WCNE, the PCCS, the PCCS Aerial Survey Team, and the HSUS state that the PCCS surveys were conducted to asses the use of the Cape Cod Bay habitat for North Atlantic right whales, however, other species such as humpback, fin, and minke whales which are likely to occur in the proposed project area are seasonal migrants known to spend most of the survey months outside of the study area. The PCCS and the HSUS point out that the applicant should use better data, such as data published from a recent NOAA report (NCCOS, 2006), research conducted by Weinrich and Sardi (2005), and even non-systematic cetacean data, such as long-term photo-identification data sets held by PCCS.

Response: NMFS recognizes that baleen whale species other than North Atlantic right whales have been sighted in the proposed project area from May to November. However, the occurrence and abundance of fin (*Balaenoptera physalus*), humpback (*Megaptera novaeangliae*), and minke (*B. acutorostrata*) is not well documented within the project area. Nonetheless, NMFS agrees with the PCCS that better data on cetacean distribution within Massachusetts Bay, such as those published by the National Centers for Coastal Ocean Science (NCCOS, 2006) should be used to estimate takes of marine mammals in the vicinity of project area. Based on the revised calculation, the updated estimated annual take numbers for North Atlantic right, fin, humpback, minke, and pilot whales, and Atlantic white-sided dolphins are 3, 13, 24, 2, 15, and 49, respectively. Please refer to the Estimate Takes by Harassment section below for a detailed description on the calculation of these numbers.

NMFS also reviewed Weinrich and Sardi's (2005) report on baleen whale distribution in the proposed project area. While NMFS considers it an excellent report in describing large whale distribution in the Massachusetts Bay and the SBNMS, with sighting data covering 1995 to 2004, NMFS could not use it to come up with take estimates because it did not provide density estimate in a quantitative analysis, which would be based on survey efforts, trackline, and strip width. Many of the non-systematic cetacean survey data, such as long-term photo-identification data sets held by the PCCS, are included in the NCCOS report.

Comment 9: The WCNE states that in their research efforts on northern Stellwagen Bank in 2006, they identified over 250 individual humpback whales, including 33 mother-calf pairs using standard photo-identification techniques, and even that number is considered an underestimate by the WCNE. Given the proximity of the project to Stellwagen Bank, the WCNE states that it is possible for any of these animals on any given day to be exposed to project noise of over 120 dB.

Response: NMFS believes a small number of humpback whales might be incidentally taken by Level B harassment if they happen to occur in the ZOI where noise from construction activities reach over 120 dB. However, the maximum size of the ZOI is calculated to be 34 km^2 (13 mi^2) with a vessel's dynamic positioning thrusters being operated in waters less than 40 m (131 ft) deep. As indicated in the Northeast Gateway's application, even this maximum ZOI would occur outside the SBNMS boundary, and there would be at least 5 nm (9.3 km) from the outer boundary of the maximum ZOI to the edge of Stellwagen Bank, where humpback whales and other large whale species are likely to occur (NCCOS, 2006). In addition, between the proposed project and the Stellwagen Bank, there is a deep drop off from the 50-m isobath where construction noise would not propagate as far when compared to areas of water depth less than 40 m (131 ft), where the maximum ZOI could occur. Therefore, the identification of 250 individual humpback whales in the northern Stellwagen Bank does not mean that those whales in that vicinity would be harassed. To the contrary, the fact that the majority of whales occur within the SBNMS, especially gathering around the Stellwagen Bank, means that fewer whales would be taken by Level B harassment in the vicinity of the project area, which is outside the SBNMS.

Comment 10: Citing the WCNE's own research on humpback whales in the SBNMS and other studies (cited as Seipt *et al.*, 1989), the WCNE states that a more realistic upper bound of the number of animals that may be taken during any given year by the project is

more likely to be up to 500 individuals each of humpback, fin, and minke whales, each of which may be taken multiple times on multiple days (no calculation provided).

Response: NMFS does not believe the WCNE's estimated take numbers are scientifically supported, especially given that the WCNE did not provide any valid calculation indicating how these numbers were assessed. The photo-identification of 250 humpback whales (including 33 mother-calf pairs) in the northern Stellwagen Bank, as mentioned in the previous Comment, does not support the WCNE's take estimate. The research conducted by Seipt *et al.* (1990), titled ''*Population Characteristics of Individual Fin Whales, Balaenoptera physalus, in Massachusetts Bay, 1980-1987*,'' was actually published in the Fishery Bulletin in 1990, not 1989 as cited by the WCNE. While the study described the use of photo-identification technology on fin whale population studies in Massachusetts Bay and presented fin whale sighting and resighting data between 1980 and 1987, it did not provide any population estimate or density assessment of the species in the study area. Therefore, NMFS does not believe these data can be used for fin whale take estimates in the proposed project area.

In addition, NMFS' own population assessment of the Gulf of Maine humpback stock is 902 whales (Warring *et al.*, 2005). The WCNE's estimated annual take of 500 humpback whales (55 percent of the population) within an maximum 120 dB re 1 microPa ZOI of 34 km^2 (13 mi^2) outside their normal habitat is not scientifically supportable. Likewise, the WCNE's estimated annual take numbers of 500 fin whales, which accounts for 18 percent of the Western North Atlantic population of 2,814 whales; and 500 minke whales, which is 14 percent of the Canadian East Coast population of 3,618 whales (which are most sighted off Nova Scotia and New Brunswick, Canada); are not good estimates.

Comment 11: The WCNE points out that right whales are not evenly distributed along a trackline, but clump in areas where a prey resource, usually copepods, is aggregated in high densities (Mayo and Marx, 1990; Baumgartner *et al.*, 2003), and citing its work on right whales, the WCNE states that the right whale use of the proposed project area may be similar to that of Cape Cod Bay where up to 100 individual whales are seen per year (Hamilton and Mayo, 1990; Brown *et al.*, 2004; Mayo *et al.*, 2005; Jaquet *et al.*, 2006). Hence, the WCNE states that an appropriate estimate of North Atlantic right whales to be harassed by the proposed project would be approximately 100 individuals annually, each of which may be taken multiple times on multiple days.

Response: NMFS agrees that right whales clump in areas where prey species are most abundant. However, a good survey design would compensate for such a bias by adequate and repeated sampling of the study area. This is certainly the case for datasets used by the NCCOS (2006) which include survey efforts and sightings data from ship and aerial surveys and opportunistic sources between 1970 and 2005 from a wide range of sources. These studies clearly show that right whales spend most of their time across the southern Gulf of Maine in Cape Cod Bay in spring, with highest abundance located over the deeper waters on the northern edge of the Great South Channel and deep waters parallel to the 100-m (328-ft) isobath of northern Georges Bank and Georges Basin. The references the WCNE cited focused most of the survey efforts in Cape Cod Bay, which is 30 - 40 mi (48 - 64 km) southeast of the proposed project area and has different oceanographic features and ecological characteristics, and a more important habitat for right whales. In addition, Weinrich and Sardi (2005) in their report on the distribution of baleen whales in the Northeast Gateway proposed LNG project area states:

> North Atlantic right whales are sporadic visitors to the study area [Northeast Gateway project area] during the April to November period. Right whales typically aggregate in Cape Cod Bay during the late winter and early spring (Mayo and Marx 1990), then move east to the Great South Channel during the spring (Kenney and Wishner 1995). They then move east along the northern edge of Georges Bank, and into the Bay of Fundy and Nova Scotian shelf during the summer and early fall (Kraus *et al.* 1988; Winn *et al.* 1986; Baumgartner *et al.* 2003). Once they leave the Bay of Fundy, pregnant females migrate to the coastal waters of the southern U.S. to calve, while the distribution of much of the rest of the population remains unknown (Winn *et al.* 1986).

Right whale sighting plots presented in this report support this statement, and it is consistent with the survey data published in the NCCOS (2006) report, which indicates that right whales do not use the proposed project area regularly. Therefore, NMFS does not believe that the WCNE's estimated annual take of 100 North Atlantic right whales by the proposed project is scientifically supported, especially given that the WCNE did not provide the calculation regarding how this take number was assessed.

Comment 12: The WCNE states that although it has no way of addressing the numbers of other species [marine mammal species other than large whales] requested to be taken by harassment, in most cases the numbers requested seem to be unrealistic to the WCNE (no references provided).

Response: Given that the WCNE has no way of addressing the numbers of other species requested, the WCNE's opinion that the numbers are unrealistic has no scientific basis.

Comment 13: The WCNE points out that the deepwater port installation during the months of August through November is a particularly sensitive time for endangered humpback and fin whales within the proposed project area, as supported by the studies conducted by Weinrich and Sardi (2005). The WCNE states that heavy industrial activity during these months would result in either take levels of these species at far greater levels than during any other month or in habitat displacement altogether.

Response: While NMFS reviewed the Weinrich and Sardi (2005) report on the distribution of baleen whales in the waters surrounding the Northeast Gateway's proposed LNG project, NMFS did not find the report contains any quantitative analysis of the cetacean density data showing that there is a statistical significance of baleen whales' use of the proposed project area on a seasonal or monthly basis. The cetacean sighting data, plotted in an area that includes most of the SBNMS, part of the Massachusetts Bay, the west terminal portion of the Boston TSS, and the proposed project area, clearly show that most humpback, fin, and minke whales were sighted within the SBNMS (Weinrich and Sardi, 2005). NMFS recognizes that there would be potential take of a small number of marine mammals by Level B harassment as a result of this project, however, NMFS does not agree with the WCNE that there would be takes at far greater levels during the months of August and November for humpback and fin whales as strict monitoring and mitigation measures, described in the Monitoring, Mitigation, and Reporting section, would be implemented to keep the impact levels as low as practicable.

Comment 14: The WCNE points out that the permit application never refers to any of the project's vessel operations except that of the thrusters. The WCNE states that staff at the SBNMS have shown that LNG tankers under operation produce acoustic sources that can radiate well over 0.25 mi (400 m) from the ship (no reference provided). The WCNE further points out that many

of the ships are large, relatively un-maneuverable vessels that would not be able to maintain legal approach distances, including the 500-yd minimum approach distance to right whales.

Response: Staff at the SBNMS has not had the opportunity to do acoustic testing of the EBRVs that will be using the Port. However, acoustic testing of the EBRVs has been conducted and was referenced in the proposed project as published in the **Federal Register** (72 FR 11328, March 13, 2007). While ''acoustic sources'' may ''radiate,'' at 0.25 mi (400 m) the received level would be below 120 dB re 1 microPa, which is the threshold for Level B behavioral harassment for marine mammals.

The Northeast Gateway states that the maneuverability of the EBRVs at this low speed (maximum 12 knots within the Boston TSS and maximum 10 knots within the SBNMS, please refer to Monitoring, Mitigation, and Reporting section below for a detailed description) would enable the vessels to maintain legal approach distance, including the 500-yd (457-m) minimum approach distance to right whales.

Comment 15: The WCNE points out that the applicant plans to use a remote acoustic detection system for whale monitoring. However, the WCNE states, that PAM can only be effective if a whale vocalizes while it is within detectable range of the array. Citing Park *et al.* (2006, unpublished data), the WCNE states that whales are often silent for prolonged periods in the WCNE's study area. The PCCS also points out that marine mammals may not vocalize continuously and work is still underway to estimate the probability of detecting a whale that is present by passive acoustic techniques.

Response: NMFS acknowledges these limitations. The requirement of PAM for marine mammal detection is intended to provide additional monitoring to the standard visual monitoring by qualified marine mammal observers (MMOs). PAM is not to be solely used for marine mammal monitoring and detection for the proposed project and certainly will not replace visual monitoring. However, passive acoustic buoys provide an early warning to contractor managers and vessel operators when a vocalizing whale is detected within 3 - 5 mi (4.8 - 8.0 km) from the project, which triggers the MMOs to heighten visual observation in the direction of a vocalizing whale (NEG, 2007).

While NMFS agrees that at times whales do not vocalize continuously, nonetheless, acoustic detection has been demonstrated to augment visual detection of marine mammal in population estimates and habitat selection selection indices in a number of studies (e.g., Moore *et al.*, 1999; Swartz *et al.*, 2002).

Comment 16: The PCCS is concerned that PAM would be entirely ineffective for monitoring marine turtles which also are least likely to be detected by visual techniques.

Response: NMFS agrees with the PCCS' comment that PAM is not an effective way to monitor marine turtles. As stated in the **Federal Register** notice (72 FR 11328, March 13, 2007), the PAM would be used as a supplemental monitoring measure for detecting marine mammals.

Comment 17: The WCNE and the PCCS Aerial Survey Team are concerned that vessel strikes have not been identified as a potential type of take, and that the applicants have made no commitments to take any actions to avoid disturbance or collision even though they know a whale is present in their path or in the disturbance ''swath.''

Response: NMFS does not agree with the WCNE and PCCS' comment. In assessing the potential impact from vessel strikes, NMFS proposed strict vessel speed limits in the vicinity of the project area, including within the SBNMS, the Boston TSS, and right whale seasonal management areas.

The IHA issued to the Northeast Gateway provides detailed monitoring and mitigation measures to avoid any disturbance or collision, including passive acoustic monitoring, reducing vessel speed to 12 knots within the Boston TSS, and further reducing vessel speed to 10 knots within the SBNMS and within seasonal management areas during certain months. These mandatory monitoring and mitigation measures are detailed in the Monitoring, Mitigation, and Reporting section of this document.

Comment 18: The WCNE states that whales would be harassed not just by exposure to sound sources of over 120 dB re 1 microPa, they may also be disturbed by multiple boats in a limited area. The WCNE cites that studies conducted by Borgaard *et al.* (1999) and Stone and Tasker (2006) on whales affected by continuous activity from dredging coupled with vessel traffic and seismic activities. The WCNE recommends that if in the first year [of the project] abundance of any of the key species are notably lower than that of previous years, the IHA should stipulate that project operations should cease until it can be determined if that change was related to project activities or other ecological factors.

Response: It is true that marine mammals maybe disturbed by multiple boats in a limited area, especially within the Boston TSS. However, this concern is not related to the issuance of this IHA since the operation of a deepwater LNG facility would only increase vessel traffic by a very small amount, about 1.5 percent (NMFS, 2007). The study by Borgaard *et al.* (1999) cited by the WCNE was focused on the effects of large scale industrial activity, which involved dredging and blasting, on large cetaceans in Bull Arm, Trinity Bay, Newfoundland from 1992 through 1995. The research indicates that humpback whales were more affected by continuous activity from dredging, coupled with vessel traffic, but appeared tolerant of transient blasting and frequent vessel traffic. Individually-identified minke whales were resighted in the industrialized area, and appeared tolerant of vessel traffic. Stone and Tasker (2006) in their research analyzed the effects of airgun seismic surveys on marine mammals in UK waters. The airgun used in seismic surveys produces impulse sounds, which is fundamentally different sound in acoustic characteristics from the intermittent noises produced during the proposed deepwater LNG port construction.

The IHA is issued for a duration of one year. NMFS will evaluate any new scientific information that may surface during the project period and assess any impacts that may result due to the deepwater port construction and operation. Based on the new information and monitoring reports, NMFS will determine whether any additional monitoring or mitigation measures are warranted for future IHAs.

Comment 19: The WCNE states that the range over which individual marine mammals would be considered harassed by exposure to vessel noise of over 120 dB re 1 microPa is also underestimated in the permit application. The WCNE points out that the Northeast Gateway FEIS provides relatively little concrete data on how far the sounds of various project activities are likely to propagate, except for a small number of studies conducted on stationary vessels in the Gulf of Mexico (GOM). The WCNE points out that the differences in the acoustic properties between the GOM and the Massachusetts Bay project site are so great that data from the former are of little relevance (no reference provided). Citing the Neptune LNG project, the WCNE states that the area around the ship that would reach areas of 120 dB re 1 microPa would be within approximately 1 nm in any direction when it is transiting at 10 knots at

depths of both 50 m and at the bottom (less at the surface, where the sound is masked by the Lloyd mirror effect), and to approximately 3 nm in any direction when thrusters are used.

Response: NMFS does not agree with the WCNE comment. The propagation of sound underwater follows basic geometric spreading models that are generally predictable (Urick, 1983). Therefore, studies on acoustic energy propagation conducted in the GOM are directly relevant to operations of identical vessels in the Massachusetts Bay unless substantial data are provided that would indicate otherwise. Regarding the size of the 120 dB re 1 microPa isopleth cited by the WCNE for the Neptune LNG project, there are a number of reasons why the isopleth areas differ from the one for this project. One reason is that the source level may be higher.

Comment 20: The WCNE points out that there is no mention in the applicant's application about harassment from blasting during the construction phase of the project, however, the proponents continue to include in many of their documents the possibility that it may occur. The WCNE states that baleen whales, including those species in the project area, have been shown to be very sensitive to blasting; in some cases, it has been known to be fatal to humpback whales (Todd *et al.*, 1996).

Response: Northeast Gateway stated that the pipeline route was intensively studied, and those studies were submitted to the USCG/MARAD and made part of their application. When the shortest, least expensive pipeline route was studied and it became clear that it would cross rocky substrate, another route, longer and more expensive was designated, selected in large part because it entirely avoids rocky substrate and the need for blasting or extensive alteration of the substrate. Northeast Gateway stated in its IHA application that no blasting would be required for the construction of the LNG deepwater port. Therefore, the IHA does not authorize blasting to be used for port construction. If, during the course of the construction, an unexpected need for blasting arises, the blasting cannot take place until a blasting plan is submission to the Federal Energy Regulatory Commission (FERC) and a Blasting Mitigation Plan prepared in consultation with NOAA for submittal to, and approval by, the FERC, which would certainly include a reconsideration of an amendment of the IHA.

Comment 21: The WCNE states that unless otherwise specifically granted an authorization by the NMFS permit office, Northeast Gateway must also move away from a right whale until they have once again established the 500 yd buffer. The application does not contain a request for an authorization to approach right whales within 500 yd. This contradicts their statement that, regarding the DSV (which maintains its position with thrusters, and is therefore well above 120 dB re 1 microPa to several miles) ''the importance of maintaining the position of the vessel is a demand which cannot be compromised'' (in other words, regardless of where any marine mammal appears).

Response: The mitigation measures for approach regulate the approach distance of a vessel to a marine mammal. They do not apply to stationary vessels. The construction vessels in question include anchored construction barges and Diver Support Vessels (DSV).

The DSV uses dynamic positioning to hold position over one or more divers deployed on the bottom with lifelines into the vessel. It is, for all intents and purposes, stationary at the time. It is extremely unlikely that a marine mammal would approach such a noise source and swim within the specified ''harassment'' distance of the vessel. However, if that occurred, the vessel would not be able to abandon its position; if the vessel did so, the safety and even the survival of the divers below would be in jeopardy. This is made clear in the proposed IHA **Federal Register** notice (72 FR 11328, March 13, 2007). Since the maximum noise level produced by deploying the dynamic positioning thrusters is under 180 dB re microPa, which is below the sound level that may cause permanent or temporary hearing threshold shift, NMFS does not believe that any Level A harassment (including injury) or mortality would occur to any marine mammals in the project vicinity.

Comment 22: The PCCS questions the 500-yd rule to determine when activities might become disruptive for right whales, and 100-yd rule for other marine mammals. The 500-yd rule for right whales was not formulated to prevent disruption from construction activities and it is unclear what the 100-yd threshold is based on. Both distances appear to be smaller than the anticipated ZOI for 120 dB re 1 microPa sound. The smallest anticipated ZOI radius according to the application is 2.18-km or 2,384-yd, far greater than both sighting distance thresholds. Finally, it is not clear why 120 dB re 1 microPa activities should cease at different distances for right whales compared to other species.

Response: Those distances are based on applicant's proposed action as described in their IHA application, as well as the EIS and Biological Opinion. Given the status of right whales, it is appropriate to have a more conservative shut-down zone for right whales.

The 2.18-km (2,384-yd) 120-dB isopleth is based on the conservative calculation using the high-intensity source level of 180 dB from the dynamic positioning thrusters. These levels of high-intensity sounds are rarely emitted, therefore, the chance of a marine mammal being exposed to received levels above 120 dB outside the 100-yd safety zone (500-yd safety zone for a right whale) is very low.

Please also note that the MMOs are able to monitor a much larger area (0.8 km, or 0.5 mi, radius) in any direction from the construction site, which is way beyond 500-yard limit. In the Arctic, mammal observers routinely report whales at 1 to 3 mi (1.6 to 4.8 km) distance from the ship from observation platforms that are 12 to 15 m (40 to 50 ft) above the surface of the sea, as would be the case for the DSVs or the construction barges.

Comment 23: The PCCS Aerial Survey Team points out that there may be other species found in the Massachusetts Bay in addition to those observed in Cape Cod Bay by the PCCS. Therefore, more marine mammal studies should be conducted in the Massachusetts Bay.

Response: NMFS agrees with the PCCS there may be other species of marine mammals present in the Massachusetts Bay that were not included in the estimated take, such as sei whales (*B. borealis*). However, these species are rarely sighted in the vicinity of the project area. Therefore, NMFS considers it unlikely that there would be a take of sei whales as a result of the proposed activity. NMFS agrees with the PCCS that more marine mammal studies should be conducted in the Massachusetts Bay. However, this is irrelevant to the issuance of this IHA since NMFS already has the necessary information to assess the level of potential impacts on marine mammals in the project area and to make the determination on the issuance of the IHA.

Comment 24: The PCCS Aerial Survey Team states that their PCCS line transect data area specifically designed to maximize right whale sightings, and other marine mammals are recorded secondarily. The PCCS points out that different survey methods are appropriate for different species and that density estimates for small

cetaceans in particular are largely influenced by sea state (Palka, 1996). The PCCS further points out that in calculating the estimated take of marine mammals, Northeast Gateway used 1.5 km as strip width, in fact, the strip width should be 1.5 nm, and that the 1.5-km strip width would not be appropriate for many of the smaller marine mammals (for example, a strip width of a few hundred meters would be more appropriate for harbor porpoises).

Response: NMFS recalculated the cetacean density data and estimated take number based on the compilation of a large number of databases published by the NCCOS (2006). Please refer to Estimated Take by Harassment section below for a detailed description. In their density estimate, the NCCOS eliminated all survey data collected for small marine mammals when sea state is 3 or above.

In making its final determination, NMFS revised its calculation for estimated take of marine mammals due to the proposed project, and a more conservative hypothetical ''strip width'' of 0.4 km (0.25 mi) was used to calculate the estimated take number from the NCCOS report. Please refer to Estimated Take by Harassment section below for a detailed analysis of the calculation.

Comment 25: The PCCS Aerial Survey Team points out that a correction factor of 30 percent in calculating marine mammal take numbers cannot be applied to all species.

Response: While the length of the dive varies widely among marine mammal species, correction factors have not been developed for all species. Nonetheless, NMFS has used a more conservative 50 percent correction factor to compensate for marine mammals that were underwater and thus not sighted. Therefore, NMFS believes that this correction factor, while general, provides a conservative estimate of possible take.

Comment 26: The PCCS Aerial Survey Team points out that human error (often known as perception error) should also be factored into the equation, but has not been included in calculations by the applicant.

Response: Since such a factor has not been calculated in any datasets the NCCOS used for its density estimate, there is no way of knowing whether a meaningful correcting factor for perception error exists, and if so, the magnitude of the factor. Nonetheless, in selecting data for cetacean density estimate, only records from dedicated aerial and platform-of-opportunity surveys that met certain selection criteria were used by the NCCOS in their calculation. Please refer to the NCCOS (2006) report for a detailed description.

Comment 27: The PCCS Aerial Survey Team points out that any harassment contributing to the stress of a right whale could potentially affect this vulnerable population.

Response: NMFS agrees with the PCCS Aerial Survey Team's assessment. NMFS endangered species scientists in the Northeast Region have conducted a thorough review of the best available information on the status of endangered and threatened species under NMFS jurisdiction, the environmental baseline for the action area, the effects of the proposed project and cumulative effects in the action area. A Biological Opinion on the proposed action was published on February 5, 2007 (NMFS, 2007), which stated that the construction and operation of the Northeast Gateway LNG deepwater port is likely to adversely affect, but is not likely to jeopardize the continued existence of Northern right whales.

In addition, NMFS has reviewed and adopted the FEIS prepared by the USCG and the MARAD, and has made its determination that the issuance of the IHA to the Northeast Gateway for taking up to 3 North Atlantic right whales by Level B harassment incidental to an LNG deepwater construction would have a negligible impact on the species.

Comment 28: The Commission assumes that NMFS chose 120-dB re 1 microPa source level, rather than the received level, as a cut-off threshold to avoid the need for a small-take authorization, and that the source level was used rather than the received level simply to avoid uncertainty pertaining to estimation of the received level. The Commission requests a clarification if its assumption is incorrect.

Response: The Northeast Gateway in its *Marine Mammal and Turtle Monitoring and Mitigation Plan of the IHA application (Appendix C)* stated:

> Construction vessel(s) in the vicinity of the sighting will be directed to cease any movement and/or stop noise emitting activities that exceed 120 decibels (dB) in the event that a right whale comes to within 500 yards of any operating construction vessel. For other whales and sea turtles this distance will be established at 100 yards. Vessels transiting the construction area such as pipe haul barge tugs will also be required to maintain these separation distances.

This proposed mitigation measure was later published in the **Federal Register** notice (72 FR 11328, March 13, 2007). However, after consulting experts on ocean acoustics, NMFS realized that setting the 120 dB source level as a cut-off is unrealistic and untenable. Given the fact that almost anything occurring on a vessel or barge would have to be stopped—including generators for basis functions, flushing toilets, and tug boats in neutral, etc.—if 120 dB source level was set as a cut-off threshold, NMFS has amended the cut-off threshold to be 120 dB re 1 microPa *received* level at 100 yd (91 m) for all marine mammals except right whales when they approach to this distance. The cut-off threshold for right whales would also be 120 dB re 1 microPa at 100 yd (91 m), however, the source shut-down distance would be 500 yd (457 m) from the source. The back calculated cut-off source level based on the most conservative model for underwater acoustic propagation (i.e., cylindrical spreading in shallow water) is 139 dB re 1 microPa. Please see Monitoring, Mitigation, and Reporting section below for a detailed description.

Comment 29: Fourteen private citizens request a public hearing to consider the IHA application submitted by the Northeast Gateway to take marine mammals off the Massachusetts coastline. These citizens also state that the dangers to marine mammals are grossly understated and misrepresented in the permit application.

Response: In view of the number of public meetings and hearings held by the USCG and others on this matter and the expedited statutory timeline for issuing this IHA, NMFS does not believe that a public hearing is warranted.

A thorough analysis of the potential impact to marine mammals as a result of the proposed project is presented in the **Federal Register** notice (72 FR 11328) published on March 13, 2007, and in the NMFS Biological Opinion on this action, the USCG and MARAD Final EIS, as well as in this document. Please refer to these documents for the issue.

Comment 30: Fourteen private citizens point out that the proposed LNG terminal would be almost on top of an old toxic, chemical, and radioactive dump site that is surrounded by three marine sanctuaries, including the SBNMS, the South Essex Ocean Sanctuary, and the North Shore Ocean Sanctuary. These citizens also expressed concerns that LNG tankers would constantly scour the bottom, dredging up and breaking up many of the thousands of waste drums documented to have been dumped in the vicinity that would pollute the ocean ecosystem, endanger 6 species of ESA-listed whales and 4 species of ESA-listed sea turtles, contaminate fish and lobsters, and threaten the livelihood and safety of fishermen who may pull

up toxic materials in their nets and traps.

Response: Algonquin has used the coordinates listed in the permits authorizing the dumping of radioactive waste to map the locations of the dump areas. The project does not involve any work in the radioactive dump locations, and therefore there will be no sediment/bottom disturbing activities resulting from the project construction or operation that would necessitate the need to clean up the wastes. One dump location is located about 6 mi (9.7 km) almost due east of Scituate and approximately 8 mi (12.9) south of the Northeast Gateway deepwater port. The second dump site is located just east of the eastern edge of the pipeline anchor corridor, approximately between Mileposts 14 and 15. While this area is more proximate to the proposed project area, geophysical surveys were performed, using sidescan sonar, subbottom profiling and magnetometer methodologies. These survey methodologies have a high probability of identifying items such as 30- or 50-gallon (113.6- or 189.3-l) steel drums, either because they create a surface image on the sidescan sonar, such as a 3- or 4-ft (0.9- or 1.2-m) diameter rock might, or because the magnetometer registers the presence of ferrous metal objects, potentially as small as a cannonball, and even if encased in concrete. Benthic community and sediment characterization surveys were also conducted using grab samplers; therefore results reflect the near-surface conditions. Benthic samples were collected throughout the area that was examined during the siting process, while sediment collections were made only in the areas finally selected for the buoys and flowlines. Because of the historical reports of radioactive wastes being disposed in eastern Massachusetts Bay, field technicians tested each benthic and sediment sample from that area with a Geiger counter. No ''hot'' samples were found. Sediment samples were tested for the chemical contaminants required for assessing dredged material proposed for disposal at the Massachusetts Bay Disposal Site (MBDS). All constituents tested fell within the Category 1 (''cleanest'') criteria, considered acceptable for disposal at the MBDS.

In addition, this is an area of intense ground fishing activity, and it is possible that disposed drums of radioactive waste that were short dumped would have already been struck by groundfishing gear, would have been picked up in groundfishing gear, or are adequately buried, such that the anchor cables will not disturb them.

Comment 31: Five private citizens point out that when Algonquin built the Hubline it ignored its permit and the Order of Conditions set by the Nahant Conservation Commission not to build during lobster migration seasons. These citizens are concerned that, given this history, Algonquin may not suspend construction activities when whales are in the vicinity.

Response: Algonquin states that during the construction of the HubLine Pipeline, the company worked closely with Federal, state and local regulatory agencies to ensure that the intent of the permit conditions were complied with. Weekly construction status reports were prepared and submitted to agency personnel. Algonquin states that the HubLine Project was complex and construction during the winter posed some significant unforeseen challenges. Throughout the construction phase, Algonquin states that it worked closely with agency personnel at the Federal and state level to overcome these challenges. Algonquin further states that it takes very seriously environmental compliance at all levels and will continue to do so during the construction of the Pipeline Lateral.

Comment 32: One private citizen states that it would be unreasonable to expect construction crews to halt construction during whale sighting and stop what amounts to noise pollution emitted at a dangerous level to whales. This citizen further states that it is irresponsible to endanger the whales, turtles, fish and lobster in this area, and that it is unacceptable to disrupt a sanctuary.

Response: The IHA issued to the Northeast Gateway and Algonquin, under section 101(a)(5)(D) of the MMPA, to take marine mammals by Level B harassment incidental to the construction and operation of an LNG facility in the Massachusetts Bay provides mitigation and monitoring requirements that will protect these animals from any injury or mortality. The IHA holders are required to comply with the IHA's requirements.

The proposed project would occur outside the SBNMS, and a thorough analysis has been conducted based on the best available information on the status of endangered and threatened species under NMFS jurisdiction, the environmental baseline for the action area, the effects of the proposed project and cumulative effects in the action area. These reviews have led NMFS to conclude that the proposed LNG project would have a negligible impact on the affected species or stocks of marine mammals and is not likely to jeopardize the continued existence of any ESA-listed species. Please refer to the **Federal Register** notice (72 FR 11328) published on March 13, 2007, NMFS Biological Opinion on Northeast Gateway's action, the USCG and MARAD Final EIS, as well as this document for additional information. The analyses of the potential impacts on the environment and other marine species can be found in the Final EIS prepared by the USCG and MARAD.

Comment 33: One private citizen states it makes more sense to back hydrogen production from purified water with a system like the Hopewell Project in New Jersey. This citizen asks NMFS to take a look into the Hopewell Project and help America become energy independent.

Response: Comment noted. However, this request is irrelevant to this action.

Marine Mammals Affected by the Activity

Marine mammal species that potentially occur within the NE Gateway facility impact area include several species of cetaceans and pinnipeds: Atlantic white-sided dolphin, bottlenose dolphin, short-beaked common dolphin, harbor porpoise, killer whale, long-finned pilot whale, Risso's dolphin, striped dolphin, white-beaked dolphin, sperm whale, minke whale, blue whale, humpback whale, North Atlantic right whale, sei whale, gray seal, harbor seal, hooded seal, and harp seal. Information on those species that may be impacted by this activity are discussed in detail in the USCG Final EIS on the Northeast Gateway LNG proposal. Please refer to that document for more information on these species and potential impacts from construction and operation of this LNG facility. In addition, general information on these marine mammal species can also be found in Wursig *et al.* (2000) and in the NMFS Stock Assessment Reports (Waring, 2006). This latter document is available at: *http://www.nefsc.noaa.gov/nefsc/publications/tm/tm194/*. An updated summary on several cetacean species distribution and abundance in the proposed action area is provided below.

Humpback Whale

The highest abundance for humpback whales was distributed primarily along a relatively narrow corridor following the 100-m (328 ft) isobath across the southern Gulf of Maine from the northwestern slope of Georges Bank, south to the Great South Channel, and northward alongside Cape Cod to Stellwagen Bank and Jeffreys Ledge. The relative abundance of whales increased in the spring with the highest

occurrence along the slope waters (between the 40- and 140-m, or 131- and 459-ft, isobaths) off Cape Cod and Davis Bank, Stellwagen Basin and Tillies Basin and between the 50- and 200-m (164- and 656-ft) isobaths along the inner slope of Georges Bank. High abundance was also estimated for the waters around Platts Bank. In the summer months, abundance increased markedly over the shallow waters (<50 m, or <164 ft) of Stellwagen Bank, the waters (100 - 200 m, or 328 - 656 ft) between Platts Bank and Jeffreys Ledge, the steep slopes (between the 30- and 160-m isobaths) of Phelps and Davis Bank north of the Great South Channel towards Cape Cod, and between the 50- and 100-m (164- and 328-ft) isobath for almost the entire length of the steeply sloping northern edge of Georges Bank. This general distribution pattern persisted in all seasons except winter, when humpbacks remained at high abundance in only a few locations including Porpoise and Neddick Basins adjacent to Jeffreys Ledge, northern Stellwagen Bank and Tillies Basin, and the Great South Channel.

Fin Whale

Spatial patterns of habitat utilization by fin whales were very similar to those of humpback whales. Spring and summer high-use areas followed the 100-m (328 ft) isobath along the northern edge of Georges Bank (between the 50- and 200-m (164- and 656-ft) isobaths), and northward from the Great South Channel (between the 50- and 160-m, or 164- and 525-ft, isobaths). Waters around Cashes Ledge, Platts Bank, and Jeffreys Ledge are all high-use areas in the summer months. Stellwagen Bank was a high-use area for fin whales in all seasons, with highest abundance occurring over the southern Stellwagen Bank in the summer months. In fact, the southern portion of the SBNMS was used more frequently than the northern portion in all months except winter, when high abundance was recorded over the northern tip of Stellwagen Bank. In addition to Stellwagen Bank, high abundance in winter was estimated for Jeffreys Ledge and the adjacent Porpoise Basin (100- to 160-m, 328- to 656-ft, isobaths), as well as Georges Basin and northern Georges Bank.

Minke Whale

Like other piscivorous baleen whales, highest abundance for minke hale was strongly associated with regions between the 50- and 100-m, 164- and 328-ft, isobaths, but with a slightly stronger preference for the shallower waters along the slopes of Davis Bank, Phelps Bank, Great South Channel and Georges Shoals on Georges Bank. Minke whales were sighted in the SBNMS in all seasons, with highest abundance estimated for the shallow waters (approximately 40 m, or 131 ft) over southern Stellwagen Bank in the summer and fall months. Platts Bank, Cashes Ledge, Jeffreys Ledge, and the adjacent basins (Neddick, Porpoise and Scantium) also supported high relative abundance. Very low densities of minke whales remained throughout most of the southern Gulf of Maine in winter.

North Atlantic Right Whale

North Atlantic right whales are generally distributed widely across the southern Gulf of Maine in spring with highest abundance located over the deeper waters (100- to 160-m, 328- to 525-ft, isobaths) on the northern edge of the Great South Channel and deep waters (100 - 300 m, 328 - 984 ft) parallel to the 100-m (328-ft) isobath of northern Georges Bank and Georges Basin. High abundance was also found in the shallowest waters (< 30 m, <98 ft) of Cape Cod Bay, over Platts Bank and around Cashes Ledge. Lower relative abundance was estimated over deep-water basins including Wilkinson Basin, Rodgers Basin and Franklin Basin. In the summer months, right whales moved almost entirely away from the coast to deep waters over basins in the central Gulf of Maine (Wilkinson Basin, Cashes Basin between the 160- and 200-m, 525- and 656-ft, isobaths) and north of Georges Bank (Rogers, Crowell and Georges Basins). Highest abundance was found north of the 100-m (328-ft) isobath at the Great South Channel and over the deep slope waters and basins along the northern edge of Georges Bank. The waters between Fippennies Ledge and Cashes Ledge were also estimated as high-use areas. In the fall months, right whales were sighted infrequently in the Gulf of Maine, with highest densities over Jeffreys Ledge and over deeper waters near Cashes Ledge and Wilkinson Basin. In winter, Cape Cod Bay, Scantum Basin, Jeffreys Ledge, and Cashes Ledge were the main high-use areas. Although SBNMS does not appear to support the highest abundance of right whales, sightings within SBNMS are reported for all four seasons, albeit at low relative abundance. Highest sighting within SBNMS occured along the southern edge of the Bank.

Pilot whale

Pilot whales arrive in the southern Gulf of Maine in spring, with highest abundance in the region occurring in summer and fall. Summer high-use areas included the slopes of northern Georges Bank along the 100-m (328-ft) isobath and pilot whales made extensive use of the shoals of Georges Bank (<60 m, or <197 ft, depth). Similarly, fall distributions were also primarily along the slopes of northern Georges Bank, but with high-use areas also occurring amongst the deep-water basins and ledges of the south-central Gulf of Maine. Within SBNMS, pilot whales were sighted infrequently and were most often estimated at low density. Cape Cod Bay and southern SBNMS were the only locations with pilot whale sightings for winter.

Atlantic White-Sided Dolphin

In spring, summer and fall, Atlantic white-sided dolphins were widespread throughout the southern Gulf of Maine, with the high-use areas widely located either side of the 100-m (328-ft) isobath along the northern edge of Georges Bank, and north from the Great South Channel to Stellwagen Bank, Jeffreys Ledge, Platts Bank and Cashes Ledge. In spring, high-use areas exist in the Great South Channel, northern Georges Bank, the steeply sloping edge of Davis Bank and Cape Cod, southern Stellwagen Bank and the waters between Jeffreys Ledge and Platts Bank. In summer, there is a shift and expansion of habitat toward the east and northeast. High-use areas were identified along most of the northern edge of Georges Bank between the 50- and 200-m (164- and 656-ft) isobaths and northward from the Great South Channel along the slopes of Davis Bank and Cape Cod. High sightings were also recorded over Truxton Swell, Wilkinson Basin, Cashes Ledge and the bathymetrically complex area northeast of Platts Bank. High sightings of white-sided dolphin were recorded within SBNMS in all seasons, with highest density in summer and most widespread distributions in spring located mainly over the southern end of Stellwagen Bank. In winter, high sightings were recorded at the northern tip of Stellwagen Bank and Tillies Basin.

A comparison of spatial distribution patterns for all baleen whales (Mysticeti) and all porpoises and dolphins combined showed that both groups have very similar spatial patterns of high- and low-use areas. The baleen whales, whether piscivorous or planktivorous, were more concentrated than the dolphins and porpoise. They utilized a corridor that extended broadly along the most linear and steeply sloping edges in the southern Gulf of Maine indicated broadly by the 100 m (328 ft) isobath. Stellwagen Bank and Jeffreys Ledge supported a high abundance of baleen whales throughout

the year. Species richness maps indicated that high-use areas for individual whales and dolphin species co-occurred, resulting in similar patterns of species richness primarily along the southern portion of the 100-m (328-ft) isobath extending northeast and northwest from the Great South Channel. The southern edge of Stellwagen Bank and the waters around the northern tip of Cape Cod were also highlighted as supporting high cetacean species richness. Intermediate to high numbers of species are also calculated for the waters surrounding Jeffreys Ledge, the entire Stellwagen Bank, Platts Bank, Fippennies Ledge and Cashes Ledge.

Potential Effects on Marine Mammals

The effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995): (1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) The noise may be audible but not strong enough to elicit any overt behavioral response; (3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases; (4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat; (5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise; (6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and (7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic (or explosive events) may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Northeast Gateway states that the potential impacts to marine mammals associated with sound propagation from vessel movements, pipe laying and installation of the Port, anchors, chains and PLEMs could be the temporary and short-term displacement of seals and whales from within the 120-dB zones ensonified by these noise sources. From the most precautionarily conservative estimates of both marine mammal densities in the Project area and the size of the 120–dB zone of (noise) influence (ZOI), the calculated number of individual marine mammals for each species that could potentially be harassed annually is small. Taking these two factors together, we conclude that there will be no biologically significant effects on the survival and reproduction of these species or stocks. Please see Estimate of Take by Harassment section below for the calculation of these take numbers.

Estimates of Take by Harassment

There are three general kinds of sounds recognized by NMFS: continuous (such as shipping sounds), intermittent (such as vibratory pile driving sounds), and impulse. No impulse noise activities, such as blasting or standard pile driving, are associated with this project, thus NMFS' 160-dB threshold criterion for estimating Level B harassment from impulse sounds is not applicable for this activity. The noise sources of potential concern are regasification/offloading (which is a continuous sound) and dynamic positioning of vessels using thrusters (an intermittent sound). Based on research by Malme *et al.* (1983, 1984), for both continuous and intermittent sound sources, Level B harassment is presumed to begin at received levels of 120-dB.

None of the continuous sound sources associated with construction or operation of the Northeast Gateway Project is expected to exceed the 120-dB threshold for Level B harassment. However, the intermittent noises from thruster use associated with dynamic positioning of vessels during either construction or operation (docking) may occasionally exceed this 120-dB threshold. Consequently, thruster use has the potential for a ''take'' by Level B harassment of any marine mammal occurring with a zone of ensonification (greater than 120 dB) emanating from the sound source. This area, known as the ZOI, has a variable maximum radius dependent on water depth and associated differences in transmission loss (see Sections 1.1.3 and 1.2.1 in the IHA application for more detail):

- For shallow-water depths (40 m (131 ft)) representative of the northern segment of the Pipeline Lateral construction, the 120-dB radius is 3.31 km (2 mi) and associated ZOI is 34 km^2.
- For moderate depths (80 m (262 ft)) representative of the Deepwater Port location and Pipeline Lateral segment nearest SBNMS, the 120-dB radius is 2.56 km (1.6 mi) and associated ZOI is 21 km^2.
- For deeper depths (120 m (394 ft)) representative of the deepest waters of the Project analysis area, the radius is 2.18 km (1.4 mi) and associated ZOI is 15 km^2.

The basis for Northeast Gateway's ''take'' estimate is the number of marine mammals that would be exposed to sound levels in excess of 120 dB. Typically this is determined by multiplying the ZOI by local marine mammal density estimates, and then correcting for seasonal use by marine mammals, seasonal duration of noise-generating activities, and estimated duration of individual activities when the maximum noise-generating activities are intermittent or occasional. In the case of data gaps, a conservative approach was to ensure the potential number of takes is not underestimated, as described next.

NMFS recognizes that baleen whale species other than North Atlantic right whales have been sighted in the proposed project area from May to November. However, the occurrence and abundance of fin, humpback, and minke is not well documented within the project area. Nonetheless, NMFS agrees with the PCCS that better data on cetacean distribution within Massachusetts Bay, such as those published by the National Centers for Coastal Ocean Science (NCCOS, 2006) should be used to determine potential takes of marine mammals in the vicinity of project area.

The NCCOS study used cetacean sightings from two sources: (1) the North Atlantic Right Whale Consortium (NARWC) sightings database held at the University of Rhode Island (Kenney,

2001); and (2) the Manomet Bird Observatory (MBO) database, held at NOAA Northeast Fisheries Science Center (NEFSC). The NARWC data contained survey efforts and sightings data from ship and aerial surveys and opportunistic sources between 1970 and 2005. The main data contributors included: Cetacean and Turtles Assessment Program (CETAP), Canadian Department of Fisheries and Oceans, PCCS, International Fund for Animal Welfare, NOAA's NEFSC, New England Aquarium, Woods Hole Oceanographic Institution, and the University of Rhode Island. A total of 653,725 km (406,293 mi) of survey track and 34,589 cetacean observations were provisionally selected for the NCCOS study in order to minimize bias from uneven allocation of survey effort in both time and space. The sightings-per-unit-effort (SPUE) was calculated for all cetacean species by month covering the southern Gulf of Maine study area, which also includes the proposed project area (NCCOS, 2006).

The MBO's Cetacean and Seabird Assessment Program (CSAP) was contracted from 1980 to 1988 by NMFS NEFSC to provide an assessment of the relative abundance and distribution of cetaceans, seabirds, and marine turtles in the shelf waters of the northeastern United States (MBO, 1987). The CSAP program was designed to be completely compatible with NMFS NEFSC databases so that marine mammal data could be compared directly with fisheries data throughout the time series during which both types of information were gathered. A total of 5,210 km (8,383 mi) of survey distance and 636 cetacean observations from the MBO data were included in the NCCOS analysis. Combined valid survey effort for the NCCOS studies included 567,955 km (913,840 mi) of survey track for small cetaceans (dolphins and porpoises) and 658,935 km (1,060,226 mi) for large cetaceans (whales) in the southern Gulf of Maine. The NCCOS study then combined these two data sets by extracting cetacean sighting records, updating database field names to match the NARWC database, creating geometry to represent survey tracklines and applying a set of data selection criteria designed to minimize uncertainty and bias in the data used.

Owning to the comprehensiveness and total coverage of the NCCOS cetacean distribution and abundance study, consequently, NMFS recalculated the estimated take number of marine mammals based on the most recent NCCOS report published in December 2006. A summary of seasonal cetacean distribution and abundance in the proposed project area is provided below, in the Marine Mammals Affected by the Activity section. For a detailed description and calculation of the cetacean abundance data and SPUE, please refer to the NCCOS study (NCCOS, 2006). These data show that the upper limit of the relative abundance of North Atlantic right, fin, humpback, minke, and pilot whales, and Atlantic white-sided dolphins for all seasons, as calculated by SPUE in number of animals per square kilometer, is 0.0082, 0.0097, 0.0265, 0.0059, 0.0407, and 0.1314 n/km, respectively.

Although sound transmission loss, and therefore the ZOI, varies with water depth, the potential take numbers are calculated by using the radius of the largest ZOI, which is 3.31 km (2 mi).

In calculating the area density of these species from these linear density data, NMFS used 0.4 km (0.25 mi), which is a quarter the distance of the radius for visual monitoring (see Monitoring, Mitigation, and Reporting section below), as a conservative hypothetical strip width (W). Thus the area density (D) of these species in the proposed project area can be obtained by the following formula:

$D = SPUE/2W$,

Based on the calculation, the estimated annual take numbers for North Atlantic right, fin, humpback, minke, and pilot whales (*Globicephala spp.*), and Atlantic white-sided dolphins (*Lagenorhynchus acutus*), within the proposed project area of approximately 200 km^2 (77.3 mi^2) maximum ZOI, corrected for 50 percent underwater, are 3, 13, 24, 2, 15, and 49, respectively.

In addition, common dolphins (*Delphinus delphis*), harbor porpoises (*Phocoena phocoena*), harbor seals (*Phoca vitulina*), and gray seals (*Halichoerus grypus*) could also be taken by Level B harassment as a result of the proposed deepwater LNG port project. The numbers of estimated take of these species are not available as NMFS does not have abundance data of these species within the proposed project area. The population estimates of these marine mammal species and stock in the west North Atlantic basin are 120,743, 89,700, 99,340, and 195,000 for common dolphins, harbor porpoises, harbor seals, and gray seals, respectively. Since the Massachusetts Bay represents only a small fraction of the west North Atlantic basin where these animals occur, and that these animals do not congregate in the vicinity of the proposed project area, NMFS believes that only a relatively small number numbers of these marine mammal species would be potentially affected by the proposed Northeast Gateway LNG deepwater project.

Potential Impact on Habitat

Construction

Construction of the Port and Pipeline Lateral will alter marine mammal habitat in several ways: disturbance of the seafloor, removal of sea water for hydrostatic testing, and generation of additional underwater noise. Although approximately 1,042 acres of seafloor (43 acres for the Port; 999 acres for the Pipeline Lateral) will be disturbed during construction, the majority of this impact will be temporary. Seafloor disturbance will include plowing to construct a trench for the pipeline. The pipelay and plow vessels will be maneuvered using a multi-point anchor system. Although the anchor system will include mid-line buoys to minimize cable sweep of the seafloor, approximately 814 acres may be temporarily affected. Crossing of two existing cables will require armoring, a change in substrate conditions in an area about 0.14 acres in size.

Once the lateral and flowlines are installed, about 3,100,000 gallons of sea water will be withdrawn to be used for hydrostatic testing. This volume is small compared to the volume of Massachusetts Bay. Although the sea water will be returned to the environment, the associated plankton will be unlikely to survive. However, because circulation patterns in the Bay ensure that plankton will be transported into the Project area continuously, this hydrostatic test will not affect the sustainability of the plankton communities in the Bay.

Construction of the Port and Pipeline Lateral will result in a reduction of benthic productivity in the Project footprint. Once the disturbance ceases, the substrate will be available for recruitment of benthic organisms. Because some of the substrate will be converted from soft to artificial hard substrate, the soft-bottom benthic community may be replaced with organisms associated with naturally occurring hard substrate, such as sponges, hydroids, bryozoans, and associated species. In other areas, re-establishment of a benthic community similar to that in adjacent areas is expected to take a period of weeks to several years.

Operations

Operation of the Port and Pipeline Lateral will result in long-term effects on the marine environment, including alteration of seafloor conditions, continued disturbance of the seafloor,

regular withdrawal of sea water, and regular generation of underwater noise. A small area (0.14 acre) along the Pipeline Lateral will be permanently altered (armored) at two cable crossings. In addition, the structures associated with the Port (flowlines, mooring wire rope and chain, suction anchors, and PLEMs) will occupy 4.8 acres of seafloor. An additional area of the seafloor of up to 38 acres will be subject to disturbance due to chain sweep while the buoys are occupied. The benthic community in the up-to 38 acres of soft bottom that may be swept by the anchor chains while EBRVs are docked will have limited opportunity to recover, so this area will experience a long-term reduction in benthic productivity.

Each EBRV will require the withdrawal of an average of 4.97 million gallons per day of sea water for general ship operations during its 8-day stay at the Port. As with hydrostatic testing, plankton associated with the sea water will not likely survive this activity. Based on densities of plankton in Massachusetts Bay, it is estimated that sea water use during operations will consume, on a daily basis, about 3 200 x 1,010 phytoplankton cells (about several hundred grams of biomass), 6.5 x 108 zooplankters (equivalent to about 1.2 kg of copepods), and on the order of 30,000 fish eggs and 5,000 fish larvae. Also, the daily removal of sea water will reduce the food resources available for planktivorous organisms. However, the removal of these species is minor and unlikely to measurably affect the food sources available to marine mammals.

Monitoring, Mitigation, and Reporting

Port Construction Measures

General

The construction activities will be limited between this May and November, 2007 time-frame so that acoustic disturbance to the endangered North Atlantic right whale can largely be avoided.

Visual Monitoring Program

The Northeast Gateway Project will employ two qualified, NMFS-approved, MMOs on each lay barge, bury barge, and DSV for visual shipboard surveys during construction activities. Qualifications for these individuals will include direct field experience on a marine mammal observation vessel and/or aerial surveys in the Atlantic Ocean/Gulf of Mexico. The observers (one primary and one secondary) are responsible for visually locating marine mammals at the ocean's surface and, to the extent possible, identifying the species. The primary observer will act as the identification specialist and the secondary observer will serve as data recorder and also assist with identification. Both observers will have responsibility for monitoring for the presence of marine mammals. All observers will receive NMFS-approved marine mammal observer training and be approved in advance by NMFS after a review of their resume.

The shipboard observers will monitor the construction area beginning at daybreak using 25x power binoculars and/or hand-held binoculars, resulting in a conservative effective search range of 0.5 mile during clear weather conditions for the shipboard observers. The observer will scan the ocean surface by eye for a minimum of 40 minutes every hour. All sightings will be recorded on marine mammal field sighting logs. Observations of marine mammals will be identified to species or the lowest taxonomic level and their relative position will be recorded. Night vision devices will be standard equipment for monitoring during low-light hours and at night.

Distance and Noise Level for Cut-Off

During construction, the following procedures will be followed upon detection of a marine mammal within 0.5 mi (0.8 km) of the construction vessels:

(1) The vessel superintendent or on-deck supervisor will be notified immediately. The vessel's crew will be put on a heightened state of alert. The marine mammal will be monitored constantly to determine if it is moving toward the construction area. The observer is required to report all North Atlantic right whale sightings to NMFS, as soon as possible.

(2) Construction vessel(s) will cease any movement and cease all activities that emit sounds reaching a received level of 120 dB re 1 microPa or higher at 100 yd (91 m) if a marine mammal other than a right whale is sighted within or approaching to this distance, or if a right whale is sighted within or approaching to a distance of 500 yd (457 m), from the operating construction vessel. The back-calculated source level, based on the most conservative cylindrical model of acoustic energy spreading, is estimated to be 139 dB re 1 microPa. Vessels transiting the construction area such as pipe haul barge tugs will also be required to maintain these separation distances.

(3) Construction may resume after the marine mammal is positively reconfirmed outside the established zones (either 500 yd (457 m) or 100 yd (91 m), depending upon species).

Vessel Strike Avoidance

(1) While under way, all construction vessels will remain 500 yd (457 m) away from right whales, and 100 yd (91 m) away from all other whales to the extent physically feasible given navigational constraints as required by NMFS.

(2) All construction vessels 300 gross tons or greater will maintain a speed of 10 knots or less. Vessels less than 300 gross tons carrying supplies or crew between the shore and the construction site must contact the appropriate authority or the construction site before leaving shore for reports of recent right whale sighting and, consistent with navigation safety, restrict speeds to 10 knots or less within 5 mi (8 km) of any recent sighting location.

(3) Vessels transiting through the Cape Cod Canal and Cape Cod Bay between January 1 and May 15 will reduce speed to 10 knots or less, follow the recommended routes charted by NOAA to reduce interactions between right whales and shipping traffic, and avoidaggregations of right whales in the eastern portion of Cape Cod Bay. To the extent practicable, pipe deliveries will be avoided during the January to May time frame. In the unlikely event the Canal is closed during construction, the pipe haul barges will transit around Cape Cod following the TSS and all measures for the EBRVs when transiting to the Port (see Port Operation Measures).

Passive Acoustic Monitoring (PAM) Program

In addition to visual monitoring, the Northeast Gateway and Algonquin will work with NMFS, the SBNMS, the Cornell University Bioacoustics Laboratory (Cornell), and the Woods Hole Oceanographic Institute (WHOI) to install several passive acoustic systems for monitoring construction noise and detecting marine mammals within the project area, and provide early warnings for potential occurrence of right whales and other marine mammals in the vicinity of the project area. The Northeast Gateway will also work with NMFS to utilize passive acoustic technology to conduct PAM to enhance their monitoring program. These passive acoustic systems include a set of near real-time auto-detection surface buoys (Abs) developed by WHOI with a special electronic notification package developed by Cornell, attached to the buoy. Some of these passive acoustic devices are already in place.

Port Operation Measures

All individuals onboard the EBRVs responsible for the navigation and

lookout duties on the vessel must receive training prior to assuming navigation and lookout duties, a component of which will be training on marine mammal sighting/reporting and vessel strike avoidance measures. Crew training of EBRV personnel will stress individual responsibility for marine mammal awareness and reporting.

If a marine mammal is sighted by a crew member, an immediate notification will be made to the Person-in-Charge on board the vessel and the Northeast Port Manager, who will ensure that the required reporting procedures are followed.

Vessel Strike Avoidance

(1) All EBRVs approaching or departing the port will comply with the MSR system to keep apprised of right whale sightings in the vicinity. Vessel operators will also receive active detections from the passive acoustic array prior to and during transit through the northern leg of the Boston TSS where the buoys are installed.

(2) In response to active right whale sightings (detected acoustically or reported through other means such as the MSR or SAS), and taking into account safety and weather conditions, EBRVs will take appropriate actions to minimize the risk of striking whales, including reducing speed to 10 knots or less and alerting personnel responsible for navigation and lookout duties to concentrate their efforts.

(3) EBRVs will maintain speeds of 12 knots or less while in the TSS until reaching the vicinity of the buoys (except during the seasons and areas defined below, when speed will be limited to 10 knots or less). At 1.86 miles (3 km) from the NEG port, speed will be reduced to 3 knots, and to less than 1 knot at 1,640 ft (500 m) from the buoy.

(4) EBRVs will reduce transit speed to 10 knots or less (unless hydrographic, meteorological, or traffic conditions dictate an alternative speed to maintain the safety or maneuverability of the vessel) from March 1 - April 30 in all waters bounded by straight lines connecting the following points in the order stated below. This area is also known as the Off Race Point Seasonal Management Area (SMA).

42°30′N 70°30′W
42°30′N 69°45′W
41°40′N 69°45′W
41°40′N 69°57′W
42°04.8′N 70°10′W
42°12′N 70°15′W
42°12′N 70°30′W
42°30′N 70°30′W

(5) EBRVs will reduce transit speed to 10 knots or less (unless hydrographic, meteorological, or traffic conditions dictate an alternative speed to maintain the safety or maneuverability of the vessel) from April 1 - July 31 in all waters bounded by straight lines connecting the following points in the order stated below. This area is also known as the Great South Channel SMA.

42°30′N 69°45′W
42°30′N 67°27′W
42°09′N 67°08.4′W
41°00′N 69°05′W
41°40′N 69°45′W
42°30′N 69°45′W

(6) EBRVs are not expected to transit Cape Cod Bay. However, in the event transit through Cape Cod Bay is required, EBRVs will reduce transit speed to 10 knots or less (unless hydrographic, meteorological, or traffic conditions dictate an alternative speed to maintain the safety or maneuverability of the vessel) from January 1 - May 15 in all waters in Cape Cod Bay, extending to all shorelines of Cape Cod Bay, with a northern boundary of 42°12′N latitude.

(7) In such cases where speeds in excess of the ten knot speed maximums as described above are required, the reasons for the deviation, the speed at which the vessel is operated, the area, and the time and duration of such deviation will be documented in the logbook of the vessel and reported to the NMFS Northeast Region Ship Strike Coordinator.

PAM Program

An array of ABs will be installed in the Boston TSS that meets the criteria specified in the recommendations developed by NOAA through consultation with the USCG under the National Marine Sanctuary Act (NMSA). The system will provide near real-time information on the presence of vocalizing whales in the shipping lanes.

An archival array of acoustic recording units (ARUs), or ''pop-ups,'' will be installed around the port site that meets the criteria specified in the program developed by NOAA in consultation with the USCG under the NMSA. The ARUs will be in place for 5 years following initiation of operations to monitor the actual acoustic output of port operations and alert NOAA to any unanticipated adverse effects of port operations, such as large-scale abandonment of the area or greater acoustic impacts than predicted through modeling.

Reporting

During construction, weekly status reports will be provided to NMFS utilizing standardized reporting forms. In addition, the Northeast Port Project area is within the Mandatory Ship Reporting Area (MSRA), so all construction and support vessels will report their activities to the mandatory reporting section of the USCG to remain apprised of North Atlantic right whale movements within the area. All vessels entering and exiting the MSRA will report their activities to WHALESNORTH. During all phases of project construction and operation, sightings of any injured or dead marine mammals will be reported immediately to the USCG or NMFS, regardless of whether the injury or death is caused by project activities.

An annual report on marine mammal monitoring and mitigation will be submitted to NMFS Office of Protected Resources and NMFS Northeast Regional Office within 90 days after the expiration of the IHA. The weekly reports and the annual report should include data collected for each distinct marine mammal species observed in the project area in the Massachusetts Bay during the period of LNG facility construction and operation. Description of marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes and the context of the changes relative to construction and operation activities shall also be included in the annual report.

Endangered Species Act (ESA)

On February 5, 2007, NMFS concluded consultation with MARAD and the USCG, under section 7 of the ESA, on the proposed construction and operation of the Northeast Gateway LNG facility and issued a biological opinion. The finding of that consultation was that the construction and operation of the Northeast Gateway LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of northern right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales and Kemp's ridley, loggerhead, green or leatherback sea turtles. NMFS' IHA will not have impacts beyond what was analyzed in the biological opinion. Therefore, additional consultation is not required.

National Environmental Policy Act

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the proposed Northeast Gateway Port and Pipeline Lateral. A notice of availability was published by MARAD on October 26, 2006 (71 FR 62657). The Final EIS/EIR provides detailed information on the proposed project facilities, construction methods

and analysis of potential impacts on marine mammal.

NMFS was a cooperating agency (as defined by the Council on Environmental Quality (40 CFR 1501.6)) in the preparation of the Draft and Final EISs. NMFS has reviewed the Final EIS and has adopted it. Therefore, the preparation of another EIS or EA is not warranted.

Determinations

NMFS has determined that the impact of construction and operation of the Northeast Gateway Port Project may result, at worst, in a temporary modification in behavior of small numbers of certain species of marine mammals that may be in close proximity to the Northeast Gateway LNG facility and associated pipeline during its construction and subsequent operation. These activities are expected to result in some local short-term displacement and will have no more than a negligible impact on the affected species or stocks of marine mammals.

This determination is supported by measures described in this document under ''*Marine Mammal Mitigation, Monitoring and Reporting*'' and NMFS' Biological Opinion on this action.

As a result of the described mitigation measures, no take by injury or death is requested, anticipated or authorized, and the potential for temporary or permanent hearing impairment is very unlikely due to the relatively low noise levels (and consequently small zone of impact) and would be avoided through the incorporation of the shut-down mitigation measures described in this document.

While the number of marine mammals that may be harassed will depend on the distribution and abundance of marine mammals in the vicinity of the port construction and operations, the estimated number of marine mammals to be harassed is small.

Authorization

NMFS has issued an IHA to Northeast Gateway and Algonquin for the taking (by Level B harassment) during construction and operation of the Northeast Gateway Port, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 7, 2007.

James H. Lecky

Director, Office of Protected Resources, National Marine Fisheries Service.

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BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Proposal To Exempt the Trading and Clearing of Certain Credit Default Products Traded on the Chicago Board Options Exchange and Cleared Through the Options Clearing Corporation Pursuant to the Exemptive Authority in § 4(c) of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed order and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or the ''Commission'') is proposing to exempt the trading and clearing of certain credit default products that are proposed to be traded on the Chicago Board Options Exchange (''CBOE'') and cleared through the Options Clearing Corporation (''OCC'') from any applicable provisions of the Commodity Exchange Act (''CEA'').[1] Authority for this exemption is found in Section 4(c) of the CEA.[2]

DATES: Comments must be received on or before May 29, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/http://frwebgate.access.gpo/cgi-bin/leaving.* Follow the instructions for submitting comments.
- *E-mail: secretary@cftc.gov.* Include ''OCC Clearing Credit Default Options'' in the subject line of the message.
- *Fax:* 202–418–5521.
- *Mail:* Send to Eileen A. Donovan, Acting Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Deputy Director and Chief Counsel, 202–418–5480, *jlawton@cftc.gov*, and Robert B. Wasserman, Associate Director, 202–418–5092, *rwasserman@cftc.gov*, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1151 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

The OCC is both a Derivatives Clearing Organization (''DCO'') registered pursuant to Section 5b of the CEA, 7 U.S.C. 7a–1, and a securities clearing agency registered pursuant to Section 17A of the Securities Exchange Act of 1934 (''1934 Act'').[3] The CBOE is a national securities exchange registered as such under Section 6 of the 1934 Act.[4]

CBOE has filed with the Securities and Exchange Commission (''SEC'') proposed rule changes to provide for the listing and trading on CBOE of cash-settled, binary call options based on credit events in one or more debt securities.[5] These options are referred to as Credit Default Options (''CDOs''), and would pay the holder a specified amount upon the occurrence, as determined by CBOE, of a ''Credit Event,'' defined to mean an ''Event of Default'' on any debt security issued or guaranteed by a specified ''Reference Entity.''

CBOE has also filed with the SEC proposed rule changes to provide for the listing and trading on CBOE of Credit Default Basket Options (''CDBOs'').[6] These are similar in concept to CDOs, except that a CDBO covers more than one Reference Entity, and for each Basket Component (that is, a single Reference Entity) a notional value (a fraction of the aggregate Notional Face Value of the basket) and a recovery rate is specified. Upon the occurrence of a Credit Event involving a particular Reference Entity, the payout to the holder is equal to the product of (a) The Notional Face Value of that Basket Component multiplied by (b) one minus the recovery rate specified in advance for that Basket Component. CDBOs may be of the multiple-payout variety, or of the single-payout variety, where a payout occurs only the first time a Credit Event is confirmed with respect to a Reference Entity prior to expiration.

OCC has filed with the CFTC, pursuant to Section 5c(c) of the CEA and Commission Regulations 39.4(a) and 40.5 thereunder,[7] requests for approval of rules and rule amendments that would enable OCC to clear and settle these CDOs and CDBOs in its capacity as a registered securities clearing agency (and not in its capacity

[1] 7 U.S.C. 1 *et seq.*

[2] 7 U.S.C. 6(c).

[3] 15 U.S.C. 78q–l.

[4] 15 U.S.C. 78f.

[5] See Release No. 34–55251, 72 FR 7091 (Feb. 14, 2007).

[6] See *SR–CBOE–2007–026.*

[7] 7 U.S.C. 7a–2(c), 17 CFR 39.4(a), 40.5.

as a DCO).[8] Section 5c(c)(3) provides that the CFTC must approve any such rules and rule amendments submitted for approval unless it finds that the rules or rule amendments would violate the CEA.

The request for approval concerning the CDO product was filed effective March 8, 2007. On April 23, 2007, the review period was extended pursuant to Regulation 40.5(c) until June 6, 2007, on the ground that the CDOs ''raise novel or complex issues, including the nature of the contract, that require additional time for review.'' The request for approval concerning the CDBO product was filed effective April 23, 2007, and absent an extension the review period is scheduled to run until June 7, 2007.

II. Section 4(c) of the Commodity Exchange Act

Section 4(c)(1) of the CEA empowers the CFTC to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction or class of transactions from any of the provisions of the CEA (subject to exceptions not relevant here) where the Commission determines that the exemption would be consistent with the public interest.[9] The Commission may grant such an exemption by rule, regulation or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative.

In enacting Section 4(c), Congress noted that the goal of the provision ''is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.'' [10] Permitting the CDOs and CDBOs to trade on CBOE and be cleared on OCC as discussed above may foster both financial innovation and competition. The CFTC believes that the venue or venues for trading and clearing of instruments such as CDOs and CDBOs should be determined by the competitive forces of the market, particularly where any potential venue would be subject to federal regulatory oversight. The CFTC is requesting comment on whether it should exempt CDOs and CDBOs, as described above, that are traded on CBOE and cleared through OCC, from any provision of the CEA that might be transgressed by trading and clearing those transactions as described above.

In proposing this exemption, the CFTC need not—and does not—find that the CDOs and CDBOs are (or are not) subject to the CEA. During the legislative process leading to the enactment of Section 4(c) of the CEA, the House-Senate Conference Committee noted that:

> The Conferees do not intend that the exercise of exemptive authority by the Commission would require any determination beforehand that the agreement, instrument, or transaction for which an exemption is sought is subject to the Act. Rather, this provision provides flexibility for the Commission to provide legal certainty to novel instruments where the determination as to jurisdiction is not straightforward. Rather than making a finding as to whether a product is or is not a futures contract, the Commission in appropriate cases may proceed directly to issuing an exemption.[11]

CDOs and CDBOs are ''novel instruments'' and the ''determination as to [their] jurisdiction is not straightforward.'' Given their potential usefulness to the significant market for credit derivatives products, however, the Commission believes that this may be an appropriate case for issuing an exemption without making a finding as to the nature of these particular instruments.

Section 4(c)(2) provides that the Commission may grant exemptions only when it determines that the requirements for which an exemption is being provided should not be applied to the agreements, contracts or transactions at issue, and the exemption is consistent with the public interest and the purposes of the CEA; that the agreements, contracts or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory responsibilities under the CEA.[12]

The purposes of the CEA include ''promot[ing] responsible innovation and fair competition among boards of trade, other markets and market participants.'' [13] It may be consistent with these and the other purposes of the CEA, and with the public interest, for the mode of trading of these transactions—whether it is to be through CFTC-regulated markets and clearing organizations or SEC-regulated markets and clearing organizations—to be determined by competitive market forces rather than by regulatory line-drawing. Accordingly, the CFTC is requesting comment as to whether an exemption from the requirements of the CEA should be granted in the context of these transactions.

Section 4(c)(3) includes within the term ''appropriate persons'' a number of specified categories of persons, and also in subparagraph (K) thereof ''such other persons that the Commission determines to be appropriate in light of * * * the applicability of appropriate regulatory protections.'' Both CBOE and OCC, as well as their members who will intermediate these transactions, are subject to extensive and detailed regulation by the SEC under the 1934 Act. The CFTC is requesting comment as to whether all persons trading CDOs and CDBOs traded on CBOE and cleared on OCC are appropriate persons.

In light of the above, the Commission also is requesting comment as to whether this exemption will interfere with its ability to discharge its regulatory responsibilities under the CEA, including its ability to determine whether the listing of similar or

[8] See SR–OCC–2007–01 A–1; SR–OCC–2007–06. OCC has filed identical proposed rule changes with the SEC.

[9] Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1), provides that:

> In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 7 of this title) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) of this section (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) of this section, or from any other provision of this chapter (except subparagraphs (c)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title), if the Commission determines that the exemption would be consistent with the public interest.

[10] HOUSE CONF. REPORT NO. 102–978, 1992 U.S.C.C.A.N. 3179, 3213 (''4(c) Conf. Report'').

[11] 4(c) Conf. Report at 3214–3215.

[12] Section 4(c)(2) of the CEA, 7 U.S.C. § 6(c)(2), provides that:

> The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) of this section unless the Commission determines that—
>
> (A) The requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and
>
> (B) The agreement, contract, or transaction—
>
> (i) Will be entered into solely between appropriate persons; and
>
> (ii) Will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this Act.

[13] CEA § 3(b), 7 U.S.C. 5(b). See also CEA § 4(c)(1), 7 U.S.C. 6(c)(1) (purpose of exemptions is ''to promote responsible economic or financial innovation and fair competition.'')

identical products on a designated contract market or derivatives transaction execution facility would or would not violate the CEA, or with the self-regulatory duties of any contract market or derivatives transaction execution facility.

III. Request for Comment

The Commission requests comment on all aspects of the issues presented by this proposed order.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [14] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The proposed exemptive order would not, if approved, require a new collection of information from any entities that would be subject to the proposed order.

B. Cost-Benefit Analysis

Section 15(a) of the CEA, as amended by Section 119 of the Commodity Futures Modernization Act of 2000 (''CFMA''),[15] requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The proposed exemptive order may facilitate market competition. The Commission is considering the costs and benefits of this proposed order in light of the specific provisions of Section 15(a) of the CEA, as follows:

1. *Protection of market participants and the public.* CBOE, OCC and their members who would intermediate CDOs and CDBOs are subject to extensive SEC oversight.

2. *Efficiency, competition, and financial integrity.* The proposed exemption may enhance market efficiency and competition since it could encourage potential trading of CDOs and CDBOs on markets other than designated contract markets or derivative transaction execution facilities. Financial integrity will not be affected since the CDOs and CDBOs will be cleared by OCC, a DCO and SEC-registered clearing agency, and intermediated by SEC-registered broker-dealers.

3. *Price discovery.* Price discovery may be enhanced through market competition.

4. *Sound risk management practices.* OCC has described appropriate risk-management practices that it will follow to margin CDOs and CDBOs.

5. *Other public interest considerations.* The proposed exemption may encourage development of credit derivative products through market competition without unnecessary regulatory burden.

After considering these factors, the Commission has determined to seek comment on the proposed order as discussed above. The Commission invites public comment on its application of the cost-benefit provision.

* * * * *

Issued in Washington, DC, on May 9, 2007 by the Commission.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. E7–9212 Filed 5–11–07; 8:45 am]

BILLING CODE 6351–01–P

[14] 44 U.S.C. 3507(d).

[15] 7 U.S.C. 19(a).

DEPARTMENT OF DEFENSE

DEPARTMENT OF ENERGY

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. EPA–HQ–OAR–2006–0957]

NUCLEAR REGULATORY COMMISSION

Multi-Agency Radiation Survey and Assessment of Materials and Equipment Manual

AGENCY: Department of Defense, Department of Energy, Environmental Protection Agency, and the Nuclear Regulatory Commission.

ACTION: Notice of availability: Reopening of public comment period.

SUMMARY: On January 16, 2007 (72 FR 1708) the Department of Defense (DoD), Department of Energy (DOE), U.S. Environmental Protection Agency (EPA), and the U.S. Nuclear Regulatory Commission (NRC) announced for public comment the availability of a draft document, entitled the ''Multi-Agency Radiation Survey and Assessment of Materials and Equipment Manual'' (MARSAME). A 90-day comment period was provided for the draft MARSAME that expired on April 16, 2007. A request for an extension to the comment period has been received from several stakeholders. The comment period for the draft manual has been reopened for an additional 30 days.

DATES: The comment period for the draft manual has been reopened and now expires on June 13, 2007. Comments received after that date will be considered if it is practical to do so, but no assurance can be given for consideration of late comments.

ADDRESSES: Submit your comments by one of the methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *http://www.marsame.org*: Follow the on-line instructions for submitting comments.
- *Mail*: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460 or Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Hand Delivery*: Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements must be made for deliveries of boxed information.

Copies of all comments received by one agency will be periodically copied and sent to the others. Copies of the draft MARSAME and all comments received may be examined or copied for a fee electronically in *www.regulations.gov*, or in hard copy at the HQ EPA Docket Public Reading Room, U.S. Environmental Protection Agency, Room 3334, Docket ID No. EPA–HQ–OAR–2006–0957, 1301 Constitution Ave., NW., Washington, DC 20460, and the NRC Public

Document Room, 11555 Rockville Pike, Rockville, Maryland 20852–2747. The HQ EPA Docket Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the EPA HQ Docket Public Reading Room is (202) 566–1744. DOE, EPA, and NRC each have a publication number for MARSAME. They are: For DOE, DOE/EH–707; for EPA, EPA 402–R–06–002; for NRC, NUREG–1575, Sup. 1. A free single copy of the draft MARSAME may be requested by writing to: Distribution and Mail Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or by fax to (301) 415–2289. The document is also available through the Internet at: *http://www.epa.gov/radiation/marssim*.

Instructions for Using the EPA Docket: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0957. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov*. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you 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. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy.

Instructions for Using the MARSAME comment Web site: Alternatively, you may submit a comment via the *http://www.marsame.org* comment system without going through *www.regulations.gov*. Users of the MARSAME comment Web site will be asked for their name and e-mail address, and then will receive a username and password at the e-mail address that was submitted. User's names and e-mail address will not appear in any public document or database.

FOR FURTHER INFORMATION CONTACT: Any of the following points of contact for each agency for technical information (See **ADDRESSES** section above for directions on obtaining a copy of the draft MARSAME.): DoD: Steven Doremus, Phone: (757) 887–7745, U.S. Navy, NAVSEADET RASO, NWS, PO Drawer 260, Yorktown, VA 23691–0260; DOE: W. Alexander Williams, Phone: (301) 903–8149, U.S. Department of Energy (EM–23), 1000 Independence Avenue, SW., Washington, DC 20585; EPA: Kathryn Snead; Phone: (202) 343–9228, U.S. Environmental Protection Agency, Mail Stop 6608J, 1200 Pennsylvania Avenue, NW., Washington DC 20460–1000; NRC: George Powers, Phone: (301) 415–6212, U.S. Nuclear Regulatory Commission, Mail Stop T9–C34, Washington DC 20555. Questions concerning the multi-agency document development project should be addressed to CAPT Colleen Petullo, U.S. Environmental Protection Agency/U.S. Public Health Service, OSWER/ERT, PO Box 93478, Las Vegas, NV 89193–3478, (702) 784–8004.

SUPPLEMENTARY INFORMATION: In March 2007, the MARSAME Working Group received a request for a 90-day extension to the comment period from the Nuclear Information and Resource Service filed on behalf of a number of interested parties, including: Alliance for Nuclear Accountability; International Science Oversight Board; Sierra Club Pennsylvania Chapter; BE SAFE/ Center for Health, Env. & Justice; Tri-Valley CAREs; Environmental Coalition on Nuclear Power; Bluesky Institute; Citizen's Environmental Coalition; Coalition on West Valley Nuclear Wastes; and Committee to Bridge the Gap. In April 2007, Rocky Mountain Peace and Justice Center and the Snake River Alliance were added to the request and the MARSAME Working Group received additional requests for a 30-day extension to the comment period from Nuclear Energy Institute, Inc., State of New Jersey Department of Environmental Protection, and State of Washington Department of Health. The requests note that the manual is very important and very technical. The original comment period for the draft manual was 90 days; in general, as proscribed by Executive Order 12889 (December 27, 1993) technical documents are put out for public comment for 75 days. After careful consideration, the agencies have determined that an additional 30 days for review (which now results in a comment period totaling 120 days) to be reasonable and consistent with the agencies' desire to receive informed comments from external stakeholders on the manual. The deadline for comments on any aspect of this manual is extended to June 13, 2007.

For the Department of Defense, dated this 30th day of April, 2007.

Alex Beehler,

Assistant Deputy Under Secretary of Defense (Environment, Safety and Occupational Health).

For the U.S. Department of Energy, dated this 20th day of April 2007.

Andrew C. Lawrence,

Director, Office of Nuclear Safety and Environment, Office of Health, Safety and Security.

For the U.S. Environmental Protection Agency, dated this 20th day of April 2007.

Juan Reyes,

Director, Radiation Protection Division.

For the U.S. Nuclear Regulatory Commission, dated this 24th day of April 2007.

Brian W. Sheron,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 07–2362 Filed 5–11–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2007–0032]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Navy proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on June 13, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended,

have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on May 2, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: May 8, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM12713–1

SYSTEM NAME:

Equal Employment Opportunity (EEO) Complaints Tracking System.

SYSTEM LOCATION:

All Department of Navy (DON) Equal Employment Opportunity Program offices. DON activity addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DON civilians, non-appropriated fund employees, and external applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home and duty station address, phone numbers, unique identifier, dates and status of EEO complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and Civilian Human Resources Manual 1614.1, Civilian Discrimination Complaints Management Program.

PURPOSE(S):

To track the status of Equal Employment Opportunity discrimination complaints for the Department of Navy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a duly appointed Hearing Examiner or Arbitrator (an employee of another Federal agency) for the purpose of conducting a hearing in connection with an employee's discrimination complaint.

To Equal Employment Opportunity Complaints Office of Federal Operations and Administrative Judges for review and adjudication.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Case number or individual's name.

SAFEGUARDS:

Password controlled system, files, and element access based on predefined need-to-know. Physical access to terminals, terminal rooms, buildings and activities' grounds are controlled by locked terminals and rooms, guards, personnel screening and visitor registers.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Director, Naval Office of EEO Complaints Management and Adjudication, 614 Sicard Street SE, Bldg 201, Washington Navy Yard DC 20374–5072.

RECORD HOLDER:

Headquarters, and field activities employing civilians. DON activity addresses are published in the Standard Navy Distribution List that is available at *http://doni.dla.mil/sndl.aspx.*

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the to the EEO office where assigned. DON activity addresses are published in the Standard Navy Distribution List that is available at *http://doni.dla.mil/sndl.aspx.*

Requests should contain individual's full name and signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to their servicing EEO office. DON activity addresses are published in the Standard Navy Distribution List that is available at *http://doni.dla.mil/sndl.aspx.*

Request should contain individual's full name and signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, interviews, and Equal Employment Opportunity Program Offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–9201 Filed 5–11–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice for Submission of Donation Application for the Destroyer ex-EDSON (DD 946)

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice for submission of donation applications for the destroyer ex-EDSON (DD 946), under the authority of 10 U.S.C. 7306. Ex-EDSON (DD 946) is located at the NAVSEA Inactive Ships On-Site Maintenance Office, Philadelphia, PA. Eligible recipients include: (1) Any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof; (2) the District of Columbia; or (3) any organization incorporated as a non-profit entity under section 501 of the Internal Revenue Code. The transfer of a vessel under this law shall be made at no cost to the United States. The donee will be required to maintain the vessel in a condition satisfactory to the Secretary of the Navy as a static museum/memorial.

The letter of intent must:

a. Identify the specific ship sought for donation;

b. Include a statement of the proposed use for the ship;

c. Identify the proposed berthing location;

d. If the applicant is not a state, territory or possession of the United States, or a political subdivision or municipal corporation thereof, or the

District of Columbia, provide a copy of a determination letter by the Internal Revenue Service that the applicant is exempt from tax under the Internal Revenue Code, or submit evidence that the applicant has filed the appropriate documentation in order to obtain tax exempt status;

e. If the applicant asserts that it is a corporation or association whose charter or articles of agreement denies it the right to operate for profit, provide a properly authenticated copy of the charter, certificate of incorporation, and a copy of the organization's by-laws;

f. Provide a notarized copy of the resolution or other action of the applicant's governing board authorizing the person signing the application to represent the organization and to sign on its behalf for the purpose of obtaining a vessel; and

g. Provide written affirmation that the prospective donee can submit a complete ship donation application to the Navy, compliant with the Navy's application requirements, by January 3, 2008. If the applicant is incapable of meeting this deadline, specific rationale must be provided along with identification of the events that must be achieved and the timeline necessary in order to submit a complete ship donation application to the Navy. The Navy reserves the right to provide a reasonable extension for receipt of applications, or to reject a request for extension and to proceed with other applications received by the January 3, 2008 deadline.

Upon receipt of the letter of intent, the Navy will contact the prospective donees to ensure a full understanding of the application requirements.

Qualified organizations wishing to apply for ex-EDSON must submit a complete application to the Navy by January 3, 2008, comprised of a business/financial plan, a technical plan (includes a towing plan, mooring plan, maintenance plan and environmental plan), a curatorial/museum plan, and a community support plan (includes information concerning support from the community and benefit to the Navy). The application must address the following areas:

a. Business/Financial Plan: The Business/Financial Plan must detail the estimated start-up and operating costs, and provide detailed evidence of firm financing adequate to cover these costs. Start-up costs include towing, mooring (this includes but not limited to the cost of acquiring and improving facilities, and dredging if required), ship restoration, museum development, and meeting environmental requirements (including permitting fees and expenses). Operating costs are those associated with operating and maintaining the vessel as a museum/memorial, including rent, utilities, personnel, insurance, periodic dry-docking, etc. Firm financing means available funding to ensure the first five years of operation and future stability for long-term operation. This can include pledges, loans, gifts, bonds (except revenue bonds), funds on deposit at a financial institution, or any combination of the above. The applicant must also provide income projections from sources such as individual and group admissions, facility rental fees and gift shop revenues sufficient to cover the estimated operating expenses.

b. Technical: The technical plan is comprised of a Towing Plan, Mooring Plan, Maintenance Plan, and Environmental Plan.

The Towing Plan describes how the ship will be prepared for tow and safely towed from it present location to the permanent display site proposed by the applicant. The Towing Plan must comply with all U.S. Navy Tow Manual requirements, which can be found at *http://www.supsalv.org/pdf/towman.pdf.*

The Mooring Plan describes how the ship will be secured at its permanent display site during normal and extreme weather conditions (including the 100-year storm event) to prevent damage to the ship, its mooring system, the pier, and surrounding facilities. Provide evidence of availability of a facility for permanent mooring of the ship, either by ownership, existing lease, or by letter from the facility owners indicating a statement of intent to utilize such facilities. Address any requirement to obtain site-specific permits and/or municipality approvals required for the facility, to include but not limited to, Port Authority and Army Corps of Engineers approvals/permits, where required. The mooring location must be acceptable to the Navy and not obstruct or interfere with navigation.

The Environmental Plan describes how the applicant will comply with all federal, state and local environmental and public health & safety regulations and permit requirements. The applicant also should provide information necessary for the Navy to complete an environmental assessment of the donation as required by the National Environmental Policy Act (NEPA), including the impact of the donation on the natural and man-made environment, local infrastructure, and evaluation of the socio-economic consequences of the donation.

The Maintenance Plan must describe plans for long-term, short-term, and daily maintenance of the vessel, including preservation and maintenance schedule, underwater hull inspections, emergency response and fire/flood/intrusion control, pest control, security, periodic dry-docking, and qualifications of the maintenance team.

c. The Curatorial/Museum Plan includes two parts: a Curatorial Plan and a Historic Management Plan. The Curatorial Plan must describe the qualifications for a professional curator (and curator staff, if necessary). The plan must also describe how the museum will collect and manage artifacts, including a statement of purpose and description of access, authority, and collection management responsibilities. The Historic Management Plan must describe how the museum will display the vessel and exhibits, including a description of the historical context of the ship, vessel restoration plans, historical subject matter that will be displayed with the ship, and exhibit display plans.

d. The Community Support Plan must include evidence of local support. Evidence of regional support should also be provided. This includes letters of endorsement from adjacent communities and counties, cities or states. Also describe how the location of the ship will encourage public visitation and tourism, become an integral part of the community, and how the ship will enhance community development. The Community Support Plan must also describe the benefit to the Navy, including, but not limited to, addressing how the prospective donee may support Navy recruiting efforts, the connection between the Navy and the proposed berthing location, how veterans associations in the area are willing to support the vessel, how the prospective donee will honor veterans' contributions to the United States, and how the exhibit will commemorate those contributions and showcase Naval traditions.

The relative importance of each area that must be addressed in the donation application is as follows:

Business/Financial Plan and Technical Plan are the most important criteria and are equal in importance. Within the Technical Plan, the Mooring Plan is of greatest importance, and the Towing Plan, Maintenance Plan and Environmental Plan are individually of equal importance but of lesser importance to the Mooring Plan. The Curatorial/Museum Plan and Community Support Plan are of equal importance, but of lesser importance than the aforementioned plans.

Evaluation of the application(s) will be performed by the Navy to ensure the

application(s) are compliant with the minimum acceptable application criteria and requirements. In the event of multiple compliant applications for the same vessel, the Navy will perform a comparative evaluation of the applications to determine the best-qualified applicant. The Secretary of the Navy or his designee will make the final donation decision.

DATES: A letter of intent will be required within 45 days from the date of this notice and all donation applications must be received by January 3, 2008. The Navy will foreclose consideration of donation of ex-EDSON to any entity that does not submit a letter of intent to the Navy within 45 days of the date of this notice. The initial notice of availability for donation of the ex-EDSON was published in the **Federal Register** at 69 FR 34142, June 18, 2004.

The complete application must be submitted in hard copy and electronically on a CD to the Navy Inactive Ships Program Office by January 3, 2008. As stated above, the Navy Reserves the right to provide a reasonable extension for receipt of applications, or to reject a request for extension and to proceed with other applications received by January 3, 2008.

FOR FURTHER INFORMATION CONTACT: Commander, Program Executive Office Ships (PEO SHIPS), PMS333, Navy Inactive Ships Program Office, Ship Donation Program, ATTN: Ms. Gloria Carvalho (PMS 333G), 1333 Isaac Hull Avenue, S.E., Stop 2701, Washington, DC 20376–2701, telephone number 202–781–0485.

SUPPLEMENTARY INFORMATION: Additional information concerning the application process and requirements are found on the Navy's Ship Donation Web site, *http://www.navsea.navy.mil/ndp.*

Dated: May 7, 2007.

L.R. Almand,

Judge Advocate General's Corps, Administrative Law Division, Federal Register Liaison Officer.

[FR Doc. E7–9183 Filed 5–11–07; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 13, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 8, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Revision.

Title: Vocational Technical Education Annual Performance and Financial Reports.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 54.

Burden Hours: 10,800.

Abstract: The information contained in the Consolidated Annual Performance Report for Vocational Education is needed to monitor State performance of the activities and services funded under the Carl D. Perkins Vocational and Technical Education Act of 1998. The respondents include eligible agencies in 54 states and insular areas. This revision clarifies instructions and the collection of student enrollment data: 16 Career Clusters as well as the race and ethnicity.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3280. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–9198 Filed 5–11–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 13, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires

that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 8, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Extension.

Title: Impact Evaluation of Upward Bound's Increased Focus on Higher-Risk Students—Baseline Data Collection Protocols.

Frequency: One time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 10,890.

Burden Hours: 3,900.

Abstract: This evaluation will focus on the impacts of Upward Bound on students applying to enter the program as early as the summer of 2007. The current OMB package requests clearance for the instruments to be used in gathering information.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3345. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–9199 Filed 5–11–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fund for the Improvement of Postsecondary Education—Comprehensive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116B

DATES: Applications Available: May 14, 2007.

Deadline for Transmittal of Applications: June 13, 2007.

Deadline for Intergovernmental Review: August 13, 2007.

Eligible Applicants: Institutions of higher education (IHEs) or combinations of those institutions and other public and private nonprofit institutions and agencies.

Estimated Available Funds: $3,400,000.

Estimated Range of Awards: $100,000–$250,000 per year.

Estimated Average Size of Awards: $160,000 per year.

Maximum Award: We will reject any application that proposes a budget exceeding $250,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 16–20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Comprehensive Program supports innovative grants and cooperative agreements to improve postsecondary education. It supports reforms, innovations, and significant improvements of postsecondary education that respond to problems of national significance and serve as national models.

Priorities: In accordance with 34 CFR 75.105(b)(2)(i), we are particularly interested in applications that meet the following invitational priorities.

Invitational Priorities: For FY 2007 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1:

Projects encouraging higher levels of access, persistence, and completion of graduation requirements for higher education.

Invitational Priority 2:

Projects aligning curriculum on a state or multi-state level between high schools and colleges, and between two-year and four-year postsecondary programs, to ensure continuing academic progress and transferability of credits.

Invitational Priority 3:

Projects improving the mathematics and science proficiency of postsecondary students including preservice math and science teachers.

Invitational Priority 4:

Projects to enable postsecondary students, including preservice teachers, to achieve proficiency or advanced proficiency or postsecondary institutions to develop programs in one or more of the less commonly taught languages: Arabic, Chinese, Korean, Japanese, Russian, and languages in the Indic, Iranian, and Turkic language families.

Invitational Priority 5:

Projects designed to disseminate successful strategies to achieve the goals of any of the above invitational priorities serving postsecondary education.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in

34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants or cooperative agreements.

Estimated Available Funds: $3,400,000.

Estimated Range of Awards: $100,000–$250,000 per year.

Estimated Average Size of Awards: $160,000 per year.

Maximum Award: We will reject any application that proposes a budget exceeding $250,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 16–20.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or combinations of those institutions and other public and private nonprofit institutions and agencies.

2. *Cost Sharing or Matching:* Although this program does not require cost sharing or matching for eligibility, it is expected that applicants will provide an institutional financial commitment to the project.

IV. Application and Submission Information

1. *Address to Request Application Package:* Levenia Ishmell, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., room 6147, Washington, DC 20006–8544. Telephone: (202) 502–7668 or by e-mail: *Levenia.Ishmell@ed.gov.*

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

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate the application. You must limit your narrative to the equivalent of no more than 20 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be singled spaced and will count toward the page limit.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will be rejected.
- The page limit does not apply to Part I, the Title Page; Part II, the Budget Summary form (ED Form 524); Part IV, the assurances and certifications; the table of contents, the appendix, which shall only include letters of support, or the response to section 427 of the Department of Education's General Education Provisions Act (GEPA). If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative (Part III) for purposes of the page limit requirement.

We will reject your application if:

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:* Applications Available: May 14, 2007.

Deadline for Transmittal of Applications: June 13, 2007.

Deadline for Intergovernmental Review: August 13, 2007.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically or by mail or by hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. Other Submission Requirements in this notice.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under the Comprehensive Program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications.

Applications for grants under the Comprehensive Program, CFDA Number 84.116B must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Comprehensive Program at: *http://www.Grants.gov* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.116, not 84.116B).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at: *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three to five days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department will then retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Levenia Ishmell, FIPSE Comprehensive Program Assistant, U.S.

Department of Education, 1990 K Street, NW., room 6147, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116B), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.116B), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. Grantees are required to use the electronic data instrument provided by the program office to complete the annual and final reports.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the following measures will be used by the Department in assessing the performance of the Fund for the Improvement of Postsecondary Education's Comprehensive Program:

(1) The percentage of projects that are adopted in full or in part, or whose materials are used by other institutions; and

(2) The percentage of projects with a high likelihood of sustainability beyond Federal funding, based on the project officer's determination.

If funded, you will be asked to collect and report data in your project's annual performance report (EDGAR, 34 CFR 75.590) on steps taken toward these goals. Consequently, applicants are advised to include these two indicators in conceptualizing the design, implementation and evaluation of the proposed project. Consideration of the two performance indicators is an important part of many of the review criteria. Thus, it is important to the success of your application that you include these indicators. Their measure should be a part of the project evaluation plan, along with measures of goals and objectives specific to your project.

VII. Agency Contact

For Further Information Contact:

Levenia Ishmell, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., room 6147, Washington, DC 20006–8544. Telephone: (202) 502–7668 or by e-mail: *Levenia.Ishmell@ed.gov*.

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

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

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

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

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 8, 2007.

James F. Manning,

Delegated the Authority of the Assistant Secretary for Postsecondary Education.

[FR Doc. 07–2341 Filed 5–11–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Personnel Development to Improve Services and Results for Children With Disabilities—National Center to Inform Policy and Practice in Special Education Professional Development; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325Q.

Dates:

Applications Available: May 14, 2007.

Deadline for Transmittal of Applications: June 13, 2007.

Deadline for Intergovernmental Review: August 13, 2007.

Eligible Applicants: Institutions of higher education (IHEs).

Estimated Available Funds: $500,000.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with infants or toddlers with disabilities, or children with disabilities; and (2) ensure that those personnel have the skills and knowledge—derived from practices that have been determined through research and experience to be successful—that are needed to serve those children.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 662(d) and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2007 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is: *National Center to Inform Policy and Practice in Special Education Professional Development.*

Background

While Federal law requires educators to meet the highly qualified teacher (HQT) requirements, States and school districts struggle to retain such teachers. The likelihood that teachers will remain in their positions beyond the first years of employment is affected by a wide variety of factors, including the policies and practices of teacher preparation programs, States, and school districts.

The retention of teachers is a major concern among educators because teacher turnover creates multiple challenges for schools. Several recent studies report the costs of teacher turnover are high because it not only affects the quality of instruction, but turnover also means additional costs for preparing, recruiting, and inducting highly qualified teachers to replace those who have left (Boe, Cook, and Sutherland, 2006; Billingsley, 2005; Johnson, Berg, and Donaldson, 2005). On the whole, there is broad consensus among policymakers that significant efforts are needed to improve the preparation and retention of highly qualified teachers.

Teacher preparation that is of high quality is a strong predictor of both teacher retention and good teaching practice (NCTAF, 2006), and research has consistently found that new teachers make important gains in teaching quality in the first year and smaller gains over the next few years of their careers (Rivkin, Hanushek, and Kain, 2005, p. 449 as cited in Condition of Education, NCES, 2005). In addition, high quality teacher preparation, along with quality induction and mentoring during the first years of employment, appear to be even more important in urban school districts where data from the last several decades show that from 40 to 50 percent of new teachers will leave the profession within five years (Darling-Hammond and Schlan, 1996; Ingersoll, 2003; National Education Association, 2006; Farber, 2006).

Research suggests that there are a variety of effective ways to improve retention rates for beginning special educators, as well as strategies that improve the quality of pre-service training and professional development for special educators. To this end, the Secretary proposes a National Center to Inform Policy and Practice in Special Education Professional Development.

Priority: This priority supports a National Center to Inform Policy and Practice in Special Education Professional Development (Center). The purposes of this Center are to: (a) Inform special education teacher preparation policy and practice by examining and recommending to IHEs, State educational agencies (SEAs), and local educational agencies (LEAs) those policies and practices that improve retention of beginning special education teachers, such as high quality induction, mentoring, and collaborative teaching experiences; and (b) recommend implementation strategies for policies and practices that provide beginning special education and regular education teachers with the knowledge and skills to effectively support students with disabilities in different classroom settings, including collaborative practices in regular classroom settings.

The Center must:

(a) *Identify needs and existing resources:* Identify critical issues, needs, and existing resources that relate to improved support for beginning special educators through: (1) A comprehensive review of current policy, scientifically based research, and evidence-based practice literature on retention strategies such as the induction and mentoring of beginning teachers of students with disabilities and collaborative teaching practices; and (2) coordination with other U.S. Department of Education (ED) funded grants related to highly qualified teacher induction, mentoring, and retention (e.g., National Comprehensive Center for Teacher Quality (*http://www.ncctq.org*); Center for Improving Teacher Quality (*http://www.centerforteacherquality.org*); National Center for Special Education Personnel and Related Service Providers (*http://www.personnelcenter.org*); and Faculty Enhancement Center (*http://iris.peabody.vanderbilt.edu*);

(b) *Identify critical gaps in the knowledge base:* Identify the most significant gaps in the current knowledge base, considering the critical issues and needs identified in paragraph (a), and utilize this information to develop an agenda that identifies and

prioritizes critical need areas, where new knowledge on retention strategies, in particular induction, mentoring, and collaborative teaching strategies in all parts of the State professional development system (IHEs, SEAs, and LEAs), is needed. The Center must ensure that the agenda is reviewed and accepted by a panel of content, research, and evaluation experts. This panel must be convened by the applicant, include representatives from teacher accreditation organizations, and be identified in collaboration with and approved by the Office of Special Education Programs (OSEP). This expert panel informs the Center's Advisory Board described in section (e).

(c) *Conduct activities aligned to the agenda:* Activities must be designed to enhance, not duplicate, efforts to understand induction and mentoring policies and practices, and their impact on retention. The Center must identify and evaluate innovative models for the induction and mentoring of beginning special education teachers; provide targeted technical assistance for urban or rural schools with high need for highly qualified teachers to help establish and maintain well-designed induction and mentoring programs; develop partnerships with member organizations such as the Council for Chief State School Officers, American Association of Colleges of Teacher Education, etc., to convene annual forums that support the planning of State and local policies and practices that promote the implementation of high-quality induction and mentoring programs and other strategies that support teacher retention; and respond to new and emerging issues that may influence the retention of special education teachers, in particular. The Center's work under this paragraph must align with, and be informed by, the agenda developed under paragraph (b).

(d) *Disseminate policy and practice information:* Develop and implement activities that will result in effective and efficient large-scale dissemination of the policy and practice information identified and developed under paragraphs (b) and (c). The Center must make materials available on a dedicated Web site that is easily searchable by topic and is available at no cost to users. The Center also must develop targeted mechanisms for dissemination to: (1) SEAs and LEAs where implementation of effective policies and practices may lead to improved staff retention; and (2) preservice training programs in IHEs, including those that supply urban or rural schools with highly qualified special educators. Dissemination activities must be conducted in collaboration with other OSEP-funded centers, in particular, the Center on Improving Teacher Quality, the National Comprehensive Center on Teacher Quality, and the National Center on Special Education Personnel and Related Services Providers Center.

(e) *Evaluate project activities:* Design and conduct a comprehensive evaluation of the Center. This evaluation must provide formative information to guide ongoing adjustments to the structure, activities, workflow, and products to improve the effectiveness of the Center. This comprehensive evaluation must also measure the impact of the Center to ensure that: (1) Policies and practices that improve retention of beginning special education teachers are identified and widely disseminated; (2) preservice training programs are designed to link with LEAs in support of induction and mentoring programs for beginning teachers; and (3) beginning teachers of students with disabilities, particularly in rural and urban high need schools, participate in well-designed induction and mentoring programs and use collaborative teaching strategies that support their retention in the profession.

(f) *Establish an Advisory Board:* The design and implementation of the Center's required activities must be guided by an Advisory Board and informed by the expert panel described in paragraph (b). The Center must establish this Advisory Board in concert with OSEP. The Advisory Board must be composed of SEA and LEA personnel, IHE faculty involved with preservice preparation, teachers, individuals or parents of students with disabilities, OSEP State Professional Development Grant project directors, and project directors of ED-funded centers on teacher quality, as appropriate.

(g) *Meet the following additional requirements:*

(1) Budget for a three-day Project Director's meeting in Washington, DC, during each year of the grant;

(2) If the Center maintains a Web site, include relevant information and documents in a form that meets a government or industry-recognized standard for accessibility; and

(3) Agree to submit an annual grant performance report which is required of each grantee for continuation funding (34 CFR 75.590).

Fourth and Fifth Years of the Project: In deciding whether to continue funding the Center for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. The review will be conducted during the last half of the project's second year in Washington, DC; projects must budget for travel expenses associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant, relevant knowledge.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on a proposed priority. However, section 681(d) of IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1462 and 1481(d).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $500,000.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment-qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning,

implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.325Q.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: May 14, 2007.

Deadline for Transmittal of Applications: June 13, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact*.

Deadline for Intergovernmental Review: August 13, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.* To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The National Center to Inform Policy and Practice in Special Education Professional Development competition—CFDA number 84.325Q is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the National Center to Inform Policy and Practice in Special Education Professional Development competition—CFDA number 84.325Q at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.326, not 84.326A).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete the steps in the Grants.gov registration process (*http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are

outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Technical Issues with the Grant.Gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under *For Further Information Contact* and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325Q), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.325Q), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.325Q), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process*:

Treating a Priority as Two Separate Competitions: In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which many entities throughout the country submit applications. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence and fairness of the review process and permit panel members to review applications under discretionary competitions for which they have also submitted applications. However, if the Department decides to select for funding an equal number of applications in each group, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements*: We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting*: At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures*: Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed annual performance measures that will yield information on various aspects of the technical assistance and dissemination activities currently being supported under Part D of IDEA. These measures will be used for the National Center to Inform Policy and Practice in Special Education Professional Development competition. They are: The percentage of products and services deemed to be of high quality by an independent review panel of qualified experts or individuals with appropriate expertise to review the substantive content of the products and services; the percentage of products and services deemed to be of high relevance to educational and early intervention policy or practice by an independent review panel of qualified members of the target audiences of the technical assistance and disseminations; and the percentage of all products and services deemed to be of high usefulness by target audiences to improve educational or early intervention policy or practice.

We will notify grantees if they will be required to provide any information related to these measures.

Grantees will also be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

For Further Information Contact: Dr. Bonnie D. Jones, U.S. Department of Education, 400 Maryland Avenue, SW., room 4153, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7395.

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

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

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

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

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: May 7, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 07–2342 Filed 5–11–07; 8:45 am]

BILLING CODE 4001–07–P

DEPARTMENT OF EDUCATION

Assistive Technology Act of 1998, As Amended—Assistive Technology Alternative Financing Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services (OSERS) proposes a priority under section 4(b)(2)(D) of the Assistive Technology Act of 1998, as amended, administered by the Rehabilitation Services Administration (RSA). The Assistant Secretary may use the priority for competitions in fiscal year (FY) 2007 and later years. We take this action to focus Federal financial assistance on an identified area of national need. We intend the priority to support activities that increase the availability of, funding for, access to, and provision of assistive technology (AT) devices and AT services.

DATES: We must receive your comments on or before June 13, 2007.

ADDRESSES: Address all comments about the proposed priority to Robert Groenendaal, U.S. Department of Education, 400 Maryland Avenue, SW., room 5019, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7393 or by e-mail: *robert.groenendaal@ed.gov.*

You must include the term ''AFP Priority'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Robert Groenendaal. Telephone: (202)

245–7393, or via Internet: *robert.groenendaal@ed.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding the proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from the proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priority in room 5019, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Most individuals with disabilities do not have the private financial resources to purchase the AT they need. Currently, programs such as Medicaid, Medicare, and vocational rehabilitation cannot meet the growing demand for AT. Through services such as financial loans, alternative financing programs (AFPs) offer individuals with disabilities affordable options that can significantly enhance their access to AT in a way that underscores independence and inclusion.

The FY 2007 full-year Continuing Resolution provides funding for the Department to support the establishment, expansion, and administration of AFPs under section 4(b)(2)(D) of the Assistive Technology Act of 1998, as amended (AT Act). States and outlying areas operate AFPs in accordance with the requirements of title III of the Assistive Technology Act of 1998 as in effect on the day before the date of enactment of the 2004 amendments (referred to throughout this document as the ''old AT Act''). The purpose of title III of the old AT Act is to maximize independence and participation in society by individuals with disabilities through AFPs. These programs offer alternatives to the traditional payment options of public assistance and out-of-pocket financing so that individuals with disabilities and their family members, guardians, advocates, and authorized representatives can purchase AT devices and services. Grantees operating AFPs must match their Federal grant amount; as provided for by the FY 2007 Continuing Resolution, which incorporates the requirements in the FY 2006 appropriations act relating to this program, the Federal share may not be more than 75 percent of the cost of AFPs featuring one or more alternative financing mechanisms for the purchase of AT devices and AT services.

In order to maintain consistency among AFPs funded under this program, we are proposing substantially the same priority that was published for this program in the **Federal Register** on June 30, 2005 (70 FR 37794).

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or using other priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use the priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

The Assistant Secretary proposes this priority to support AFPs that provide individuals with disabilities the funding for and provision of AT devices and services.

In order to meet this priority, the State must establish or expand one or more of the following types of AFPs (section 301(b) of the old AT Act):

(1) A low-interest loan fund.

(2) An interest buy-down program.

(3) A revolving loan fund.

(4) A loan guarantee or insurance program.

(5) A program operated by a partnership among private entities for the purchase, lease, or other acquisition of AT devices or services.

(6) Another mechanism that meets the requirements of title III of the old AT Act and is approved by the Secretary.

AFPs are designed to allow individuals with disabilities and their family members, guardians, advocates, and authorized representatives to purchase AT devices or services. If family members, guardians, advocates, and authorized representatives (including employers who have been designated by an individual with a disability as an authorized representative) receive AFP support to purchase AT devices or services, the purchase must be on behalf of an individual with a disability, i.e., the AT device or service that is purchased must be solely for the benefit of that individual.

To be considered for funding, an applicant must identify the type or types of AFP to be supported by the grant and submit all of the following assurances in their entirety:

(1) *Nature of the Match:* An assurance that the State will provide the non-Federal share (not less than 25 percent) of the cost of the AFP in cash, from State, local, or private sources (sections 301(d) and 303(b)(1) of the old AT Act, as provided for by the 2007 Continuing Resolution, which incorporates requirements in the FY 2006 appropriations act relating to this program). An applicant must identify the amount of Federal funds the State is requesting, the amount of cash that the State will provide as a match, and the source of the cash.

(2) *Permanent Separate Account:* An assurance from the State that—

(a) All funds that support the AFP, including funds repaid during the life of the program, will be placed in a permanent separate account and identified and accounted for separately from any other fund;

(b) If the organization administering the program invests funds within this account, the organization will invest the funds in low-risk securities in which a regulated insurance company may invest under the law of the State; and

(c) The organization will administer the funds with the same judgment and care that a person of prudence, discretion, and intelligence would exercise in the management of the financial affairs of that person (section 303(b)(5) of the old AT Act).

During the first 12-month budget period, a grantee must deposit its matching funds and its Federal award funds in the permanent and separate account.

(3) *Permanence of the Program:* An assurance that the AFP will continue on a permanent basis (section 303(b)(2) of the old AT Act).

A State's obligation to implement the AFP consistent with all of the requirements, including reporting requirements, continues until there are no longer any funds available to operate the AFP and all outstanding loans have been repaid. If a State decides to terminate its AFP while there are still funds available to operate the program, the State must return the Federal share of the funds remaining in the permanent separate account to RSA (e.g., 75 percent if the original State to Federal match was 1 to 3) except for funds being used for grant purposes, such as loan guarantees for outstanding loans. However, before closing out its grant, the State also must return the Federal share of any principal and interest remitted to it on outstanding loans and any other funds remaining in the permanent separate account, such as funds being used as loan guarantees for those loans.

(4) *Consumer Choice and Control:* An assurance that, and information describing the manner in which, the AFP will expand and emphasize consumer choice and control (section 303(b)(3) of the old AT Act).

(5) *Supplement Not Supplant:* An assurance that the funds made available through the grant to support the AFP will be used to supplement and not supplant other Federal, State, and local public funds expended to provide alternative financing mechanisms (section 303(b)(4) of the old AT Act).

(6) *Contract With a Community-Based Organization:* An assurance that the State will enter into a contract with a community-based organization (CBO) (including a group of CBOs) that has individuals with disabilities involved in organizational decision-making at all organizational levels, to administer the AFP. The contract must—

(a) Include a provision requiring that the program funds, including the Federal and non-Federal shares of the cost of the program, be administered in a manner consistent with the provisions of title III of the old AT Act;

(b) Include any provision the Secretary requires concerning oversight and evaluation necessary to protect Federal financial interests; and

(c) Require the CBO to enter into a contract, to expand opportunities under title III of the old AT Act and facilitate administration of the AFP, with commercial lending institutions or organizations or State financing agencies (section 304 of the old AT Act).

During the first 12-month budget period, a grantee will enter into the contract with a CBO and ensure that the CBO has entered into the contract with the commercial lending institutions or organizations or State financing agencies.

(7) *Use and Control of Funds:* An assurance that—

(a) Funds comprised of the principal and interest from the account described in paragraph (2) *Permanent Separate Account* of this priority will be available to support the AFP; and

(b) Any interest or investment income that accrues on or derives from those funds after the funds have been placed under the control of the organization administering the AFP, but before the funds are distributed for purposes of supporting the program, will be the property of the organization administering the program (section 303(b)(6) of the old AT Act).

This assurance regarding the use and control of funds applies to all funds derived from the AFP including the original Federal award, the State matching funds, AFP funds generated by either interest bearing accounts or investments, and all principal and interest paid by borrowers of the AFP who are extended loans from the permanent separate account.

(8) *Indirect Costs:* An assurance that the percentage of the funds made available through the grant that is used for indirect costs will not exceed 10 percent (section 303(b)(7) of the old AT Act).

For each 12-month budget period, grantees must recalculate their allowable indirect cost rate, which may not exceed 10 percent of the amount of funds in the permanent and separate account and any outstanding loans from that account.

(9) *Administrative Policies and Procedures:* An assurance that the State and any CBO that enters into a contract with the State under title III of the old AT Act will submit to the Secretary the following policies and procedures for administration of the AFP:

(a) A procedure to review and process in a timely manner requests for financial assistance for immediate and potential technology needs, including consideration of methods to reduce paperwork and duplication of effort, particularly relating to need, eligibility, and determination of the specific AT device or service to be financed through the program.

(b) A policy and procedure to ensure that access to the AFP must be given to consumers regardless of type of disability, age, income level, location of residence in the State, or type of AT device or service for which financing is requested through the program.

(c) A procedure to ensure consumer-controlled oversight of the program (section 305 of the old AT Act).

Grantees must submit the administrative policies and procedures required in this assurance within 12 months of the start of the grant.

(10) *Data Collection:* An assurance that the State will collect and report data requested by the Secretary in the format, with the frequency, and using the method established by the Secretary until there are no longer any funds available to operate the AFP and all outstanding loans have been repaid.

(11) *Collaboration With the Statewide AT Program:* An assurance that the AFP will enter into a written agreement with that State's statewide AT program supported under section 4 of the AT Act to coordinate activities appropriately.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority we have determined that the benefits of the proposed priority justify the costs.

We have also determined that this regulatory action does not unduly

interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicability of Education Department General Administrative Regulations (EDGAR) to AFP

In general, EDGAR would apply to this grant except to the extent it is inconsistent with the purpose of and intent of section 4(b)(2)(D) of the AT Act. Specifically, grantees would be exempt from section 80.21(i) regarding interest earned on advances and the addition method in section 80.25(g)(1). Also, sections 75.560–75.564 would not apply to the extent that these sections of EDGAR are inconsistent with the AFP requirement that indirect costs cannot exceed 10 percent.

Electronic Access to This Document

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number 84.224C Assistive Technology Alternative Financing Programs)

Program Authority: 29 U.S.C. 3001 *et seq.*

Dated: May 9, 2007.

Andrew J. Pepin,

Executive Administrator, Office of Special Education and Rehabilitative Services.

[FR Doc. E7–9222 Filed 5–11–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance: Hearing

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of an opening hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming hearing of the Advisory Committee on Student Financial Assistance (The Advisory Committee). This notice also describes the functions of the Advisory Committee. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATE AND TIME: Tuesday, June 5, 2007, beginning at 9 a.m. and ending at approximately 5 p.m.

ADDRESSES: Holiday Inn on the Hill, Federal North Room, 415 New Jersey Avenue, NW., Washington DC 20001.

FOR FURTHER INFORMATION CONTACT: Dr. Michelle Asha Cooper, Deputy Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW, Suite 413, Washington DC 20202–7582, (202) 219–2099.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act, and to make recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students. In addition, Congress expanded the Advisory Committee's mission in the Higher Education Amendments of 1998 to include several important areas: access, Title IV modernization, distance education, and early information and needs assessment. Specifically, the Advisory Committee is to review, monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The Advisory Committee has scheduled this one-day hearing to discuss release of its new report related to its congressionally requested study to make textbooks more affordable (Textbook Study). This one-year study, was requested by the U.S. House of Representatives Committee on Education and Labor (formerly Education and the Workforce) to investigate further the problem of rising textbook prices and determine the impact of rising textbook prices on students' ability to afford a postsecondary education. In addition, other discussions will focus on two components of the Advisory Committee's three-year Innovative Pathways Study: Expected Family Contribution and early financial aid information.

The proposed agenda includes expert testimony and discussions by prominent higher education community leaders, Congressional staff, state representatives, and institutions on (a) the Advisory Committee's Textbook Study recommendations; (b) legislative efforts to simplify the student aid application and delivery process; and (c) the National Advising Corps. The Advisory Committee will also conduct a public comment and discussion session.

Individuals who will need accommodations for a disability in order to attend the hearing (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Tuesday, May 29, 2007 by contacting Ms. Hope Gray at (202) 219–2099 or via e-mail at *hope.gray@ed.gov.* We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The hearing site is accessible to individuals with disabilities.

The Advisory Committee invites the public to submit written comments on the agenda topics to the following e-mail address: *ACSFA@ed.gov.* Information regarding the topics covered at the hearing will also be available on the Advisory Committee's Web site, *http://www.ed.gov/ACSFA.* We must receive your comments on or before Tuesday, May 29, 2007 to be included in the hearing materials.

Space for the hearing is limited and you are encouraged to register early if you plan to attend. You may register by sending an email to the following address: *ACSFA@ed.gov* or *Tracy.Deanna.Jones@ed.gov.* Please include your name, title, affiliation, complete address (including internet

and email address, if available), and telephone and fax numbers. If you are unable to register electronically, you may fax your registration information to the Advisory Committee staff office at (202) 219–3032. You may also contact the Advisory Committee staff directly at (202) 219–2099. The registration deadline is Tuesday, May 29, 2007.

Records are kept for Advisory Committee proceedings, and are available for inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW.—Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m. Monday through Friday, except Federal holidays. Information regarding the Advisory Committee is available on the Committee's Web site, *http://www.ed.gov/ACSFA.*

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

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 9, 2007.

William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. E7–9218 Filed 5–11–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–207–000]

Colorado Interstate Gas Company; Notice of Application

May 7, 2007.

Take notice that on April 27, 2007, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed an application in Docket No. CP07–207–000, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing its High Plains Expansion Project which consists of approximately 164 miles of 24- and 30-inch diameter pipeline, in four related pipeline segments, and metering facilities, with appurtenances, to be located in Adams, Morgan, and Weld Counties, Colorado. As part of the project, CIG is seeking authorization to implement new services and rates, and gas quality control rates and fuel charges. When completed, the pipeline facilities will transport and deliver up to 899,000 Dth per day of natural gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this Application should be directed to Richard Derryberry, Director, Regulatory Affairs, Colorado Interstate Gas Company, P. O. Box 1087, Colorado Springs, Colorado, 80944 at (719) 520–3788 or by fax at (719) 667–7534 or Craig V. Richardson, Vice President and General Counsel, Colorado Interstate Gas Company, P. O. Box 1087, Colorado Springs, Colorado, 80944 at (719)520–4829 or by fax at (719)520–4898.

On October 6, 2006, the Commission staff granted CIG's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF06–36–000 to staff activities involving the CIG's expansion project. Now, as of the filing of CIG's application on April 27, 2007, the NEPA Pre-Filing Process for this project has ended. From this time forward, CIG's proceeding will be conducted in Docket No. CP07–207–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed

documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: May 29, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9192 Filed 5–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS06–11–001]

Wabash Valley Power Association, Inc.; Notice of Filing

May 7, 2007.

Take notice that on November 20, 2006, Wabash Valley Power Association, Inc. filed a response to the Commission's letter Order issued October 19, 2006, explaining that it does not have access to transmission, customer or market information covered by section 358, 18 CFR 358, of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 15, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9190 Filed 5–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–9–000]

BP West Coast Products LLC, Complainant v. SFPP, L.P., Respondents; Notice of Complaint

May 7, 2007.

Take notice that on May 3, 2007, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules and Practice and Procedure, section 343.3 of the Commission's Procedural Rules, sections 1(5), 8, 9, 13, 15, and 16 of the Interstate Commerce Act, and section 1803 of the Energy Policy Act of 1992, BP West Coast Products LLC (Complainant) filed a formal complaint against SFPP, L.P. (Respondent) requesting the Commission to review and reject the Respondent's Ultra Low Sulfur Diesel surcharge submitted to the Commission on March 1, 2007, in Docket No. IS07–137–000, alleging it is contrary to the Commission's regulations and is in violation of the doctrine of retroactive ratemaking. The Respondent also requests the Commission to handle this Complaint under its fast track procedures.

The Complainant states that copies of the Complaint were served on the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 23, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9191 Filed 5–11–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

May 7, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–83–000.

Applicants: Old Lane Commodities, LP.

Description: Old Lane Commodities LP submits application for authorization under section 203 of the FPA for disposition of jurisdictional facilities.

Filed Date: 4/27/2007.

Accession Number: 20070501–0276.

Comment Date: 5 p.m. Eastern Time on Friday, May 18, 2007.

Docket Numbers: EC07–84–000.

Applicants: ESI Altamont Acquisitions, Inc.; ESI Bay Area, Inc.; U.S. Bank National Association.

Description: ESI Altamont Acquisitions, Inc et al submit a joint application for authorization to acquire interests in Electric Utility Companies and Request for Expedited Action.

Filed Date: 4/27/2007.

Accession Number: 20070501–0278.

Comment Date: 5 p.m. Eastern Time on Friday, May 18, 2007.

Docket Numbers: EC07–85–000.

Applicants: Montana Acquisition Company LLC; Centennial Energy Resources LLC; Centennial Power, Inc.; San Joaquin Cogen, L.L.C.; Mountain View Power Partners, LLC; Rocky Mountain Power, Inc.; Colorado Power Partners; BIV Generation Company, L.L.C.; Hartwell Energy Limited Partnership.

Description: Montana Acquisition Company LLC, et al submit a joint application under section 203 of the FPA and Request for Expedited Action.

Filed Date: 5/4/2007.

Accession Number: 20070504–5080.

Comment Date: 5 p.m. Eastern Time on Friday, May 25, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–48–000.

Applicants: Lock 7 Hydro Partners, LLC.

Description: Lock 7 Hydro Partners, LLC submits a self-certification notice of exempt wholesale generator status.

Filed Date: 4/27/2007.

Accession Number: 20070427–5033.

Comment Date: 5 p.m. Eastern Time on Friday, May 18, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER95–1787–019.

Applicants: Texaco Natural Gas Inc.

Description: Texaco Natural Gas Inc. submits a notice of Non-Material Change in the Status of Facilities Relied Upon In Triennial Market-Power Review.

Filed Date: 5/1/2007.

Accession Number: 20070501–5047.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER98–2640–018; ER01–205–020; ER98–4590–016; ER99–1610–024.

Applicants: Northern States Power Company and Northern States Power Company (Wisconsin); Xcel Energy Services Inc.; Public Service Company of Colorado; Southwestern Public Service Company.

Description: Northern States Power Co., et al submit a change in Status Report in Compliance Filing with Order 652.

Filed Date: 5/4/2007.

Accession Number: 20070503–5092.

Comment Date: 5 p.m. Eastern Time on Friday, May 25, 2007.

Docket Numbers: ER02–2536–004.

Applicants: Bank of America, N.A.

Description: Bank of America, N.A. submits a notice of Non-Material Change in Status.

Filed Date: 5/2/2007.

Accession Number: 20070502–5010.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 23, 2007.

Docket Numbers: ER07–272–001; ER07–283–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc submits a supplemental filing, to their 12/1/06 filing of two executed service agreements for Network Integration Transmission Service with Kansas Power Pool.

Filed Date: 5/1/2007.

Accession Number: 20070503–0161.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–304–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc submits a supplemental filing to its 12/7/06 filing of an executed service agreement for Network Integration Transmission Service with Oklahoma Gas & Electric Company.

Filed Date: 5/1/2007.

Accession Number: 20070503–0160.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–419–002.

Applicants: PPL Electric Utilities Corporation.

Description: PPL Electric Utilities Corporation submits a supplement to its 3/26/07 response to FERC's 2/22/07 letter order.

Filed Date: 5/1/2007.

Accession Number: 20070503–0185.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–676–001.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits an amendment to its 3/29/07 filing.

Filed Date: 4/30/2007.

Accession Number: 20070503–0159.

Comment Date: 5 p.m. Eastern Time on Monday, May 21, 2007.

Docket Numbers: ER07–713–001.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Co submits revised Original Sheets 506 and 507 to its 4/5/07 filing and submits a correction to its 5/2/07 filing on 5/3/07.

Filed Date: 5/2/2007; 5/3/07.

Accession Number: 20070504–0226.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 23, 2007.

Docket Numbers: ER07–719–001.

Applicants: Xcel Energy Operating Companies.

Description: Xcel Energy Operating Companies submits a correction to its 4/5/07 filing.

Filed Date: 4/30/2007.

Accession Number: 20070503–0158.

Comment Date: 5 p.m. Eastern Time on Monday, May 21, 2007.

Docket Numbers: ER07–805–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits an amendment to the ISO Tariff re April 2007 NERC/WECC Charge Invoicing Amendment.

Filed Date: 4/27/2007.

Accession Number: 20070501–0314.

Comment Date: 5 p.m. Eastern Time on Friday, May 18, 2007.

Docket Numbers: ER07–807–000.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Deseret Generation & Transmission Co-operative, Inc submits its annual Informational Filing setting forth updated approved costs for member-owned generation resources for 2007.

Filed Date: 4/27/2007.

Accession Number: 20070501–0315.

Comment Date: 5 p.m. Eastern Time on Friday, May 18, 2007.

Docket Numbers: ER07–808–000.

Applicants: Epic Merchant Energy CA, LLC.

Description: EPIC Merchant Energy CA, LLC submits a petition for acceptance of initial tariff, waiver and blanket authority.

Filed Date: 4/27/2007.

Accession Number: 20070501–0313.

Comment Date: 5 p.m. Eastern Time on Friday, May 18, 2007.

Docket Numbers: ER07–820–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation agent for AEP Texas Central Company submits a restated and amended interconnection agreement with Central Power and Light Company.

Filed Date: 5/1/2007.

Accession Number: 20070503–0156.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–821–000.

Applicants: American Electric Power Service Corporation.

Description: The American Electric Power Service Corporation agent for the

AEP Operating Companies submits a new Interconnection and Local Delivery Service Agreement with the City of Westerville Ohio.

Filed Date: 5/1/2007

Accession Number: 20070503–0157.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–822–000.

Applicants: New England Power Pool Participants Committee.

Description: New England Power Pool Participants Committee submits the signature pages of the New England Power Pool Agreement dated 9/1/71, as amended and executed by Horizon Power and Light LLC et al.

Filed Date: 5/1/2007.

Accession Number: 20070503–0155.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–823–000.

Applicants: Commonwealth Edison Company.

Description: Commonwealth Edison Company submits Notices of Cancellation of FERC Electric Tariff Rates 26, 27, and 28, rate schedules.

Filed Date: 5/1/2007.

Accession Number: 20070503–0154.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–824–000.

Applicants: Tampa Electric Company.

Description: Tampa Electric Company submits its Sixth Revised Sheet 70 and 71 to its First Revised Rate Schedule 62, to become effective 5/1/07.

Filed Date: 4/30/2007.

Accession Number: 20070503–0153.

Comment Date: 5 p.m. Eastern Time on Monday, May 21, 2007.

Docket Numbers: ER07–825–000.

Applicants: California Power Exchange Corporation.

Description: The California Power Exchange Corporation submits proposed amendments to its Rate Schedule 1 in order to recover projected expenses for the period 7/1/07 through 12/31/07.

Filed Date: 5/1/2007.

Accession Number: 20070503–0152.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–826–000.

Applicants: Northwestern Wisconsin Electric Company.

Description: Northwestern Wisconsin Electric Co submits a proposed rate change, Sixth Revised Rate Schedule FERC 2, to be effective 5/1/07.

Filed Date: 5/1/2007.

Accession Number: 20070503–0170.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–827–000.

Applicants: Montana Generation, LLC.

Description: Montana Generation, LLC submits a power purchase agreement to sell power to NorthWestern Corporation.

Filed Date: 5/1/2007

Accession Number: 20070503–0173.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–828–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed service agreement for Network Integration Transmission Service with Public Service Co of Oklahoma et al.

Filed Date: 5/1/2007.

Accession Number: 20070503–0172.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–829–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits a Confirmation Letter dated 4/27/07 with Montezuma Municipal Light and Power Plant.

Filed Date: 5/2/2007.

Accession Number: 20070503–0151.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 23, 2007.

Docket Numbers: ER07–830–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits Third Revised Sheet 54 et al to the Amended and Restated Eldorado System Conveyance and Co-Tenancy Agreement with Nevada Power Co et al.

Filed Date: 5/1/2007.

Accession Number: 20070503–0150.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–831–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits First Revised Sheet 14, 19, 24, 25 and Original Sheet 19A and 25a to First Revised Rate Schedule 82 with Northwest Iowa Power Cooperative dated 4/27/07 under ER07–831.

Filed Date: 5/1/2007.

Accession Number: 20070503–0149.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–832–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits a Network Integration Transmission Service Agreement and Network Operating Agreement with Central Iowa Power Cooperative dated 4/27/07 etc.

Filed Date: 5/1/2007.

Accession Number: 20070503–0148.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–833–000.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co submits its Amendment 3 to the Joint Operation Agreement with Edison Sault Electric Co.

Filed Date: 5/2/2007.

Accession Number: 20070504–0227.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 23, 2007.

Docket Numbers: ER07–834–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits a revision to the liability limitation provisions contained in its OATT and Market Administration and Control Area Services Tariff.

Filed Date: 5/1/2007.

Accession Number: 20070503–0232.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: ER07–836–000.

Applicants: Long Beach Generation LLC.

Description: Long Beach Generation, LLC submits a Power Purchase Tolling Agreement with Southern California Edison Co dated 11/10/06.

Filed Date: 5/3/2007.

Accession Number: 20070504–0253.

Comment Date: 5 p.m. Eastern Time on Thursday, May 24, 2007.

Docket Numbers: ER07–837–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc agent for Alabama Power Company et al submits an informational filing under its Open Access Transmission Tariff, Fourth revised Volume 5.

Filed Date: 5/1/2007.

Accession Number: 20070504–0252.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH07–12–000.

Applicants: Carlyle/Riverstone Global Energy and Power Fund II, L.P.

Description: FERC Form 65 B—Waiver Notification of Carlyle/Riverstone Global Energy and Power Fund II, L.P.

Filed Date: 5/1/2007.

Accession Number: 20070501–5077.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 22, 2007.

Docket Numbers: PH07–13–000.

Applicants: SEMGROUP, L.P.; SEMSTREAM, L.P.

Description: FERC Form 65 B—Waiver Notification of SemGroup, L.P., and SemStream, L.P. as a Single State Holding Company System.

Filed Date: 5/2/2007.

Accession Number: 20070502–5013.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 23, 2007.

Docket Numbers: PH07–14–000.

Applicants: Ritchie Capital Management, L.L.C.

Description: FERC Form 65 B Waiver Notification of Ritchie Capital Management.

Filed Date: 5/2/2007.

Accession Number: 20070502–5023.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 23, 2007.

Docket Numbers: PH07–15–000.

Applicants: Ritchie Capital Management, L.L.C.

Description: FERC Form 65 A Exemption Notification of Ritchie Capital Management.

Filed Date: 5/2/2007.

Accession Number: 20070502–5022.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 23, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–9193 Filed 5–11–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8314–3]

California State Motor Vehicle Pollution Control Standards; California Heavy-Duty On-Highway Otto-Cycle Engines and Incomplete Vehicles Regulations; Within-the-Scope Request; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to the California heavy-duty otto-cycle regulations for 2004, 2005 through 2007, and for the 2008 and subsequent model years. Three different emissions standards apply to the 2004, 2005–2007, and 2008 model years respectively. By letter dated December 7, 2005, CARB submitted a request seeking EPA confirmation that its amendments affecting these model years be considered within-the-scope of previously granted waivers of preemption under section 209(b) of the Clean Air Act (CAA), 42 U.S.C. 7543(b). This notice announces that EPA has tentatively scheduled a public hearing concerning California's request and that EPA is accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on June 13, 2007 beginning at 10 a.m. EPA will hold a hearing only if a party notifies EPA by June 4, 2007, expressing its interest in presenting oral testimony. By June 8, 2007, any person who plans to attend the hearing should call David Dickinson at (202) 343–9256 to learn if a hearing will be held. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB's request based on written submissions to the docket. Any party may submit written comments by July 13, 2007.

ADDRESSES: EPA will make available for public inspection at the Air and Radiation Docket and Information Center written comments received from interested parties, in addition to any testimony given at the public hearing. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1743. The reference number for this docket is EPA–HQ–OAR–2006–0018. Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at the address noted below. If EPA receives a request for a public hearing, EPA will hold the public hearing at 1310 L St., NW., Washington, DC 20005 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460. Telephone: (202) 343–9256, Fax: (202) 343–2804, e-mail address: *Dickinson.David@EPA.GOV.*

Obtaining Electronic Copies of Documents: Submit your comments, identified by Docket ID No. EPA–HQ–2005–0133, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: dickinson.david@epa.gov.*
- *Fax:* (202) 343–2804.
- *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room B108, Mail Code 6102T, Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2005–0133. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, EPA/DC, EPA West, Room B102, 1301

Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Instructions: Direct your comments to Docket ID No EPA–HQ–OAR–2005–0133.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail.

The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. Docket: All documents in the 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.

SUPPLEMENTARY INFORMATION:

(A) *Background and Discussion:* Section 209(a) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7543(a), provides:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that the state standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. California is the only state that is qualified to seek and receive a waiver under section 209(b). The Administrator must grant a waiver unless he finds that (A) the determination of the state is arbitrary and capricious, (B) the state does not need the state standards to meet compelling and extraordinary conditions, or (C) the state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.

When EPA receives new waiver requests from CARB, EPA traditionally publishes a notice of opportunity for public hearing and comment and then publishes a decision in the **Federal Register** following the public comment period. In contrast, when EPA receives within the scope waiver requests from CARB, EPA usually publishes a decision in the **Federal Register** and concurrently invites public comment if an interested party is opposed to EPA's decision.

Although CARB has submitted a within the scope waiver request, EPA invites comment on the following issues: Whether California's standards, within the context of a within the scope analysis (a) Undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards, (b) affect the consistency of California's requirements with section 202(a) of the Act, and (c) raise new issues affecting EPA's previous waiver determinations. Please also provide comment that if CARB's standards were not found to be within the scope of previous waivers and instead required a full waiver analysis, whether (a) CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

Procedures for Public Participation

In recognition that public hearings are designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until July 13, 2007. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing, if any, relevant written submissions, and other information that he deems pertinent.

Persons with comments containing proprietary information must distinguish such information from other comments to the great possible extent and label it as ''Confidential Business Information'' (CBI). If a person making comments want EPA to base its decision in part on a submission labeled CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: May 8, 2007.

Elizabeth Craig,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. E7–9207 Filed 5–11–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2007–0291; FRL–8309–2]

Enhancing Environmental Outcomes From Audit Policy Disclosures Through Tailored Incentives for New Owners; Notice

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for comment.

SUMMARY: The Environmental Protection Agency (''EPA'' or ''the Agency'') requests comment on whether and to what extent the Agency should consider offering tailored incentives to encourage new owners of regulated entities to discover, disclose, correct, and prevent the recurrence of environmental violations. The Agency is considering whether actively encouraging such disclosures has the potential to yield significant environmental benefit, since new owners may be particularly well-situated and highly motivated to focus on, and invest in, making a clean start for their new facilities by addressing environmental noncompliance.

Any tailored incentives for new owners would be beyond those offered as EPA is currently implementing EPA's April 11, 2000 policy on ''Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations,'' commonly referred to as the ''Audit Policy'' (65 FR 19618). These incentives would be designed to enhance implementation of the Audit Policy and encourage its use in the new owner context, but would not constitute a change to the Policy overall.

After the comment period closes, the Agency plans to review all comments and decide whether to develop a pilot program to test the policy of offering tailored incentives to encourage new owners to self-audit and disclose under the Audit Policy. Should the Agency decide to proceed, EPA would then publish a second **Federal Register** notice to seek comment on a proposed pilot program. After a second round of public comment, the Agency would publish in the **Federal Register**: The final description of the pilot program; an announcement of its start date; and a description of how its success in achieving increased self-auditing and disclosure and significant improvement to the environment will be evaluated.

DATES: EPA urges interested parties to comment in writing on the issues raised in this notice. Comments must be received by EPA at the address below no later than July 13, 2007. Comments may also be communicated orally at two public meetings EPA will hold during the comment period. The first meeting is scheduled for Washington, DC at the J.W. Marriott Hotel, 1331 Pennsylvania Ave., NW., on June 12, 2007. The second one is scheduled for San Francisco at the Palace Hotel, 2 New Montgomery St., on June 20, 2007. Both meetings will begin at 10 a.m. and end at 4 p.m.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2007–0291, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: docket.oeca@epa.gov*, Attention Docket ID No. EPA–HQ–OECA–2007–0291.
- *Fax:* (202) 566–9744, Attention Docket ID No. EPA–HQ–OECA–2007–0291.
- *Mail:* Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OECA–2007–0291.
- *Hand Delivery:* Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2007–0291. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov.* The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

FOR FURTHER INFORMATION CONTACT: For further information, contact Caroline Makepeace of EPA's Office of Civil Enforcement, Special Litigation and Projects Division, at (202) 564–6012 or *makepeace.caroline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Introduction

On April 11, 2000, EPA issued its revised final policy on ''Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations,'' commonly referred to as the ''Audit Policy'' (65 FR 19618). The purpose of the Audit Policy is to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, disclose, correct and prevent

the recurrence of violations of Federal environmental law. Benefits available to entities that make disclosures under the terms of the Audit Policy include reductions in the amount of civil penalties and a determination not to recommend criminal prosecution of disclosing entities.

The Audit Policy program has been a successful effort to date, resolving disclosed violations with over 3,000 entities. However, more than half of these disclosures have involved reporting violations which, while important for public information and safety purposes, may not produce significant reductions in pollutant emissions once the violations are corrected. Consistent with EPA's strategic plan, the Agency's goal is to increase the number of self-disclosures that have the potential to yield significant environmental benefits while effecting compliance with Federal environmental requirements. EPA's recent experience with corporate-wide auditing agreements following a corporate merger or acquisition has heightened the Agency's interest in exploring whether encouraging new owners of regulated facilities to discover, disclose, correct, and prevent the recurrence of environmental violations would help EPA meet this goal. New owners may be particularly well-situated and highly motivated to invest in making a ''clean start'' for their new facilities by: Doing thorough self-audits of their new facilities; disclosing any violations found; promptly correcting the violations; and making the substantial improvements that will enhance their ability to remain in compliance going forward. Nevertheless, certain disincentives may stand in the way of new owners that may be interested in taking these steps, and there may be equitable reasons for considering particular incentives to encourage self-auditing and disclosure at the time a new owner takes control. The Agency is interested in developing this idea because of its potential to enhance EPA's efforts to effectively utilize scarce government resources by securing significant environmental improvement as quickly as possible. The Agency is also interested in whether offering tailored incentives in the new owner context may have unintended adverse consequences with respect to, for example, discouraging appropriate due diligence, timely compliance and a level playing field, or other negative effects. The Agency seeks comment on the potential for any positive or negative results that might come from providing such tailored incentives. The Agency also requests comment on how EPA could most efficiently determine who is a bona-fide new owner, and how the Agency should evaluate whether such incentives are successful in securing the prompt correction of environmental violations and significant improvement to the environment.

While EPA does not intend to amend the Audit Policy, the Agency is considering ways to enhance its implementation and encourage its greater use in new owner situations, particularly with regard to the disclosure and correction of violations that may yield significant pollutant reductions. Today, EPA issues this Notice signaling its intent to consider offering tailored incentives to self-report under the current Audit Policy for new owners of regulated facilities.

The purpose of this notice is to (1) solicit information to be used in helping EPA better understand and formulate decisions about key issues; and (2) provide notification of open meetings at which EPA hopes to hear from the public on these issues. Copies of the Agency's current Audit Policy may be found on the EPA's Web site at *http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html.*

B. Background and History of the Audit Policy

1. Overview of the Audit Policy

The Audit Policy provides incentives for regulated entities to detect, promptly disclose, expeditiously correct, and prevent the recurrence of violations of federal environmental requirements. The Audit Policy contains nine conditions, and entities that meet all of them are eligible for 100% mitigation of any gravity-based civil penalties that otherwise could be assessed in settlement. (''Gravity-based'' penalty refers to that portion of the civil penalty over and above the portion that represents the entity's economic gain from noncompliance, known as the ''economic benefit.'') Regulated entities that do not meet the first condition—systematic discovery of violations—but meet the other eight conditions are eligible for 75% mitigation of any gravity-based penalties. For criminal matters, EPA will generally elect not to recommend criminal prosecution by the Department of Justice (''DOJ'') or any other prosecuting authority for a disclosing entity that meets at least conditions two through nine (i.e., regardless of whether it meets the systematic discovery requirement) as long as its self-policing, discovery and disclosure were conducted in good faith and the entity adopts a systematic approach to preventing recurrence of the violation. The Audit Policy includes important safeguards to deter violations and protect the environment. For example, the Audit Policy requires entities to act to prevent recurrence of violations and to remedy any environmental harm that may have occurred. Repeat violations, those that result in actual harm to the environment, and those that may present an imminent and substantial endangerment are not eligible for relief under the Audit Policy. Entities and individuals also remain criminally liable for violations that result from conscious disregard of or willful blindness to their obligations under the law.

The Audit Policy and related documents are available on the Internet at *http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html*. Additional guidance for implementing the Policy in the context of criminal violations can be found at *http://www.epa.gov/compliance/resources/policies/incentives/auditing/auditcrimvio-mem.PDF*.

2. How EPA Implements its Voluntary Disclosure Programs

EPA's voluntary disclosure policies [1] are designed to provide major incentives for regulated entities that voluntarily discover, promptly disclose, and expeditiously correct violations, rendering formal EPA investigation and enforcement action unnecessary in most instances. The policies safeguard human health and the environment by providing incentives for regulated entities to come into compliance with the federal environmental laws and regulations, and enable efficient use of scarce government resources.

Most self-disclosures come into the Agency on a single facility basis. However, the Agency sometimes enters into an audit agreement under which the disclosing entity commits to undertake a comprehensive multimedia audit that will be conducted at a number of its facilities over an agreed-upon time frame. Corporate auditing agreements allow companies to plan a corporate-wide audit with advance understanding between the company and EPA regarding the scope of the audit, schedules (audit, reporting, and correction of violations), whether resolution will be judicial or administrative, and any other

[1] Besides the Audit Policy, EPA also implements another voluntary disclosure policy: The Small Business Compliance Policy (65 FR 19630), published April 11, 2000.

expectations. Such agreements also offer the potential for significant environmental benefit while providing greater certainty to companies about their environmental liabilities. Thus, EPA encourages companies with multiple facilities to take advantage of the Agency's Audit Policy through use of such corporate auditing agreements.

Once a regulated entity notifies EPA, in writing, of potential violations, EPA evaluates the discovery, disclosure, and correction of the violations against the criteria set forth in the Audit Policy, or if applicable, the Small Business Compliance Policy, and determines the appropriate enforcement response. If the disclosure does not meet the conditions of the applicable policy or the disclosing entity does not provide sufficient information to EPA to allow the Agency to make this determination, then the matter is handled under the appropriate medium-specific penalty policies, which often accommodate penalty mitigation for voluntary disclosures. The enforcement response for the vast majority of voluntary disclosures is a Notice of Determination (''NOD'') for cases involving no assessment of penalties. EPA retains its discretion to assess any economic benefit that may have been realized as a result of noncompliance. If the regulated entity has gained significant economic benefit, or if it failed to meet all the conditions of the applicable policy, then a civil penalty may be sought in an administrative or judicial action.

Overall, the Agency's voluntary disclosure programs continue to have positive results. The Audit and Small Business Compliance Policies have encouraged voluntary self-policing while preserving fair and effective enforcement and their use has been widespread. As of October 1, 2006, regulated entities and organizations have resolved actual or potential violations at 9,255 facilities.

Thus, the solicitation of comments on tailored incentives for new owners does not signal any intention to shift course regarding the Agency's position on self-policing and voluntary disclosures, but instead represents an attempt to enhance implementation of the Audit Policy, and encourage its increased use in the new owner context.

As mentioned in the Introduction, EPA's interest in exploring this approach stems in part from recent experiences in the Agency's current implementation of the Audit Policy. In the last few years, EPA has entered into corporate auditing agreements with several companies following a merger or acquisition valued at over $1 billion. These corporate auditing agreements provided a unique opportunity for companies to use self-disclosures to make a ''clean start'' with regard to environmental compliance. The Agency recognizes that taking steps to further encourage audit agreements in this context could offer the potential to garner significant environmental benefit.

3. How the Audit Policy Currently Applies to New Owners

On April 30, 2007, EPA issued the ''Audit Policy: Frequently Asked Questions (2007)'' which recognizes that owners of newly acquired facilities are uniquely situated to examine and improve performance at newly acquired facilities. Specifically, the 2007 Frequently Asked Questions provides that:

- New owners may be eligible for penalty mitigation under the Audit Policy for violations at newly acquired facilities which are discovered as part of a compliance examination agreed to be undertaken prior to the 1st annual certification under Title V of the Clean Air Act, or which are disclosed before that time.

Generally, Clean Air Act (CAA) violations discovered during activities supporting Title V certification requirements are not eligible for penalty mitigation under the Policy. Condition 2 of the Audit Policy requires that disclosed violations must not be discovered through a legally mandated monitoring or sampling requirement prescribed by statute or regulation; therefore, examination of CAA compliance accompanying a Title V annual certification is not voluntary.[2] However, EPA wants to encourage new owners to examine facility operations to determine compliance, correct violations, and upgrade deficient equipment and practices. Thus, for new owners that in good faith undertake such efforts and inform the Agency of such actions, either by disclosure in writing or entry into an audit agreement with EPA prior to submission of the facility's first annual Title V certification under new ownership, the violations disclosed would be considered voluntarily discovered for purposes of the Audit Policy.

The 2007 Frequently Asked Questions also provides that:

- New owners may be eligible for penalty mitigation under the Audit Policy for violations at newly acquired facilities irrespective of the disclosing entity's compliance history at other facilities.

EPA's primary interest is to encourage owners of newly acquired facilities to undertake a comprehensive examination of and improvements to a facility's environmental compliance and its compliance management systems. Notwithstanding a new owner's history of violations at its other facilities, if its efforts to examine and improve upon an acquired facility's environmental operations are thorough and are likely to result in improved compliance, EPA's intent is to encourage such examinations. The Audit Policy: Frequently Asked Questions (2007) can be found on the Internet at *http://www.epa.gov/compliance/incentives/auditing/auditpolicy.html*.

C. Role of Benefit Recapture in the Auditing Context

The imposition of civil penalties that recapture the economic benefit of noncompliance is the cornerstone of the EPA's civil penalty program. Benefit recapture was adopted in 1984, and it has served the Agency and the public well. Benefit recapture has also been a part of the Audit Policy since it was first issued, on the premise that, even in self-audit and disclosure situations, penalties should not be reduced below the level necessary to recapture economic benefit when a violator has achieved an economic advantage over its complying competitors. Accordingly, the Audit Policy provides that EPA reserves the right to assess any economic benefit which may have been realized as a result of noncompliance, even where the entity meets all other Audit Policy conditions. The Audit Policy further provides that the Agency may also waive the economic benefit component of the penalty where the Agency determines that the economic benefit is insignificant (65 FR 19620).

Violators obtain an economic benefit from violating the law by delaying compliance, avoiding compliance or obtaining an unfair competitive advantage. When violators delay compliance, they have the use of the money that should have been spent on compliance to put into profit-making investments. Put simply, violators ''gain'' the interest on the amount of money that should have been invested in pollution control equipment. A

[2] Under the regulations governing CAA Title V permit applications and annual compliance certifications, any application, form, report or compliance certification is required to contain a certification by a responsible official of the truth, accuracy and completeness of information contained in such documents. The regulations further provide that ''[t]his certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.'' 40 CFR 70.5(d).

typical example is where a factory delays installation of a required waste water treatment facility. If the waste water treatment facility costs $1,000,000 to install, and the violator waits three years past the required date to comply, the violator has saved about $236,000 by delaying compliance.[3]

A second type of economic benefit is derived when a violator not only delays but avoids the costs it would have incurred if it had complied in a timely manner. A typical example would be where a factory avoids the operation and maintenance costs for the above-mentioned waste water treatment plant for the three years the polluter was out of compliance. If the facility's annual operation and maintenance costs are $100,000, then the violator probably saved about $200,000 by avoiding the operation and maintenance costs for three years (again assuming the violator is in the top tax bracket).

The third type of economic benefit is derived from the violator obtaining an unfair competitive advantage. For example, where a violator is selling banned products (e.g., DDT), any money made from the sale of this banned pesticide would be illegal.[4]

D. Why is EPA Currently Considering Tailoring Incentives for Audit Policy Disclosures for New Owners of Regulated Entities?

As previously stated, one of EPA's main goals is to secure the prompt correction of environmental violations and achieve significant improvements to the environment as expeditiously as possible. A number of factors, including the Agency's recent experience with corporate auditing agreements following large mergers and acquisitions, have highlighted the promising opportunity presented by encouraging new owners of regulated facilities to discover, disclose, correct, and prevent the recurrence of environmental violations.

It is reasonable to surmise that new owners may be particularly well-situated and highly motivated to focus on and invest in making a ''clean start'' for their new facilities and thus may be willing to conduct thorough self-audits of their new facilities, disclose any violations found, promptly correct the violations, and make the significant improvements that will enhance compliance going forward. If former owners were not timely about a facility's compliance obligations, the new owners may want to make a clean break with the past and get their newly acquired facilities into compliance promptly. It is possible that new owners may see the benefits of quickly assessing and working to limit their company's liability, and a firm with a widely-respected compliance record may want to ensure that any new acquisition develops a similarly positive record. Although some anecdotal accounts suggest that, in recent years, new owners have often had to make purchasing decisions based upon more limited information about environmental compliance issues than may have been available in the past, there has likely been at least some opportunity for pre-acquisition due diligence review. Even somewhat limited due diligence findings could help trigger a new owner's interest in more comprehensively assessing the facility's environmental status and exposure. New facility managers may also have access to new infusions of capital, which could enable the sort of improvements that yield significant benefit to the environment.

The Agency recognizes, however, that certain disincentives may stand in the way of new owners who are interested taking advantage of the Audit Policy. New owners may still have to pay substantial civil penalties under the Audit Policy, as only the gravity portion of the penalty can currently be mitigated. It stands to reason that new owners may be uncomfortable about calling EPA's attention to compliance issues at their newly acquired facilities when they themselves may not be fully aware of all the compliance issues presented. Particularly when many and/or complex facilities are involved, it may indeed be difficult for new owners to have a reasonable idea of the full spectrum of compliance issues.

In addition, the Agency's experience with implementing the Audit Policy, especially with regard to corporate auditing agreements, suggests that one of the major reasons a company may be hesitant to self-audit and disclose under the Audit Policy is uncertainty about how the Agency will treat such self-disclosures. One of the Agency's current goals is to provide greater overall certainty and consistency in the Audit Policy's implementation, and the recently-issued Audit Policy: Frequently Asked Questions (2007) should help to resolve such concerns generally. Nevertheless, there is likely still some hesitation on the part of new owners to self-disclose violations, because they worry about exactly how such disclosures will be handled by the Agency.

Encouraging new owners with tailored incentives that help address some of their concerns or alleviate some of their costs, in the context of a well-defined program that provides greater certainty about the handling of disclosures, may make the difference in their willingness to come forward and to commit to improving their environmental compliance and reducing their environmental footprint. There is a strong equitable argument that a new owner should not be penalized for economic benefit relating to violations that arose when a facility was not under the new owner's control, if that new owner is willing to promptly address violations and make changes to ensure the facility stays in compliance in the future. The Agency is also interested in exploring the idea of tailored incentives because it may present an opportunity to enhance EPA's efforts to effectively utilize scarce government resources, by securing high quality environmental improvements and achieving the most significant environmental benefit more quickly than might otherwise occur. Nevertheless, the Agency is also aware that such incentives may have unintended adverse consequences with respect to, for example, discouraging appropriate due diligence, timely compliance and a level playing field, or other negative effects, and EPA intends to consider the potential for such negative results as well.

E. Objectives of Any Potential Pilot Program

If, after review and consideration of all comments on this concept and on any draft incentive policy, the Agency decides it makes sense to test the approach of tailoring incentives to encourage new owners to utilize the Audit Policy, EPA would then develop a pilot program. Such a pilot program would be evaluated after three years and would be designed with four main objectives in mind:

1. The program should increase the number of self-audits and disclosures that yield significant environmental benefits.

2. The program should be transparent and straightforward. There should be clarity about the program's goals and how the Agency will handle those firms that self-audit and disclose violations, and the program should have sufficient

[3] This number was generated by the current version of the BEN computer model using the following assumptions: (1) The violator was in the average maximum tax bracket; (2) the violator's cost of money (i.e., the discount/compound rate) was 7.9%; and (3) inflation was based on the Plant Cost Index published in Chemical Engineering magazine. The BEN computer model can be found at *http://www.epa.gov/compliance/civil/econmodels/index.html*.

[4] For a more detailed discussion of how economic benefit is created, *see* **Federal Register** Notice of August 25, 2005, entitled ''Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases'' (70 FR 50326).

safeguards to ensure that only bona-fide new owners participate.

3. The program should be efficient to administer. EPA must develop a program that can be effective with the limited resources available to administer it. For instance, EPA does not envision analyzing the various financial details of each merger or acquisition.

4. The program should also have minimal transaction costs for the regulated entities participating in the program. While the compliance costs for the firms participating may be substantial, the actual participation in the program should be cost-effective.

II. Issues

The Agency is seeking comment limited to: (1) Whether EPA should offer tailored incentives to encourage new owners of regulated entities to discover, disclose, correct and prevent environmental violations; (2) how should the Agency determine who is a new owner; (3) what incentives should the Agency consider offering in order to encourage new owners to self-audit and disclose; and (4) if such tailored incentives are offered, what measures should the Agency use in determining whether and to what extent self-audits and disclosures from new owners are achieving significant improvements to the environment.

A. Should the Agency Offer Tailored Incentives to Encourage New Owners of Regulated Entities to Self-Audit and Disclose Violations?

Are tailored incentives needed and/or appropriate to encourage self-audits and disclosures by new owners of regulated entities? Do the circumstances of new ownership warrant special consideration or handling, if the new owner was not responsible for creating a violation and there exists potentially significant environmental benefit that could result from new owners' disclosures and correction of violations? Or, does the Audit Policy as currently implemented already offer sufficient incentives to induce new owners to undertake self-audits and disclosures?

1. Due Diligence in Mergers and Acquisitions

Anecdotal accounts suggest that, in today's merger and acquisition market, acquiring firms often have to make decisions about a target acquisition under tight deadlines and with relatively minimal information about an entity's environmental compliance status or problems. These accounts indicate that the traditional paradigm of assuming that due diligence review will yield full knowledge to the purchaser about any potential acquisition may not be accurate in many current mergers and acquisitions. EPA suspects that the amount of environmental compliance due diligence varies greatly depending on the industrial sector involved, or on whether a certain target facility's or company's environmental compliance is likely to present an important or material issue (e.g., environmental compliance would be more germane to the purchase of a chemical company than of a financial services firm). EPA seeks comment on the extent to which pre-acquisition due diligence reviews reveal environmental noncompliance (as opposed to environmental contamination and remedial liability).

Providing tailored incentives to self-audit and disclose could potentially improve environmental compliance in these situations by encouraging in-depth auditing after purchase. On the other hand, providing such incentives could cause sellers to further delay or avoid compliance (i.e., a firm might be tempted to sell off a unit to another business in its noncompliant state rather than bring that unit into compliance), or could have the unintended effect of encouraging buyers to perform inadequate due diligence. EPA seeks comment on whether it would be appropriate to require that new owners have performed a certain level of pre-acquisition due diligence to qualify for tailored incentives, and if so, what that level should be? The Agency also seeks comment on the potential effects on environmental compliance and on due diligence reviews that might result from offering tailored incentives for new owners.

2. Purchase Price Calculation

If, as the anecdotal reports mentioned above would indicate, the due diligence that potential buyers perform may have substantial gaps with regard to information about environmental compliance issues, what is the effect on acquisition negotiations? If an acquiring company had perfect information, presumably it would adjust its offered purchase price to account for any anticipated environmental liabilities associated with the target firm. But, without good information, the buyer's offer may not reflect adjustments for the cost of environmental noncompliance. EPA seeks comment on the extent to which environmental noncompliance liabilities (as distinguished from environmental remediation liabilities) are reflected in purchase price, and whether tailored incentives should take this into account.

3. Indemnification Agreements Between Purchaser and Seller

The Agency is aware that, in acquisition situations, sellers may indemnify purchasers across a broad range of issues, including environmental liability. If a selling firm has indemnified the purchaser for violations which are ultimately disclosed by the new owner, are tailored incentives to self-report needed at all? On the other hand, the mere existence of an indemnification agreement does not insulate the purchaser from liability. Given the Agency's interest in encouraging appropriate accountability and buyer/seller agreements on environmental compliance issues, how should EPA take indemnification agreements into account in designing any tailored incentives? Should the existence or terms of an indemnification agreement have any bearing on a new owner's eligibility for tailored incentives and, if so, how? The Agency seeks comment on all the questions above.

4. Other Requirements for Incentives

Should the Agency consider other eligibility criteria or participation requirements if a program to offer tailored incentives is developed?

B. What Constitutes a ''New Owner'' for Purposes of Being Offered Tailored Incentives under the Audit Policy?

If EPA develops a pilot program offering incentives to new owners, the Agency's goal would be to ensure that only bona-fide new owners can participate. There should be no possibility that a firm could evade significant environmental liabilities by making superficial changes designed to make it appear as if the regulated entity has a new owner. The Agency believes that, in the context of eligibility for tailored incentives, only ''arm's length'' transactions can produce ''new owners.''

However, the Agency does not have the resources necessary to delve into complex corporate structures and histories to make determinations about the authenticity of new ownership in the context of such Audit Policy self-disclosures. The Agency seeks comment on a clear, straightforward and easily administered approach to determining ''new ownership'' and eligibility for tailored incentives, and on the specific questions posed below.

1. What should a company need to provide to demonstrate to the Agency that it is a bona-fide ''new owner?''

What should the standard be, to demonstrate ''new ownership'' in this

context? Should the Agency require each company to self-certify to the government that it is indeed a bona-fide new owner, and eligible for tailored incentives? If a self-certification is appropriate in this situation, what should it contain? Should other proof be offered along with the self-certification?

2. How long after an acquisition is an owner still ''new'' for the purpose of being offered tailored incentives?

The Agency is seeking a clear approach to use in making such determinations. While EPA wants to encourage new owners to avail themselves of this process, there must be a time limit for the new owners to address environmental violations that began prior to their assuming ownership. Otherwise, the Audit Policy's goal of encouraging regulated entities to self-audit and promptly correct noncompliance could be undermined.

3. How should the Agency treat different acquisition transactions?

Should the Agency make any distinctions between acquisitions and mergers? How should EPA handle disclosures by reorganized companies that emerge from Chapter 11 bankruptcy? Should companies in which the controlling interest is purchased by a new firm with no plans to participate in management or operations be eligible for incentives? How should the Agency treat companies that are purchased by their employees, who were employed by the company when noncompliance began?

C. What Incentives Should the Agency Consider to Encourage New Owners to Self-Disclose?

EPA is also inviting comment on what tailored incentives might be appropriate to encourage self-auditing and disclosures from new owners. EPA has identified three major potential incentives: (1) Reducing civil penalties beyond what the current Audit Policy provides, by reducing any economic benefit portion of the penalty; (2) allowing Audit Policy consideration of violations which would otherwise be ineligible, because their discovery is legally mandated and thus not discovered voluntarily; and (3) providing recognition from the Agency to new owners who self-audit and disclose under the Audit Policy.

EPA is seeking comment on these three possible incentives as well as on any alternative approaches that might be effective. Commenters suggesting other incentives are requested to clearly describe those incentives and how they would function in the Audit Policy context.

In addition, there are some specific questions associated with the three potential incentives suggested above on which EPA is seeking comment:

1. How should economic benefit be calculated for disclosures by new owners?

a. When should the clock start running when calculating economic benefit?

The current practice is to calculate economic benefit forward from the date a violation first occurred. This method can result in benefit calculations so large that they serve as a disincentive to self-report, especially in the context of certain types of statutory violations, which may be longstanding and require multi-million dollar capital and operating cost expenditures to remedy. Additionally, most new owners would be averse to paying significant economic benefit amounts when they were not in control of the facility when the violations occurred and had little or no knowledge of them at the time of purchase. An alternative method of calculating benefit in the new owner context would be to commence calculating economic benefit from the date the facility was acquired; another possibility might be to use the date the post-acquisition audit was completed. If the latter, how long should a new owner be given to complete the audit? Another approach might be to give the new owner a reasonable time after acquisition to put on controls, particularly where those controls are complex, and to calculate benefits for delays beyond the reasonable period.

b. Should the economic benefit calculation take into account whether and the extent to which the seller has indemnified the buyer?

As discussed above, in Section II.A.3.of this Notice, the Agency is aware that, in many acquisition situations, the seller has indemnified the new owner from liability from a whole host of issues, often including certain environmental liabilities. The Agency seeks comment specifically on whether such indemnification arrangements should have any bearing on the calculation of penalties for economic benefit, as a potential incentive.

c. In calculating economic benefit, should the Agency allow the new owner to offset the cost of the audit?

Some self-audits can be expensive, particularly for large, complex facilities. One incentive might be to offset the cost of the audit from the economic benefit calculation. A fair, objective and efficient way of establishing the cost of the audit would be critical to this approach, especially when an audit has been performed by the company itself, rather than by an outside third-party auditor.

2. Should EPA allow consideration under the Audit Policy of violations which might otherwise be excluded, when the disclosures come from new owners?

As described in Section I.B.3.of this Notice, EPA's recently issued Audit Policy: Frequently Asked Questions (2007) makes new owners eligible for Audit Policy penalty mitigation for violations at newly acquired facilities, when the violations are discovered as part of a compliance examination agreed to be undertaken prior to the first annual certification under Title V of the Clean Air Act, or are disclosed to EPA before that time. An additional suggested incentive is to allow consideration under the Audit Policy of certain other violations (e.g., Risk Management Program (RMP) under CAA 112(r)(7)) which may otherwise be ineligible for Audit Policy penalty mitigation. As noted above, Condition 2 of the Audit Policy requires that disclosed violations must not be discovered through a legally mandated monitoring or sampling requirement prescribed by statute or regulation. Therefore, for example, examination pursuant to a RMP Triennial Audit would not normally be considered voluntary. Since EPA wants to encourage new owners to examine compliance and operations at their newly-acquired facilities, correct violations and upgrade deficient equipment and practices, should new owners that in good faith undertake a RMP triennial Audit and inform the Agency of violations, which existed prior to acquisition and are discovered through the audit, be eligible for Audit Policy consideration? Are there other similar categories of violations disclosed by new owners that should be eligible for Audit Policy consideration?

3. Should the Agency provide recognition to new owners who self-audit and disclose under the Audit Policy?

Would positive recognition by the Agency, commending a new owner's willingness to voluntarily audit and disclose, encourage a company to undertake such actions? One suggestion has been to create and publicize a list that recognizes companies that have stepped forward to examine compliance and operations at their newly acquired facilities, correct violations and upgrade

deficient equipment and practices. What sort of recognition, if any, would be most desirable?

D. Measures of Success

If the Agency decides to develop a policy for tailored incentives for new owners, EPA intends to develop a three-year pilot program to test the effectiveness of such incentives. In order to objectively, effectively and promptly evaluate the pilot program and this approach, EPA must have already identified clearly measurable outcomes and efficient assessment methodologies. The main goal of this program, and the most important measure of success, would be to show that compliance with environmental laws and regulations has improved, and that significant environmental benefit has been attained. However, there are different approaches for determining how well these goals have been met.

What measures of success should the Agency adopt for the evaluation of a pilot program? Important outcomes to consider could be the number of disclosures made under the pilot program, the significance of the violations involved, and the significance of the pollutant reductions that can be attributed to or associated with these disclosures. Transparency of the program, efficiency in administration, and low transaction costs are also issues to be considered in evaluating the tailored incentive approach. EPA is seeking comment on any potential measures, and on the methodologies necessary to accurately measure them.

III. Public Process

As part of EPA's effort to obtain input on whether to offer tailored incentives for new owners self-disclosing under the Audit Policy, the Agency is planning to hold two public comment sessions. At those two meetings, interested parties may attend and provide oral and written comments on the issues. The first meeting is scheduled for Washington, DC at the J.W. Marriott Hotel, 1331 Pennsylvania Ave., NW., on June 12, 2007. The second one is scheduled for San Francisco at the Palace Hotel, 2 New Montgomery St., on June 20, 2007. Both meetings will begin at 10 a.m. and end at 4 p.m.

The Agency is especially interested in comments relating to the issues specified in this Notice. After the comment period closes, the Agency plans to review and consider all comments. If EPA decides to develop a pilot program offering tailored incentives to new owners beyond those currently available under the Audit Policy, the Agency would then publish a second **Federal Register** notice to seek comment on such a proposed pilot program. After a second round of public comment, the Agency would publish in the **Federal Register**: The final description of the pilot program; an announcement of its start date; and a description of how its success in achieving increased self-auditing and disclosure and significant improvement to the environment will be evaluated. EPA encourages parties of all interests, including State and local government, industry, not-for-profit organizations, municipalities, public interest groups and private citizens to comment, so that the Agency can hear from as broad a spectrum as possible.

IV. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *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:

- Identify the Notice; Request for Comments by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions.
- Explain why you agree or disagree; suggest alternatives and language.
- Describe any assumptions and provide any technical information and/or data that you used.
- If possible, provide any pertinent information about the context for your comments (e.g., the size and type of acquisition transaction you have in mind).
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Submit your comments on time.

Dated: April 30, 2007.

Granta Y. Nakayama,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. E7–9197 Filed 5–11–07; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Notice of Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 72 FR 26115, Tuesday, May 8, 2007.

PREVIOUSLY ANNOUNCED DATE AND TIME OF MEETING: Wednesday, May 16, 2007, 9:30 a.m. Eastern Time.

CHANGE IN THE MEETING:

Open Session:

Item Nos. 3. Full-Service Publication Storage and Distribution Center Contract has been removed from the Agenda.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Acting Executive Officer, on (202) 663–4070.

Dated: May 10, 2007.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 07–2386 Filed 5–10–07; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Assessment Rate Adjustment Guidelines for Large Institutions and Insured Foreign Branches in Risk Category I

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final guidelines.

SUMMARY: The FDIC is publishing the guidelines it will use for determining how adjustments of up to 0.50 basis points would be made to the quarterly assessment rates of insured institutions defined as large Risk Category I institutions, and insured foreign branches in Risk Category I, according to the Assessments Regulation. These guidelines are intended to further clarify the analytical processes, and the

controls applied to these processes, in making assessment rate adjustment determinations.

DATES: *Effective Date:* May 8, 2007.

FOR FURTHER INFORMATION CONTACT: Miguel Browne, Associate Director, Division of Insurance and Research, (202) 898–6789; Steven Burton, Senior Financial Analyst, Division of Insurance and Research, (202) 898–3539; and Christopher Bellotto, Counsel, Legal Division, (202) 898–3801.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Assessments Regulation (12 CFR 327.9 [1]), assessment rates of large Risk Category I institutions are first determined using either supervisory and long-term debt issuer ratings, or supervisory ratings and financial ratios for large institutions that have no publicly available long-term debt issuer ratings. While the resulting assessment rates are largely reflective of the rank ordering of risk, the Assessments Regulation indicates that FDIC may determine, after consultation with the primary federal regulator, whether limited adjustments to these initial assessment rates are warranted based upon consideration of additional risk information. Any adjustments will be limited to no more than 0.50 basis points higher or lower than the initial assessment rate and in no case would the resulting rate exceed the maximum rate or fall below the minimum rate in effect for an assessment period. In the Assessments Regulation, the FDIC acknowledged the need to further clarify its processes for making adjustments to assessment rates and indicated that no adjustments would be made until additional guidelines were approved by the FDIC's Board.

On February 21, 2007, the FDIC published in the **Federal Register**, for a 30-day comment period, a set of proposed guidelines that would be used by the FDIC to evaluate when an assessment rate adjustment is warranted as well as the magnitude of that adjustment. 72 FR 7878 (Feb. 21, 2007). The FDIC sought public comment on the proposed guidelines and received seven comment letters: three from trade organizations whose membership is comprised of banks and savings associations (one of these letters was submitted jointly on behalf of three trade organizations), three from large banking organizations, and one from a small community bank.[2] The comments received and the final guidelines governing the assessment rate adjustment process are discussed in later sections.

II. Summary

For purposes of making assessment rate adjustment decisions as transparent as possible, the final guidelines describe in detail the steps that will be used by the FDIC to identify possible inconsistencies between the rank orderings of risk suggested by initial assessment rates and other risk information, the types of risk measures that will be considered in these comparisons, the relative importance that the FDIC will attach to various types of risk measures, and the controls to ensure any decision to make an adjustment is justified and well-informed.

The first six guidelines describe the analytical processes and considerations that will determine whether an assessment rate adjustment is warranted as well as the magnitude of any adjustment. In brief, the FDIC will compare the risk ranking of an institution's initial assessment rate, as compared to the assessment rates of other large Risk Category I institutions, with the risk rankings suggested by other risk measures. The purpose of these comparisons is to identify possible material inconsistencies in the rank orderings of risk suggested by the initial assessment rate and these other risk measures. Comparisons will encompass risk measures that relate to both the likelihood of failure and loss severity in the event of failure. The analytical process will consider all available risk information pertaining to an institution's risk profile including supervisory, market, and financial performance information as well as quantitative loss severity estimates, qualitative indicators that pertain to potential resolutions costs in the event of failure, and information pertaining to the ability of an institution to withstand adverse conditions.

The next four guidelines described the controls that will govern the analytical process to ensure adjustment decisions are justified, well supported, and appropriately take into account additional information and views held by the primary federal regulator, the appropriate state banking supervisor, and the institution itself. These guidelines include a requirement to consult with an institution's primary federal regulator and appropriate state banking supervisor before making an adjustment, and to provide an institution with advance notice of, and an opportunity to respond to a pending upward adjustment.

The timing of an assessment rate adjustment will depend on whether it is an upward or a downward adjustment. Any upward adjustment would not be reflected in an institution's assessment rates immediately, but rather in the first assessment period after the assessment period that prompted the notification of an upward adjustment. The purpose of this advance notice is to provide an institution being considered for an upward adjustment an opportunity to respond with additional information should the institution disagree with the stated reasons for the upward adjustment. Downward adjustments will be applied immediately within the assessment period being considered. Any implemented upward or downward adjustment will remain in effect until the FDIC determines the adjustment is no longer warranted. The removal of a downward adjustment is subject to the same advance notification requirements as an upward adjustment.

Underlying the FDIC's adjustment authority is the need to preserve consistency in the orderings of risk indicated by these assessment rates, the need to ensure fairness among all large institutions, and the need to ensure that assessment rates take into account all available information that is relevant to the FDIC's risk-based assessment decision. As noted in the proposed guidelines, the FDIC expects that such adjustments will be made relatively infrequently and for a limited number of institutions. This expectation reflects the FDIC's view that the use of agency and supervisory ratings, or the use of supervisory ratings and financial ratios when agency ratings are not available, will sufficiently reflect the risk profile and rank orderings of risk in large Risk Category I institutions in most cases.

Comments on the General Intent of the Adjustment Guidelines

A joint letter submitted on behalf of three trade organizations (referred to hereafter as the ''joint letter'') agrees that it is critical for the FDIC to identify inconsistencies and anomalies between initial assessment rates and relative risk levels posed by large Risk Category I institutions. The joint letter also urges the FDIC to closely monitor assessment rates produced by the Assessment Rule and to consider modifying the base methodology for determining initial assessment rates if a large number of assessment rate adjustments were deemed necessary. The FDIC agrees

[1] 71 FR 69282 (November 30, 2006).

[2] The trade organizations included the American Bankers Association, America's Community Bankers, the Financial Services Roundtable, the Clearing House, and the Committee for Sound Lending.

with these observations and has stated that it would likely reevaluate the assessment rate methodology applied to large Risk Category I institutions if assessment rate adjustments were to occur frequently and for more than a limited number of institutions.

A comment from a small community bank indicates its opposition to further reductions in the assessment rates of large banks. The guidelines discussed below allow for both increases and decreases in assessment rates of large Risk Category I institutions.

III. The Assessment Rate Adjustment Process

The process for determining whether an assessment rate adjustment is appropriate, and the magnitude of that adjustment, entails a number of steps. In the first step, an initial risk ranking will be developed for all large institutions in Risk Category I based on their initial assessment rates as derived from agency and supervisory ratings, or the use of supervisory ratings and financial ratios when agency ratings are not available, in accordance with the Assessment Rule.

In the second step, the FDIC will compare the risk rankings associated with these initial assessment rates with the risk rankings associated with broad-based and focused risk measures as well as the risk rankings associated with other market indicators such as spreads on subordinated debt. Broad-based risk measures include each of the inputs to the initial assessment rate considered separately, other summary risk measures such as alternative publicly available debt issuer ratings, and loss severity estimates, which are not always sufficiently reflected in the inputs to the initial assessment rate or in other debt issuer ratings. Focused risk measures include financial performance measures, measures of an institution's ability to withstand financial adversity, and individual factors relating to the severity of losses to the insurance fund in the event of failure.

In the third step, the FDIC will perform further analysis and review in those cases where the risk rankings from multiple measures (such as broad-based risk measures, focused risk measures, and other market indicators) appear to be inconsistent with the risk rankings associated with the initial assessment rate. This step will include consultation with an institution's primary federal regulator and state banking supervisor. Although information or feedback provided by the primary federal regulator or state banking supervisor will be considered in the FDIC's ultimate decision concerning such adjustments, participation by the primary federal regulator or state banking supervisory in this consultation process should not be construed as concurrence with the FDIC's deposit insurance pricing decisions.

In the final step, the FDIC will notify an institution when it proposes to make an upward adjustment to that institution's assessment rate. Notifications involving an upward adjustment in an institution's initial assessment rate will be made in advance of implementing such an adjustment so that the institution has an opportunity to respond to or address the FDIC's rationale for proposing an upward adjustment.[3] Adjustments will be implemented after considering institution responses to this notification along with any subsequent changes either to the inputs to the initial assessment rate or any other risk factor that relates to the decision to make an assessment rate adjustment.

IV. Final Guidelines Governing Assessment Rate Adjustment Determinations

To ensure consistency, fairness, and transparency, the FDIC will apply the following guidelines to its processes for determining when an assessment rate adjustment appears warranted, the magnitude of the adjustment, and controls to ensure adjustments are justified and take into consideration any additional information or views held by the primary federal regulator, state banking supervisor, and the institutions themselves. Guidelines 1 through 6 relate to the analytical process that will govern assessment rate adjustment decisions. Guidelines 7 through 10 relate to the operational controls that will govern assessment rate adjustment decisions.

Analytical Guidelines

Guideline 1: The analytical process will focus on identifying inconsistencies between the rank orderings of risk associated with initial assessment rates and the rank orderings of risk indicated by other risk measures. This process will consider all available information relating to the likelihood of failure and loss severity in the event of failure.

The Rank Ordering Analysis

The purpose of the analytical process is to identify institutions whose risk measures appear to be significantly different than other institutions with similarly assigned initial assessment rates. The analytical process will identify possible inconsistencies between the rank orderings of risk associated with the initial assessment rate and the risk rankings associated with other risk measures. The intent of this analysis is not to override supervisory evaluations or to question the validity of agency ratings or financial ratios when applicable. Rather, the analysis is meant to ensure that the assessment rates, produced from the combination of either supervisory ratings and long-term debt issuer ratings (the debt rating method), or supervisory ratings and financial ratios (the financial ratio method) result in a reasonable rank ordering of risk that is consistent with risk profiles of large Risk Category I institutions with similar assessment rates.

The FDIC will consider adjusting an institution's initial assessment rate when there is sufficient information from a combination of broad-based risk measures, focused risk measures, and other market indicators to support an adjustment. An adjustment will be most likely when: (1) The rank orderings of risk suggested by multiple broad-based measures are directionally consistent and materially different from the rank ordering implied by the initial assessment rate; (2) there is sufficient corroborating information from focused risk measures and other market indicators to support differences in risk levels suggested by broad-based risk measures; (3) information pertaining to loss severity considerations raise prospects that an institution's resolution costs, when scaled by size, would be materially higher or lower than those of other large institutions; or (4) additional qualitative information from the supervisory process or other feedback provided by the primary federal regulator or state banking supervisor is consistent with differences in risk suggested by the combination of broad-based risk measures, focused risk measures, and other market indicators.

A detailed listing of the types of broad-based risk measures, focused risk measures, and other market indicators that will be considered during the analysis process are described in detail in the Appendix. The listing of risk measures in the Appendix is not intended to be exhaustive, but represents the FDIC's view of the most important focused risk measures to consider in the adjustment process. The development of risk measurement and monitoring capabilities is an ongoing and evolving process. As a result, the FDIC may revise the risk measures considered in its analytical processes over time as a result of these

[3] The institution will also be given advance notice when the FDIC determines to eliminate any downward adjustment to an institution's assessment rate.

development activities and consistent with the objective to consider all available risk information pertaining to an institution's risk profile in its assessment rate decisions. The FDIC will inform the industry if there are material changes in the types of information it considers for purposes of making assessment rate adjustment decisions.

General Comments on Analytical Guideline 1

A comment from a large banking organization indicates that the market and supervisory ratings already encompass many of the risk measures that will be considered by the FDIC in making assessment rate adjustment decisions. As a result, the commenter questions why the FDIC's judgment about the risk inherent in these measures should ever be substituted in place of the views of the market or supervisors. Another comment from a large banking organization suggests that the guidelines are redundant with supervisory evaluations from the primary federal regulator.

The analytical approach described in these guidelines does not substitute FDIC views of risk in place of either market or supervisory ratings. The initial assessment rates of large Risk Category I institutions are determined from a combination of supervisory ratings and long-term debt issuer ratings or from a combination of supervisory ratings and financial ratios when long-term debt issuer ratings are not available. Combining these risk measures can produce risk rank orderings of assessment rates that do not align with the risk rank orderings of supervisory ratings considered in isolation. As a result, the consideration of additional risk factors is not redundant with supervisory risk measurement processes and will, in the FDIC's view, help preserve a reasonable and consistent ordering of risk among large Risk Category I institutions as indicated by the range of assessment rates applied to these institutions.

Consideration of Quantitative Loss Severity Factors

The loss severity factors the FDIC will consider include both quantitative and qualitative information. Quantitative information will be used to develop estimates of deposit insurance claims and the extent of coverage of those claims by an institution's assets. These quantitative estimates can in turn be converted into a relative risk ranking and compared with the risk rankings produced by the initial assessment rate. Factors that will be used to produce loss severity estimates include: estimates for the amount of insured and non-insured deposit funding at the time of failure; estimates of the extent of an institution's obligations that would be subordinated to depositor claims in the event of failure; estimates of the extent of an institution's obligations that would be secured or would otherwise take priority over depositor claims in the event of failure; and the estimated value of assets in the event of failure.

Comments on Quantitative Loss Severity Considerations

One comment letter, the joint letter, objects to the inclusion of Federal Home Loan Bank (FHLB) borrowings in producing loss severity estimates and requests that the FDIC not include these funding sources in the calculation of secured liabilities for purposes of making such estimates. While acknowledging that such advances reduce the level of assets available to the FDIC to satisfy depositor claims in the event of failure, the commenter argues that FHLB borrowings provide a stable and reliable source of funding that reduces the likelihood of failure.

The final guidelines do not single out FHLB borrowings, either as a negative or a positive risk factor. The FDIC recognizes that while larger volumes of such funding could result in a lower level of recoveries on failed institution assets, the presence of such funding can also reduce liquidity risks. The FDIC believes it is appropriate to take both factors into account. Specifically, the FDIC believes it should include FHLB borrowings in its calculation of secured borrowings since their exclusion would lead to incomplete and possibly erroneous loss severity estimates. However, the FDIC agrees with the point raised in the joint letter that it is also appropriate to consider the stabilizing influence of such funding while evaluating liquidity risks. Accordingly, the Appendix to the final guidelines makes such liquidity risk considerations more explicit (see qualitative and mitigating liquidity factors under the Liquidity and Market Risk Indicators section).

Another comment from a large banking organization argues that the FDIC's Assessment Rule assumes a worst-case scenario that all deposits will be insured and therefore that any adjustments should result in lower not higher assessment rates.

The FDIC acknowledges that uninsured deposits would serve to reduce the level of losses sustained by the insurance funds in the event of failure. However, the FDIC believes that meaningful loss severity estimates need to take into account a number of considerations beyond determining current levels of insured and uninsured deposits. These considerations include the prospects for ring-fencing of uninsured foreign deposits (discussed further below) and how the mix of deposit and non-deposit liabilities might change from current levels in a failure scenario. To the extent the FDIC uses loss severity estimates to support an adjustment decision, either up or down, it will document and support the assumptions and the bases for these estimates.

Consideration of Qualitative Loss Severity Factors

In addition to quantitative loss severity factors, the FDIC will also consider other qualitative information that would have a bearing on the resolution costs of a failed institution. These qualitative factors include, but are not limited to, the following:

- The ease with which the FDIC could make quick deposit insurance determinations and depositor payments as evidenced by the capabilities of an institution's deposit accounting systems to place and remove holds on deposit accounts en masse as well as the ability of an institution to readily identify the owner(s) of each deposit account (for example, by using a unique identifier) and identify the ownership category of each deposit account;
- The ability of the FDIC to isolate and control the main assets and critical business functions of a failed institution without incurring high costs;
- The level of an institution's foreign assets relative to its foreign deposits and prospects of foreign governments using these assets to satisfy local depositors and creditors in the event of failure; and
- The availability of sufficient information on qualified financial contracts to allow the FDIC to identify the counterparties to, and other details about, such contracts in the event of failure.

As with other risk measures, the FDIC will evaluate these qualitative loss severity considerations by gauging the prospects for higher resolutions costs posed by a given institution relative to the same type of risks posed by other large Risk Category I institutions. Where the FDIC lacks sufficient information to make such comparisons, assessment rate adjustment decisions will not incorporate these considerations.

Comments on Qualitative Loss Severity Considerations

Deposit Accounting System Capabilities

Three comment letters (the joint letter, a trade organization, and a large

banking organization) object to the inclusion of qualitative loss severity considerations pertaining to the capabilities of deposit accounting systems in the assessment rate adjustment analysis process. Each commenter indicates that it was premature for the FDIC to incorporate such considerations given the separate proposed rulemaking process under way—the Large-Bank Deposit Insurance Determination Modernization Proposal (the modernization proposal).[4] All three letters suggest that such considerations in the assessment rate adjustment process presume the final outcome of this other rulemaking process. The joint letter also suggests that the consideration of these factors may encourage some institutions to undertake costly systems enhancements that may ultimately prove to be inconsistent with requirements imposed by a final rule stemming from the modernization proposal. The joint letter further argues that such considerations do not lend themselves to risk-measurement and would necessarily involve a high degree of subjectivity.

As noted in the proposed guidelines, the FDIC believes that institutions that have the deposit accounting capabilities described above (placing holds en masse and the ability to uniquely identify depositors) present a lower level of resolutions risk irrespective of the existence or absence of deposit accounting system requirements imposed by final rules stemming from the modernization proposal. The FDIC will compare and contrast these capabilities across large Risk Category I institutions and will incorporate such information in adjustment decisions.

Finally, a comment from a trade organization contends that considerations pertaining to the capabilities of institutions' deposit accounting systems are not consistent with the objective of achieving fairness in deposit insurance pricing between large and small institutions since only large institutions would be subject to these types of considerations. The FDIC does not agree that such considerations will necessarily impose a penalty on large institutions relative to small institutions since the evaluation of such factors involves comparisons of the capabilities of one institution's deposit accounting systems relative to those of other large Risk Category I institutions. On the contrary, consideration of this factor could possibly result in lower assessment rates for institutions that possess these capabilities when the systems of other large institutions with similar assessment rates do not have these capabilities.

Foreign Deposits

One comment, the joint letter, indicated that the level of foreign deposits should not be a consideration for adjusting premium rates. While acknowledging the existence of ring-fencing risks, the commenter indicated that a mere ranking of foreign deposits does not provide sufficient information with which to evaluate this risk.

The FDIC agrees that the level of foreign deposits by itself offers limited information as to the prospects for ring-fencing risk in the event of failure. Rather, the FDIC believes that an evaluation of foreign assets held relative to foreign deposits is a better measure of potential ring-fencing risks since such a measure identifies the upper boundary of assets that could be obtained by foreign governments to satisfy local deposit claims in the event of failure. If available, the information about the level of foreign assets to foreign deposits on a country-by-country basis would be better still in evaluating prospects for ring-fencing. Although the FDIC believes it is appropriate to consider such prospects in its loss severity estimates, these estimates would never be the sole determinant of an assessment rate adjustment according to Guideline 4 (described below). Moreover, any loss severity estimates used in support of assessment rate adjustment would need to fully support this estimate and any assumptions underlying the estimate, including any assumptions relating to foreign assets and deposits.

Stress Considerations

To the extent possible, the FDIC will consider information pertaining to the ability of institutions to withstand adverse events (stress considerations). Sources of this information are varied but might include analyses produced by the institution or the primary federal regulator, such as stress test results and capital adequacy assessments, as well as detailed information about the risk characteristics of institution's lending portfolios and other businesses. Because of the difficulties in comparing this type of information across institutions, those stress considerations pertaining to internal stress test results and internal capital adequacy assessments will not be used to develop quantitative analyses of relative risk levels. Rather, such information will be used in a more qualitative sense to help inform judgments pertaining to the relative importance of other risk measures, especially information that pertains to the risks inherent in concentrations of credit exposures and other material non-lending business activities. As an example, in cases where an institution had a significant concentration of credit risk, results of internal stress tests and internal capital adequacy assessments could obviate FDIC concerns about this risk and therefore provide support for a downward adjustment, or alternatively, provide additional mitigating information to forestall a pending upward adjustment. In addition, the FDIC will not use the results of internal stress tests and internal adequacy assessments to support upward adjustments in assessment rates. It must be reemphasized that despite the availability of information pertaining to these stress consideration factors, the FDIC expects that assessment rate adjustments will be made relatively infrequently and for a limited number of institutions.

Comments on Stress Considerations

One comment, the joint letter, indicates that difficult-to-quantify subjective risk factors, such as those pertaining to stress considerations and loss severity, should never be used to increase rates, but only to decrease rates. The FDIC agrees that some of the stress consideration risk factors contained in the proposed guidelines, those pertaining to measures of an institution's ability to withstand financial stress, are difficult to incorporate into an analytical construct that relies on comparisons of ordinal rankings of risk. This difficulty stems from the range of different approaches and different methodologies used to assess capital needs and the ability to withstand financial shocks.

Because of these difficulties, the FDIC agrees with the need to modify its approach for certain stress consideration risk factors. Specifically, rate adjustment decisions in the near term will not rely on quantitative measures involving internal stress test results or internal capital adequacy assessments. Nevertheless, the FDIC believes its assessment rate adjustment process would be incomplete if it did not consider both the extent to which institutions have sufficient capital, earnings, and liquidity to buffer against adverse financial conditions; and the types of risk management processes used by institutions to determine the appropriate level of these buffers. At a minimum, information from an internal

[4] 71 FR 74857 (December 13, 2006). This modernization proposal discusses the need to establish requirements relating to deposit accounting systems capabilities to ensure prompt deposit insurance determinations and prompt payments to insured depositors in the event of failure.

stress testing exercise or an internal capital adequacy assessment would provide useful, albeit nonquanitifiable, insights into management's perspective on the types and magnitude of the risks faced by the institution. Specifically, the FDIC believes that this type of information, considered in a more qualitative than quantitative sense, will lead to more informed deposit insurance pricing decisions by enhancing its understanding of the relative importance of other, more quantifiable risk measures and especially those risk measures relating to credit, market, and operational risk concentrations.

To illustrate, some institutions may occasionally wish to provide stress testing results and internal capital adequacy evaluations to the FDIC to help foster a better understanding of the relative risk levels inherent in a specific portfolio with concentrated credit risk exposures. The FDIC would evaluate this information, not for purposes of initiating an assessment rate adjustment, but to gain further insights into the nature of the underlying credit concentration. If the information presented effectively mitigates concerns over the concentration risk, the FDIC may decide either not to proceed with a pending upward adjustment being contemplated or to proceed with a downward adjustment.

Guideline 2: Broad-based indicators and other market information that represent an overall view of an institution's risk will be weighted more heavily in adjustment determinations than focused indicators as will loss severity information that has bearing on the ability of the FDIC to resolve institutions in a cost effective and timely manner.

The FDIC will accord more weight to risk-ranking comparisons involving broad-based or comprehensive risk measures than focused risk measures. Examples of comprehensive or broad-based risk measures include, but are not limited to, each of the inputs to the initial assessment rate (that is, weighted average CAMELS ratings, long-term debt issuer ratings, and the combination of weighted average CAMELS ratings and the five financial ratios used to determine assessment rates for institutions when long-term debt issuer ratings are not available), and other ratings intended to provide a comprehensive view of an institution's risk profile.[5] Likewise, spreads on subordinated debt will be accorded more weight than other market indicators since these spreads represent an evaluation of risk from institution investors whose risks are similar to those faced by the FDIC.[6] To the extent that sufficient information exists, the FDIC will also accord more weight to the qualitative loss severity factors discussed in Guideline 1 since these have a direct bearing on the resolutions costs that would be incurred by the FDIC in the event of failure and since these factors are generally not taken into account by other risk measures.

The FDIC received no specific comments on Guideline 2.

Guideline 3: Focused risk measures and other market indicators will be used to compare with and supplement the comparative analysis using broad-based risk measures.

Financial performance and condition risk measures, such as those listed in the Appendix, will generally not be as heavily relied upon as the broad-based risk measures previously discussed in making assessment rate adjustment decisions. Rather, the FDIC will use these focused risk measures, along with other market indicators, to supplement the risk comparisons of broad-based risk measures with initial assessment rates and to provide corroborating evidence of material differences in risk suggested by such comparisons.

The FDIC received no specific comments on Guideline 3.

Guideline 4: Generally, no single risk factor or indicator will control the decision on whether to make an adjustment. The absence of certain types of information shall not be construed as indicating higher risks relative to other institutions.

In general, no single risk indicator will be used as the basis for decisions to adjust a large Risk Category I institution's assessment rates. In certain cases, the FDIC may determine that an assessment rate adjustment is appropriate when certain qualitative risk factors pertaining to loss severity suggest materially higher or lower risk relative to the same types of risks posed by other institutions. As noted above, the FDIC intends to place greater weight on these factors since they have a direct bearing on resolution costs and since these factors are generally not considered in other risk measures.

The FDIC will not interpret the absence of certain types of information that are not normal and necessary components of risk management and measurement processes, or financial reporting, to be indicative of higher risks for a given institution relative to other institutions. For example, the FDIC will not construe the lack of a debt issuer rating as being indicative of higher risk.

Comments on Guideline 4

A comment from a large banking organization requests that the FDIC revise the guidelines to eliminate any negative implications to the nonexistence of a risk indicator, such as the absence of an agency rating. The FDIC agrees with this comment. The FDIC will not interpret the absence of certain types of information for a given risk indicator (such as agency ratings, where the institution has no ratings) as evidence of higher risk, and has revised Guideline 4 accordingly.

Guideline 5: Comparisons of risk information will consider normal variations in performance measures and other risk indicators that exist among institutions with differing business lines.

The FDIC will consider the effect of business line concentrations in its risk ranking comparisons. The FDIC's notice of proposed rulemaking for deposit insurance assessments, issued in July 2006, referenced a set of business line groupings that included processing institutions and trust companies, residential mortgage lenders, non-diversified regional institutions, large diversified institutions, and diversified regional institutions.[7] When making assessment rate adjustment decisions, the FDIC will employ risk ranking comparisons within these business line groupings to account for normal variations in risk measures that exist among institutions with differing business line concentrations.

The FDIC received no specific comments on Guideline 5.

Guideline 6: Adjustment will be made only if additional analysis suggests a meaningful risk differential, to include both differences in risk rankings and differences in the underlying risk measures, between the institution's initial and adjusted assessment rates.

Where material inconsistencies between initial assessment rates and other risk indicators are present, additional analysis will determine the magnitude of adjustment necessary to align the assessment rate better with the rates of other institutions with similar risk profiles. The objective of this analysis will be to determine the amount of assessment rate adjustment that would be necessary to bring an institution's assessment rate into better alignment with those of other

[5] The Appendix contains additional descriptions of broad-based risk measures.

[6] The FDIC will take into account considerations relating to the liquidity of a given issue, differing maturities, and other bond-specific characteristics, when making such comparisons.

[7] See 71 FR 41910 (July 24, 2006).

institutions that pose similar levels or risk. This process will entail a number of considerations, including: (1) The number of rank ordering comparisons that identify the institution as a potential outlier relative to institutions with similar assessment rates; (2) the direction and magnitude of differences in rank ordering comparisons; (3) a qualitative assessment of the relative importance of any apparent outlier risk indicators to the overall risk profile of the institution, (4) an identification of any mitigating factors, and (5) the materiality of actual differences in the underlying risk measures.

Based upon these considerations, the FDIC will determine the magnitude of adjustment that would be necessary to better align its assessment rate with institutions that pose similar levels of risk. When the assessment rate adjustment suggested by these considerations is not material, or when there are a number of risk comparisons that offer conflicting or inconclusive evidence of material inconsistencies in either risk rankings or the underlying risk measures, no assessment rate adjustment will be made.

Comments on Guideline 6

A comment from a large banking organization indicates that in order to gauge the significance of an outlier condition, one would need to know the relative levels of the risk indicator being measured in addition to the differences in risk rankings along that measure. The FDIC acknowledges that for a given risk indicator, differences in risk rankings across institutions could represent either a material or an immaterial difference in risk. Although, in general, adjustments would only be considered when a preponderance of risk information indicates the need for an adjustment, the FDIC agrees that it is important to consider both the differences in risk rankings and the magnitude of differences in underlying risk measures, and has revised Guideline 6 accordingly.

Other Comments on Analytical Guidelines 1 Through 6

A comment from a large banking organization supported the guidelines as well reasoned, comprehensive, and consistent with other assessment frameworks used by credit rating agencies and credit risk analyses processes used within many financial institutions. The commenter suggests that the FDIC consider the inclusion of certain additional risk factors in the analytical process such as the diversification and volatility of earnings from major business lines, and the level of net charge-offs to pre-provision earnings. The FDIC agrees with these suggestions and has modified the risk factors in the Appendix accordingly.

A comment from a trade organization objected to the blanket inclusion of ''commercial real estate'' in the definition of one of the risk factors included in the Appendix entitled higher risk loans to tier 1 capital. The FDIC agrees that risks associated with commercial real estate lending can vary considerably depending on such factors as property type, collateral, the degree of pre-leasing, etc. As with any of the measures listed in the Appendix, the FDIC does not consider any single financial ratio as representative of an institution's risk profile. Rather, each set of financial performance factors is accompanied by a description of qualitative and mitigating risk considerations. More specifically, the qualitative considerations accompanying the asset quality measures in the Appendix indicate that the FDIC will consider mitigating factors, including the degree of collateral coverage and differences in underwriting standards, when evaluating credit risks related to commercial real estate holdings. These second-order considerations, coupled with any additional information obtained pertaining to the specific risk characteristics of a given portfolio, will help better distinguish the risk contained within any commercial real estate concentrations.

A comment from a large banking organization recommends that the FDIC's risk ranking analyses be performed without respect to the assessment rate floors in effect for large Risk Category I institutions (i.e., the risk rankings encompassing approximately the 1st through the 46th percentile).[8] The FDIC agrees that the application of the assessment rate floor to the ranking of risk factors results in some loss of information about the magnitude of differences in risk rank levels between institutions in the peer group. Accordingly, the FDIC will initially assign risk rankings to risk measures without respect to how these percentile rankings align with the assessment rate floor. However, the FDIC will continue to view a rank ordering analysis that supports an overall assessment rate risk ranking falling approximately between the lowest 1st and 46th percentiles,[9] as being indicative of minimum risk. The FDIC does not believe this modification to risk ranking comparisons will alter the resulting assessment rate decisions from the analytical process described in the proposed guidelines.

Control Guidelines

Guideline 7: Decisions to adjust an institution's assessment rate must be well supported.

The FDIC will perform internal reviews of pending adjustments to an institution's assessment rate to ensure the adjustment is justified, well supported, based on the most current information available, and results in an adjusted assessment rate that is consistent with rates paid by other institutions with similar risk profiles.

Comments on Guideline 7

One comment, the joint letter, agreed that adjustment decisions should be well supported by the preponderance of factors that suggest a change is required. The FDIC believes the final guidelines establish an analytical process and controls over that process that are consistent with this comment.

Guideline 8: The FDIC will consult with an institution's primary federal regulator and appropriate state banking supervisor prior to making any decision to adjust an institution's initial assessment rate (or prior to removing a previously implemented adjustment). Participation by the primary federal regulator or state banking supervisor in this consultation process should not be construed as concurrence with the FDIC's deposit insurance pricing decisions.

Consistent with existing practices, the FDIC will continue to maintain an ongoing dialogue with primary federal regulator concerning large institution risks. When assessment rate adjustments are contemplated, the FDIC will notify the primary federal regulator and the appropriate state banking supervisor of the pending adjustment in advance of the first opportunity to implement any adjustment. This notification will include a discussion of why the adjusted assessment rate is more consistent with the risk profiles

[8] The proposed guidelines indicated that comparisons of risk measures will generally treat as indicative of low risk that portion of the risk rankings falling within the lowest X percentage of assessment rate rankings, with X being the proportion of large Risk Category I institutions assigned the minimum assessment rate. As of June 30, 2006, 46 percent of large Risk Category I institutions would have been assigned a minimum assessment rate. Therefore, as of June 30, 2006, risk rankings from the 1st to the 46th percentile for any given risk measure would generally have been considered suggestive of low risk, and all risk rankings for risk measures in this range would be set at the 46th percentile for risk ranking comparison purposes.

[9] The 46th percentile corresponds to the proportion of large Risk Category I institutions that would have paid the minimum assessment rate if the final assessment rules would have been in place as of June 30, 2006.

represented by institutions with similar assessment rates. The FDIC will consider any additional information provided by either the primary federal regulator or state banking supervisor prior to proceeding with an adjustment of an institution's assessment rate.

Comments on Guideline 8

A comment from a trade organization indicates that the guidelines do not apply a significant and explicit weight to the views of the primary federal regulator. The FDIC agrees that its adjustment decisions should weigh heavily the views of the primary federal regulator, as well as the views of the appropriate state banking supervisor. As noted under Guideline 1, the intent of any assessment rate adjustment is not to override supervisory evaluations. Rather, the consideration of additional risk information is meant to ensure that assessment rates, produced from a combination of supervisory ratings and agency ratings or supervisory ratings and financial ratios (when applicable), result in a reasonable rank ordering of risk. Guideline 8 also indicates that no adjustment decision will be made until the FDIC consults with the primary federal regulator and the appropriate state banking supervisor. If the primary federal regulator or state banking supervisor choose to express a view on the appropriateness of the adjustment, the FDIC will accord such views significant weight in its decision of whether to proceed with an adjustment.

Guideline 9: The FDIC will give institutions advance notice of any decision to make an upward adjustment to its initial assessment rate, or to remove a previously implemented downward adjustment.

The FDIC will notify institutions when it intends to make an upward adjustment to its initial assessment rate (or remove a downward adjustment). This notification will include the reasons for the adjustment, when the adjustment would take effect, and provide the institution up to 60 days to respond. Adjustments would not become effective until the first assessment period after the assessment period that prompted the notification of an upward adjustment. During this subsequent assessment period, the FDIC will determine whether an adjustment is still warranted based on an institution's response to the notification. The FDIC will also take into account any subsequent changes to an institution's weighted average CAMELS, long-term debt issuer ratings, financial ratios (when applicable), or other risk measures used to support the adjustment. In other words, both an adjustment determination and a determination of the amount of the adjustment will be made with respect to information and risk factors pertaining to the assessment period being assessed—that is, the first assessment period after the assessment period that prompted the notification. The FDIC will also consider any actions taken by the institution, during the period for which the institution is being assessed, in response to the FDIC's concerns described in the notice.

Comments on Guideline 9

One comment, the joint letter, supported this advance notification requirement for upward adjustments, which will give institutions an opportunity to respond to and address the FDIC's concerns.

Guideline 10: The FDIC will continually re-evaluate the need for an assessment rate adjustment.

The FDIC will re-evaluate the need for the adjustment during each subsequent quarterly assessment period. These evaluations will be based on any new information that becomes available, as well as any changes to an institution's weighted average CAMELS, long-term debt issuer ratings, financial ratios (when applicable), or other risk measures used to support the adjustment. Re-evaluations will also consider the appropriateness of the magnitude of an implemented adjustment, for example, in cases where changes to the initial assessment rate inputs result in a change to the initial assessment rate. Consistent with Guideline 9, the FDIC will not increase the magnitude of an adjustment without first notifying the institution of the proposed increase.

The institution can request a review of the FDIC's decision to adjust its assessment rate.[10] It would do so by submitting a written request for review of the assessment rate assignment, as adjusted, in accordance with 12 CFR 327.4(c). This same section allows an institution to bring an appeal before the FDIC's Assessment Appeals Committee if it disagrees with determinations made in response to a submitted request for review.

The FDIC received no specific comment on Guideline 10.

Comments on Control Guidelines

One comment, the joint letter, indicated that institutions should have the opportunity to petition the FDIC for a reduction in assessment rates. The commenter argues that the guidelines only allow the FDIC to initiate changes in assessment rates, and that institutions may have evidence of lower risk that is not captured in either the initial assessment rate or the risk information considered for purposes of determining whether an adjustment is appropriate.

The FDIC believes that the final guidelines, coupled with existing assessment rate rules, give institutions a number of opportunities to argue for lower assessment rates.[11] For instance, institutions have 90 days from the date of receiving an assessment rate invoice to request a review of that rate. This request for review procedure is available whether or not an adjustment is reflected in the assessment rate. Additionally, institutions can appeal decisions made in response to these requests for review to the FDIC's Assessment Appeals Committee.

Another comment from a large banking organization argues that the guidelines should include a greater level of due process for upward adjustments than is available under the existing Assessment Rule to include the opportunity to have objections heard by a neutral third party.

The FDIC agrees that the imposition of an upward assessment rate adjustment should afford institutions opportunities to present counter arguments. The FDIC believes the guidelines provide multiple such opportunities, which are consistent in many respects with the commenter's recommendation. First, an institution will receive advance notification of the FDIC's grounds for considering an upward adjustment. At this point, an institution will have the opportunity to provide information that challenges the appropriateness of an upward assessment rate adjustment. Second, once the FDIC has considered an institution's response to the advance notice of a pending upward adjustment, the FDIC will provide the institution with a written response and rationale for any decision to proceed with the upward adjustment. At this point, the institution will have an opportunity to request a review of a decision to impose a higher assessment rate and will be able to present evidence to challenge the decision in accordance with the Assessment Rule. Third, an institution

[10] The institution can also request a review of the FDIC's decision to remove a previous downward adjustment.

[11] Any requests for review or appeals would be subject to the limitations contained within the Assessment Rule, namely that assessment rate adjustments would be limited to no more than ½ basis point, and that no adjustment may cause an institution's rate to fall below the minimum assessment rate or rise above the maximum assessment rate in effect for a given assessment period.

will be able to appeal the outcome of this request for review to the FDIC's Assessment Appeals Committee. In short, institutions will have multiple opportunities to dispute an upward adjustment, and the institution's position will be considered at increasingly higher levels within the Corporation. The FDIC believes it is neither necessary nor appropriate for it to provide for third party review of decisions made by the FDIC under its statutory authority.

Other Comments on the Guidelines

Incorporation of Basel II Information Into Assessment Rate Adjustment Decisions

One comment, from a large banking organization, recommends that the FDIC table its guidelines pending finalization of rulemaking for the new risk-based capital framework (Basel II). The commenter argues that a risk-differentiation system using Basel II information may produce different results than a system that does not incorporate this information.

The underlying objective of the guidelines is to evaluate all available information for purposes of ensuring a reasonable and consistent rank ordering of risk. The FDIC does not believe that the adoption of Basel II will produce information that conflicts with the risk information being evaluated as part of these guidelines. Rather, the FDIC believes that risk information obtained from advanced risk measurement systems should serve to complement the analysis process described in these final guidelines.

Considerations of Parent Company or Affiliate Support

Two comments (the joint letter and a large banking organization) recommended that the FDIC consider parent company support in its assessment rate adjustment determinations. Both comments suggested that the existence of a financially strong parent should be a consideration only in reducing rates.

The FDIC believes it is appropriate to take into account all available information in its assessment rate adjustment decisions. Accordingly, the FDIC will consider both the willingness and ability of a parent company to support an insured institution in its adjustment decisions. The willingness of a company to support an insured subsidiary can be demonstrated by historical and ongoing financial and managerial support provided to an institution. The ability of a company to support an insured subsidiary can be evaluated through a review of a company's financial strength, supervisory and debt ratings, market-based views of risk, and a review of the company's operating environment and affiliate structure. Although the FDIC will take into account considerations of parent company support, these considerations will not be accorded any greater or lesser weight than other risk considerations. Rather, these considerations will be evaluated in conjunction with the analysis of other risk measures as indicated in the final guidelines. Because many institutions' initial assessment rates already reflect considerations of parent company support (when it is subject to the debt rating method),[12] the FDIC does not believe it would be appropriate to automatically lower an institution's assessment rate when an institution is owned by a financially strong parent.

Considerations of Additional Supervisory Information

The proposed guidelines posed a question about whether the FDIC should consider certain additional supervisory information when determining whether a downward adjustment in assessment rates is appropriate. In response to this question, one comment, the joint letter, indicated that only risk-related considerations should be reflected in assessment rate adjustments. More specifically, the commenter argues that technical violations that the commenter believes do not relate to the risk of failure should not preclude a downward assessment rate adjustment.

The FDIC believes that its assessment rate adjustment decisions should be based on risk-related considerations and will incorporate all available supervisory information that has a bearing on the risks posed to the insurance funds into its adjustment decisions.

Disclosure of Assessment Rate Adjustments

One comment, the joint letter, recommends that the FDIC disclose the number (but not the names) of institutions whose assessment rate adjustments have been adjusted and the magnitude of these adjustments. This same comment indicates that it would be appropriate to give the results of the FDIC's analysis, each time it is performed, to each large Risk Category I institution in order to enhance the dialogue between the FDIC and the institution.

The FDIC plans to provide information about the number of and amount of implemented assessment rate adjustments. The FDIC also intends to determine the appropriate form and extent of analytical results pertaining to its adjustment decisions that will be given to large Risk Category I institutions. At a minimum, the FDIC intends to provide institutions with a summary of its analyses in cases where an adjustment is contemplated.

Need for Further Notice and Comment on Future Modifications

One comment, the joint letter, believes that any modification in the risk factors considered in the adjustment decision should be subject to further notice and comment.

The FDIC believes it would be impractical and inefficient to subject every modification in the risk factors considered as part of the adjustment analysis process to further notice and comment. As noted in the proposed guidelines, the risk measures listed in the Appendix are not intended to be either an exhaustive or a static representation of all risk information that might be considered in adjustment decisions. Rather, the list identified what the FDIC believes at this time to be the most important risk elements to consider in its assessment rate adjustment determinations. These elements are likely to change and evolve over time due to changes in reported financial variables (e.g., Call Report changes) and changes in access to new types of risk information. The FDIC believes it is appropriate to seek additional notice and comment for material changes in the methodologies or processes used to make assessment rate adjustment decisions. A material change would be one that is expected to result in a significant change to the frequency of assessment rate adjustments.

Relationship Between Adjustment Decisions and Revenues

A comment from a large banking organization suggests that the lack of transparency in the guidelines give the appearance that the FDIC intends to extract additional premiums from large institutions. To avoid this appearance, the commenter recommends that that the FDIC impose revenue neutrality on its adjustment decisions by implementing upward adjustments in amounts not greater than the amount of downward adjustments.

The FDIC has no intent to use its adjustment authority for revenue generation purposes. The guidelines are intended to provide as much

[12] Moody's and Fitch debt issuer ratings explicitly take into account parent company support.

transparency as possible on how the FDIC's assessment rate adjustment decisions will be made. Moreover, the guidelines allow for both upward and downward assessment rate adjustments. The FDIC believes that the final guidelines, coupled with the multiple opportunities afforded to institutions to challenge the FDIC's assessment rate determinations, ensure a sufficient degree of objectivity and fairness without imposing additional constraints, such as revenue neutrality, over these decisions. Such a revenue neutrality constraint would limit the ability of the FDIC to meet its main objective, which is to ensure a reasonable and consistent rank ordering of risk in the range of assessment rates.

V. Timing of Notifications and Adjustments

Upward Adjustments

As noted above, institutions will be given advance notice when the FDIC determines that an upward adjustment in its assessment rate appears to be warranted. The timing of this advance notification will correspond approximately to the invoice date for an assessment period. For example, an institution would be notified of a pending upward adjustment to its assessment rates covering the period April 1st through June 30th sometime around June 15th. June 15th is the invoice date for the January 1st through March 31st assessment period.[13] Institutions will have up to 60 days to respond to notifications of pending upward adjustments.

The FDIC would notify an institution of its decision either to proceed with or not to proceed with the upward adjustment approximately 90 days following the initial notification of a pending upward adjustment. If a decision were made to proceed with the adjustment, the adjustment would be reflected in the institution's next assessment rate invoice. Extending the example above, if an institution were notified of a proposed upward adjustment on June 15th, it would have up to 60 days from this date to respond to the notification. If, after evaluating the institution's response and following an evaluation of updated information for the quarterly assessment period ending June 30th, the FDIC decides to proceed with the adjustment, it would communicate this decision to the institution on September 15th, which is the invoice date for the April 1st through June 30th assessment period. In this case, the adjusted rate would be reflected in the September 15th invoice. The adjustment would remain in effect for subsequent assessment periods until the FDIC determined either that the adjustment is no longer warranted or that the magnitude of the adjustment needed to be reduced or increased (subject to the ½ basis point limitation and the requirement for further advance notification).[14]

Downward Adjustments

Decisions to lower an institution's assessment rate will not be communicated to institutions in advance. Rather, they would be reflected in the invoices for a given assessment period along with the reasons for the adjustment. Downward adjustments may take effect as soon as the first insurance collection for the January 1st through March 31, 2007 assessment period subject to timely approval of the guidelines by the Board of the FDIC. Downward adjustments will remain in effect for subsequent assessment periods until the FDIC determines either that the adjustment is no longer warranted (subject to advance notification) or that the magnitude of the adjustment needs to be increased (subject to the ½ basis point limitation) or lowered (subject to advance notification).[15]

Appendix—Examples of Risk Measures that Will Be Considered in Assessment Rate Adjustment Determinations[16]

Broad-based Risk Measures

- Composite and weighted average CAMELS ratings: The composite rating assigned to an insured institution under the Uniform Financial Institutions Rating System and the weighted average CAMELS rating determined under the Assessments Regulation.
- Long-term debt issuer rating: A current, publicly available, long-term debt issuer rating assigned to an insured institution by Moody's, Standard & Poor's, or Fitch.
- Financial ratio measure: The assessment rate determined for large Risk Category I institutions without long-term debt issuer ratings, using a combination of weighted average CAMELS ratings and five financial ratios as described in the Assessments Regulation.
- Offsite ratings: Ratings or numerical risk rankings, developed by either supervisors or industry analysts, that are based primarily on off-site data and incorporate multiple measures of insured institutions' risks.
- Other agency ratings: Current and publicly available ratings, other than long-term debt issuer ratings, assigned by any rating agency that reflect the ability of an institution to perform on its obligations. One such rating is Moody's Bank Financial Strength Rating BFSR, which is intended to provide creditors with a measure of a bank's intrinsic safety and soundness, excluding considerations of external support factors that might reduce default risk, or country risk factors that might increase default risk.
- Loss severity measure: An estimate of insurance fund losses that would be incurred in the event of failure. This measure takes into account such factors as estimates of insured and non-insured deposit funding, estimates of obligations that would be subordinated to depositor claims, estimates of obligations that would be secured or would otherwise take priority claim over depositor claims, the estimated value of assets, prospects for ''ring-fencing'' whereby foreign assets are used to satisfy foreign obligor claims over FDIC claims, and other factors that could affect resolution costs.

Financial Performance and Condition Measures

Profitability

- Return on assets: Net income (pre- and post-tax) divided by average assets.
- Return on risk-weighted assets: Net income (pre- and post-tax) divided by average risk-weighted assets.
- Core earnings volatility: Volatility of quarterly earnings before tax, extraordinary items, and securities gains (losses) measured over one, three, and five years.
- Net interest margin: Interest income less interest expense divided by average earning assets.
- Earning asset yield: Interest income divided by average earning assets.
- Funding cost: Interest expense divided by interest bearing obligations.
- Provision to net charge-offs: Loan loss provisions divided by losses applied to the loan loss reserve (net of recoveries).
- Burden ratio: Overhead expenses less non-interest revenues divided by average assets.
- Qualitative and mitigating profitability factors: Includes considerations such as earnings prospects, diversification of revenue sources by business line and source, and the volatility of earnings from principal business lines.

Capitalization

- Tier 1 leverage ratio: Tier 1 capital for Prompt Corrective Action (PCA) divided by adjusted average assets as defined for PCA.
- Tier 1 risk-based ratio: PCA tier 1 capital divided by risk-weighted assets.

[13] Since the intent of the notification is to provide advance notice of a pending upward adjustment, the invoice covering the assessment period January 1st through March 31st in this case would not reflect the upward adjustment.

[14] The timeframes and example illustrated here would also apply to a decision by the FDIC to remove a previously implemented downward adjustment as well as a decision to increase a previously implemented upward adjustment (the increase could not cause the total adjustment to exceed the 0.50 basis point limitation).

[15] As noted in the Assessments Regulation, the FDIC may raise an institution's assessment rate without notice if the institution's supervisory or agency ratings or financial ratios (for institutions without debt ratings) deteriorate.

[16] This listing is not intended to be exhaustive but represents the FDIC's view of the most important risk measures that should be considered in the assessment rate determinations of large Risk Category I institutions. This listing may be revised over time as improved risk measures are developed through an ongoing effort to enhance the FDIC's risk measurement and monitoring capabilities.

• Total risk-based ratio: PCA total capital divided by risk-weighted assets.

• Tier 1 growth to asset growth: Annual growth of PCA tier 1 capital divided by annual growth of total assets.

• Regulatory capital to internally-determined capital needs: PCA tier 1 and total capital divided by internally-determined capital needs as determined from economic capital models, internal capital adequacy assessments processes (ICAAP), or similar processes.

• Qualitative and mitigating capitalization factors: Includes considerations such as strength of capital planning and ICAAP processes, and the strength of financial support provided by the parent.

Asset Quality

• Non-performing assets to tier 1 capital: Nonaccrual loans, loans past due over 90 days, and other real estate owned divided by PCA tier 1 capital.

• ALLL to loans: Allowance for loan and lease losses plus allocated transfer risk reserves divided by total loans and leases.

• Net charge-off rate: Loan and lease losses charged to the allowance for loan and lease losses (less recoveries) divided by average total loans and leases.

• Earnings coverage of net loan losses: Loan and lease losses charged to the allowance for loan and lease losses (less recoveries) divided by pre-tax, pre-loan loss provision earnings.

• Higher risk loans to tier 1 capital: Sum of sub-prime loans, alternative or exotic mortgage products, leveraged lending, and other high risk lending (e.g., speculative construction or commercial real estate financing) divided by PCA tier 1 capital.

• Criticized and classified assets to tier 1 capital: Assets assigned to regulatory categories of Special Mention, Substandard, Doubtful, or Loss (and not charged-off) divided by PCA tier 1 capital.

• EAD-weighted average PD: Weighted average estimate of the probability of default (PD) for an institution's obligors where the weights are the estimated exposures-at-default (EAD). PD and EAD risk metrics can be defined using either the Basel II framework or internally defined estimates.

• EAD-weighted average LGD: Weighted average estimate of loss given default (LGD) for an institution's credit exposures where the weights are the estimated EADs for each exposure. LGD and PD risk metrics can be defined using either the Basel II framework or internally defined estimates.

• Qualitative and mitigating asset quality factors: Includes considerations such as the extent of credit risk mitigation in place; underwriting trends; strength of credit risk monitoring; and the extent of securitization, derivatives, and off-balance sheet financing activities that could result in additional credit exposure.

Liquidity and Market Risk Indicators

• Core deposits to total funding: The sum of demand, savings, MMDA, and time deposits under $100 thousand divided by total funding sources.

• Net loans to assets: Loans and leases (net of the allowance for loan and lease losses) divided by total assets.

• Liquid and marketable assets to short-term obligations and certain off-balance sheet commitments: The sum of cash, balances due from depository institutions, marketable securities (fair value), federal funds sold, securities purchased under agreement to resell, and readily marketable loans (e.g., securitized mortgage pools) divided by the sum of obligations maturing within one year, undrawn commercial and industrial loans, and letters of credit.

• Qualitative and mitigating liquidity factors: Includes considerations such as the extent of back-up lines, pledged assets, the strength of contingency and funds management practices, and the stability of various categories of funding sources.

• Earnings and capital at risk to fluctuating market prices: Quantified measures of earnings or capital at risk to shifts in interest rates, changes in foreign exchange values, or changes in market and commodity prices. This would include measures of value-at-risk (VaR) on trading book assets.

• Qualitative and mitigating market risk factors: Includes considerations of the strength of interest rate risk and market risk measurement systems and management practices, and the extent of risk mitigation (e.g., interest rate hedges) in place.

Other Market Indicators

• Subordinated debt spreads: Dealer-provided quotes of interest rate spreads paid on subordinated debt issued by insured subsidiaries relative to comparable maturity treasury obligations.

• Credit default swap spreads: Dealer-provided quotes of interest rate spreads paid by a credit protection buyer to a credit protection seller relative to a reference obligation issued by an insured institution.

• Market-based default indicators: Estimates of the likelihood of default by an insured organization that are based on either traded equity or debt prices.

• Qualitative market indicators or mitigating market factors: Includes considerations such as agency rating outlooks, debt and equity analyst opinions and outlooks, the relative level of liquidity of any debt and equity issues used to develop market indicators defined above, and market-based indicators of the parent company.

Risk Measures Pertaining to Stress Conditions

Ability To Withstand Stress Conditions

• Concentration risk measures: Measures of the level of concentrated risk exposures and extent to which an insured institution's capital and earnings would be adversely affected due to exposures to common risk factors such as the condition of a single obligor, poor industry sector conditions, poor local or regional economic conditions, or poor conditions for groups of related obligors (e.g., subprime borrowers).

• Qualitative and mitigating factors relating to the ability to withstand stress conditions: Includes results of stress tests or scenario analyses that measure the extent of capital, earnings, or liquidity depletion under varying degrees of financial stress such as adverse economic, industry, market, and liquidity events as well as the comprehensiveness of risk identification and stress testing analyses, the plausibility of stress scenarios considered, and the sensitivity of scenario analyses to changes in assumptions.

Loss Severity Indicators

• Subordinated liabilities to total liabilities: The sum of obligations, such as subordinated debt, that would have a subordinated claim to the institution's assets in the event of failure divided by total liabilities.

• Secured (priority) liabilities to total liabilities: The sum of claims, such as trade payables and secured borrowings, that would have priority claim to the institution's assets in the event of failure divided by total liabilities.

• Foreign assets relative to foreign deposits: The sum of assets held in foreign units relative to foreign deposits.

• Liquidation value of assets: Estimated value of assets, based largely on historical loss rates experienced by the FDIC on various asset classes, in the event of liquidation.

• Qualitative and mitigating factors relating to loss severity: Includes considerations such as the sufficiency of information and systems capabilities relating to qualified financial contracts and deposits to facilitate quick and cost efficient resolution, the extent to which critical functions or staff are housed outside the insured entity, and prospects for foreign deposit ring-fencing in the event of failure.

By order of the Board of Directors.

Dated at Washington, DC, this 8th day of May, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E7–9196 Filed 5–11–07; 8:45 am]

BILLING CODE 6714–01–P

OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request for Unmodified Qualified Trust Model Certificates and Model Trust Documents

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: The Office of Government Ethics is publishing this first round notice and seeking comment on the twelve executive branch OGE model certificates and model documents for qualified trusts. OGE intends to submit these forms for extension of approval (up to two years) by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OGE is proposing no changes to these forms at this time. As in the past, OGE will notify filers of an update to the privacy information contained in the existing

forms, and will post a notification thereof on its Web site.

DATES: Written comments by the public and the agencies on this proposed extension are invited and must be received by July 13, 2007.

ADDRESSES: You may submit comments to OGE on this paperwork notice by any of the following methods:

E-mail: usoge@oge.gov. (Include reference to ''Qualified trust model certificates and model trust documents paperwork comment'' in the subject line of the message).

FAX: 202–482–9237.

Mail, Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Paul D. Ledvina, Records Officer, Information Resources Management Division.

FOR FURTHER INFORMATION CONTACT: Mr. Ledvina at the Office of Government Ethics; telephone: 202–482–9281; TDD: 202–482–9293; FAX: 202–482–9237; E-mail: *pdledvin@oge.gov.* The model certificates of independence and compliance for qualified trusts are codified in appendixes A, B, and C to 5 CFR part 2634. Copies of the model trust documents are available through the Forms, Publications & Other Ethics Documents section of OGE's Web site at *http://www.usoge.gov.* Copies of the qualified trust model certificates and the model trust documents may also be obtained, without charge, by contacting Mr. Ledvina.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is planning to submit, after this first round notice and comment period, all twelve qualified trust model certificates and model documents described below (all of which are included under OMB paperwork control number 3209–0007) for a two-year extension of approval by OMB under the Paperwork Reduction Act (44 U.S.C. chapter 35). At that time, OGE will publish a second paperwork notice in the **Federal Register** to inform the public and the agencies. The current paperwork approval, last granted by OMB in 2005, for the model certificates and model trust documents is scheduled to expire at the end of June 2007. OGE is proposing no changes to the twelve qualified trust certificates and model documents at this time.

In 2003, OGE updated the OGE/GOVT–1 system of records notice (covering SF 278 Public Financial Disclosure Reports and other name-retrieved ethics program records), including the addition of the three new routine uses. As a result, the Privacy Act Statement on each of the qualified trust model certificates and documents, which includes paraphrases of the routine uses, is affected. OGE has not incorporated this update into the qualified trust model certificates and documents at this time, since a more thorough revision of these information collections is planned within the next two years. Upon distribution of the trust model certificates and documents, OGE will continue to inform users of the update to the Privacy Act Statement. OGE will also post a notification thereof on its Web site to accompany the model certificates and documents.

OGE is the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act of 1978 (Ethics Act). Presidential nominees to executive branch positions subject to Senate confirmation and any other executive branch officials may seek OGE approval for Ethics Act qualified blind or diversified trusts as one means to be used to avoid conflicts of interest.

OGE is the sponsoring agency for the model certificates and model trust documents for qualified blind and diversified trusts of executive branch officials set up under section 102(f) of the Ethics Act, 5 U.S.C. app. § 102(f), and OGE's implementing financial disclosure regulations at subpart D of 5 CFR part 2634. The various model certificates and model trust documents are utilized by OGE and settlors, trustees and other fiduciaries in establishing and administering these qualified trusts.

There are two categories of information collection requirements that OGE plans to submit for renewed paperwork approval, each with its own related reporting model certificates or model trust documents which are subject to paperwork review and approval by OMB. The OGE regulatory citations for these two categories, together with identification of the forms used for their implementation, are as follows:

i. *Qualified trust certifications*—5 CFR 2634.401(d)(2), 2634.403(b)(11), 2634.404(c)(11), 2634.406(a)(3) and (b), 2634.408, 2634.409 and appendixes A and B to part 2634 (the two implementing forms, the Certificate of Independence and Certificate of Compliance, are codified respectively in the cited appendixes; see also the Privacy Act and Paperwork Reduction Act notices thereto in appendix C); and

ii. *Qualified trust communications and model provisions and agreements*—5 CFR 2634.401(c)(1)(i) and (d)(2), 2634.403(b), 2634.404(c), 2634.408 and 2634.409 (the ten implementing forms are the: (A) Blind Trust Communications (Expedited Procedure for Securing Approval of Proposed Communications); (B) Model Qualified Blind Trust Provisions; (C) Model Qualified Diversified Trust Provisions; (D) Model Qualified Blind Trust Provisions (For Use in the Case of Multiple Fiduciaries); (E) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (F) Model Qualified Diversified Trust Provisions (Hybrid Version); (G) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries); (H) Model Qualified Diversified Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust); (I) Model Confidentiality Agreement Provisions (For Use in the Case of a Privately Owned Business); and (J) Model Confidentiality Agreement Provisions (For Use in the Case of Investment Management Activities). As noted above, blank copies of each of these model documents are posted on OGE's Web site.

The communications formats and the confidentiality agreements (items ii. (A), (I) and (J) above), once completed, would not be available to the public because they contain sensitive, confidential information. All the other completed model trust certificates and model trust documents (except for any trust provisions that relate to the testamentary disposition of trust assets) are publicly available based upon a proper Ethics Act request (by filling out an OGE Form 201 access form).

The Office of Government Ethics administers the qualified trust program for the executive branch. Therefore, the estimated burden figures provided below represent branchwide implementation of the forms. The estimated hour burden, which remains the same as last indicated by OGE in its prior second round paperwork renewal notice in 2005 (70 FR 31471–31472 June 1, 2005), is based on the amount of time imposed on a trust administrator or private representative.

i. Trust Certificates:

A. Certificate of Independence: total filers (executive branch): 5; private citizen filers (100%): 5; private citizen burden hours (20 minutes/certificate): 2.

B. Certificate of Compliance: total filers (executive branch): 10; private citizen filers (100%): 10; private citizen burden hours (20 minutes/certificate): 3; and

ii. Model Qualified Trust Documents:

A. Blind Trust Communications: total users (executive branch): 5; private citizen users (100%): 5; communications documents (private citizens): 25 (based on an average of five communications per user, per year);

private citizen burden hours (20 minutes/communication): 8.

B. Model Qualified Blind Trust: total users (executive branch): 2; private citizen users (100%): 2; private citizen burden hours (100 hours/model): 200.

C. Model Qualified Diversified Trust: total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (100 hours/model): 100.

D.–H. Of the five remaining model qualified trust documents: total users (executive branch): 2; private citizen users (100%): 2; private citizen burden hours (100 hours/model): 200.

I.–J. Of the two model confidentiality agreements: total users (executive branch): 1; private citizen users (100%): 1; private citizen burden hours (50 hours/agreement): 50.

However, the total annual reporting hour burden on filers themselves is zero and not the 563 hours estimated above because OGE's estimating methodology reflects the fact that all respondents hire private trust administrators or other private representatives to set up and maintain the qualified blind and diversified trusts. Respondents themselves, typically incoming private citizen Presidential nominees, therefore incur no hour burden. The estimated total annual cost burden to respondents resulting from the collection of information is $1,000,000. Those who use the model documents for guidance are private trust administrators or other private representatives hired to set up and maintain the qualified blind and diversified trusts of executive branch officials who seek to establish qualified trusts. The cost burden figure is based primarily on OGE's knowledge of the typical trust administrator fee structure (an average of 1 percent of total assets) and OGE's experience with administration of the qualified trust program. The $1,000,000 annual cost figure is based on OGE's estimate of an average of five active trusts anticipated to be under administration for each of the next two years with combined total assets of $100,000,000. However, OGE notes that the $1,000,000 figure is a cost estimate for the overall administration of the trusts, only a portion of which relates to information collection and reporting. For want of a precise way to break out the costs directly associated with information collection, OGE is continuing to report to OMB the full $1,000,000 estimate for paperwork clearance purposes.

Public comment is invited on each aspect of the model qualified trust certificates and model trust documents, and underlying regulatory provisions, as set forth in this notice, including specific views on the need for and practical utility of this set of collections of information, the accuracy of OGE's burden estimate, the potential for enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of the OMB paperwork approval for the set of the various existing qualified trust model certificates, the model communications package, and the model trust documents. The comments will also become a matter of public record.

Approved: May 3, 2007.

Robert I. Cusick,

Director, Office of Government Ethics.

[FR Doc. E7–9162 Filed 5–11–07; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Liaison and Scientific Review Office; Meeting of the NTP Board of Scientific Counselors

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health.

ACTION: Meeting announcement and request for comments.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a meeting of the NTP Board of Scientific Counselors (NTP BSC). The NTP BSC is composed of scientists from the public and private sectors and provides primary scientific oversight to the NTP Director and evaluates the scientific merit of the NTP's intramural and collaborative programs.

DATES: The NTP BSC meeting will be held on June 22, 2007. The deadlines for submission of written comments and for pre-registration for the meeting are June 8 and June 15, 2007, respectively. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919–541–2475 (voice), 919–541–4644 TTY (text telephone), through the Federal TTY Relay System at 800–877–8339, or by e-mail to *niehsoeeo@niehs.nih.gov.* Requests should be made at least 7 days in advance of the event.

ADDRESSES: The NTP BSC meeting will be held in the Rodbell Auditorium, Rall Building at the NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709. Public comments and any other correspondence should be submitted to Dr. Barbara Shane, Executive Secretary for the NTP BSC (NTP Liaison and Scientific Review Office, NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709; fax: 919–541–0295; or e-mail: *shane@niehs.nih.gov*).

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Shane (telephone: 919–541–4253 or e-mail: *shane@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Preliminary Agenda Topics and Availability of Meeting Materials

Preliminary agenda topics include:

- Update of NTP activities.
- Implementation of workshop and NTP retreat recommendations.
- Review of NTP contracts.
- NTP testing nominations.
- Five-year plan for the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM)—Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM).

A copy of the preliminary agenda, committee roster, and any additional information, when available, will be posted on the NTP Web site (*http://ntp.niehs.nih.gov/go/165*) or may be requested in hardcopy from the Executive Secretary for the NTP BSC (see **ADDRESSES** above). Following the meeting, summary minutes will be prepared and made available on the NTP Web site.

Attendance and Registration

The meeting is scheduled for June 22, 2007, from 8:30 a.m. to adjournment and is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the NTP Web site by June 15, 2007 to facilitate planning for the meeting. Please note that a photo ID is required to access the NIEHS campus. The NTP is making plans to videocast the meeting through the Internet at *http://www.niehs.nih.gov/external/video.htm.*

Request for Comments

Time is allotted during the meeting for the public to present comments to the NTP BSC on the agenda topics. Each organization is allowed one time slot per agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the NTP BSC chair. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be

determined by the number of persons who register at the meeting.

Persons registering to make oral comments are asked, if possible, to send a copy of their statement to the Executive Secretary for the NTP BSC (see **ADDRESSES** above) by June 8, 2007, to enable review by the NTP BSC prior to the meeting. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution to the NTP BSC and NIEHS/NTP staff and to supplement the record. Written comments received in response to this notice will be posted on the NTP Web site and persons identified by their name and affiliation and/or sponsoring organization, if applicable. Persons submitting written comments should include their name, affiliation (if applicable), phone, e-mail, and sponsoring organization (if any) with the document.

Background Information on the NTP Board of Scientific Counselors

The NTP BSC is a technical advisory body comprised of scientists from the public and private sectors who provide primary scientific oversight to the overall program and its centers. Specifically, the NTP BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purposes of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology and neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. NTP BSC meetings are held annually or biannually.

Dated: May 3, 2007.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E7–9174 Filed 5–11–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an a needed basis, scientific reviews of applications of AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for Ambulatory Safety and Quality: ''Enabling Patient-Centered Care through Health IT (R18),'' are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Ambulatory Safety and Quality: Enabling Patient-Centered Care through Health IT (R18).

Date: June 14–15, 2007 (Open on July 14 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: Hilton Washington DC/Rockville Executive Meeting (Formerly the Doubletree Hotel), 1750 Rockville Pike, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

May 7, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–2365 Filed 5–11–07; 8:45am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0053]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 13, 2007.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974. All comments should be identified with the OMB control number 0910–0381. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Labeling Regulations (OMB Control Number 0910–0381)—Extension

FDA regulations require food producers to disclose to consumers and others specific information about themselves or their products on the label or labeling of their products. Related regulations require that food producers retain records establishing the basis for the information contained in the label or labeling of their products and provide those records to regulatory

officials. Finally, certain regulations provide for the submission of food labeling petitions to FDA. FDA's food labeling regulations under parts 101, 102, 104, and 105 (21 CFR parts 101, 102, 104, and 105) were issued under the authority of sections 4, 5, and 6 of the Fair Packaging and Labeling Act (the FPLA) (15 U.S.C. 1453, 1454, and 1455) and under sections 201, 301, 402, 403, 409, 411, 701, and 721 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 331, 342, 343, 348, 350, 371, and 379e). Most of these regulations derive from section 403 of the act, which provides that a food product shall be deemed to be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the food product, is false or misleading in any particular, or bears certain types of unauthorized claims. The disclosure requirements and other collections of information in the regulations in parts 101, 102, 104, and 105 are necessary to ensure that food products produced or sold in the United States are in compliance with the labeling provisions of the act and the FPLA.

Section 101.3 of FDA's food labeling regulations requires that the label of a food product in packaged form bear a statement of identity (i.e., the name of the product), including, as appropriate, the form of the food or the name of the food imitated. Section 101.4 prescribes requirements for the declaration of ingredients on the label or labeling of food products in packaged form. Section 101.5 requires that the label of a food product in packaged form specify the name and place of business of the manufacturer, packer, or distributor and, if the food producer is not the manufacturer of the food product, its connection with the food product. Section 101.9 requires that nutrition information be provided for all food products intended for human consumption and offered for sale, unless an exemption in § 101.9(j) applies to the product. Section 101.9(g)(9) also provides for the submission to FDA of requests for alternative approaches to nutrition labeling. Finally, § 101.9(j)(18) provides for the submission to FDA of notices from firms claiming the small business exemption from nutrition labeling.

Section 101.10 requires that restaurants provide nutrition information, upon request, for any food or meal for which a nutrient content claim or health claim is made. Section 101.12(b) provides the reference amount that is used for determining the serving sizes for specific products, including baking powder, baking soda, and pectin. Section 101.12(e) provides that a manufacturer that adjusts the reference amount customarily consumed (RACC) of an aerated food for the difference in density of the aerated food relative to the density of the appropriate nonaerated reference food must be prepared to show FDA detailed protocols and records of all data that were used to determine the density-adjusted RACC. Section 101.12(g) requires that the label or labeling of a food product disclose the serving size that is the basis for a claim made for the product if the serving size on which the claim is based differs from the RACC. Section 101.12(h) provides for the submission of petitions to FDA to request changes in the reference amounts defined by regulation.

Section 101.13 requires that nutrition information be provided in accordance with § 101.9 for any food product for which a nutrient content claim is made. Under some circumstances, § 101.13 also requires the disclosure of other types of information as a condition for the use of a nutrient content claim. For example, under § 101.13(j), if the claim compares the level of a nutrient in the food with the level of the same nutrient in another ''reference'' food, the claim must also disclose the identity of the reference food, the amount of the nutrient in each food, and the percentage or fractional amount by which the amount of the nutrient in the labeled food differs from the amount of the nutrient in the reference food. It also requires that when this comparison is based on an average of food products, this information must be provided to consumers or regulatory officials upon request. Section 101.13(q)(5) requires that restaurants document and provide to appropriate regulatory officials, upon request, the basis for any nutrient content claims they have made for the foods they sell.

Section 101.14(d)(2) and (d)(3) provides for the disclosure of nutrition information in accordance with § 101.9 and, under some circumstances, certain other information as a condition for making a health claim for a food product. Section 101.15 provides that, if the label of a food product contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label shall appear thereon in both the foreign language and in English. Section 101.22 contains labeling requirements for the disclosure of spices, flavorings, colorings, and chemical preservatives in food products. Section 101.22(i)(4) sets forth reporting and recordkeeping requirements pertaining to certifications for flavors designated as containing no artificial flavor. Section 101.30 specifies the conditions under which a beverage that purports to contain any fruit or vegetable juice must declare the percentage of juice present in the beverage and the manner in which the declaration is to be made. Section 102.33 specifies the common or usual name for beverages that contain fruit or vegetable juice.

Section 101.36 requires that nutrition information be provided for dietary supplements offered for sale, unless an exemption in § 101.36(h) applies. Section 101.36(f)(2) cross-references the provisions in § 101.9(g)(9) for the submission to FDA of requests for alternative approaches to nutrition labeling. Also, § 101.36(h)(2) cross-references the provisions in § 101.9(j)(18) for the submission of small business exemption notices.

Section 101.42 requests that food retailers voluntarily provide nutrition information for raw fruits, vegetables, and fish at the point of purchase, and § 101.45 contains guidelines for providing such information. Also, § 101.45(c) provides for the submission of nutrient data bases and proposed nutrition labeling values for raw fruit, vegetables, and fish to FDA for review and approval.

Sections 101.54, 101.56, 101.60, 101.61, and 101.62 specify information that must be disclosed as a condition for making particular nutrient content claims. Section 101.67 provides for the use of nutrient content claims for butter, and cross-references requirements in other regulations for ingredient declaration (§ 101.4) and disclosure of information concerning performance characteristics (§ 101.13(d)). Section 101.69 provides for the submission of a petition requesting that FDA authorize a particular nutrient content claim by regulation. Section 101.70 provides for the submission of a petition requesting that FDA authorize a particular health claim by regulation. Section 101.77(c)(2)(ii)(D) requires the disclosure of the amount of soluble fiber per serving in the nutrition labeling of a food bearing a health claim about the relationship between soluble fiber and a reduced risk of coronary heart disease. Section 101.79(c)(2)(iv) requires the disclosure of the amount of folate per serving in the nutrition labeling of a food bearing a health claim about the relationship between folate and a reduced risk of neural tube defects.

Section 101.100(d) provides that any agreement that forms the basis for an exemption from the labeling requirements of section 403(c), (e), (g), (h), (i), (k), and (q) of the act be in

writing and that a copy of the agreement be made available to FDA upon request. Section 101.100 also contains reporting and disclosure requirements as conditions for claiming certain labeling exemptions (e.g., § 101.100(h)).

Section 101.105 specifies requirements for the declaration of the net quantity of contents on the label of a food in packaged form and prescribes conditions under which a food whose label does not accurately reflect the actual quantity of contents may be sold, with appropriate disclosures, to an institution operated by Federal, State, or local government. Section 101.108 provides for the submission to FDA of a written proposal requesting a temporary exemption from certain requirements of §§ 101.9 and 105.66 for the purpose of conducting food labeling experiments with FDA's authorization.

Regulations in part 102 define the information that must be included as part of the statement of identity for particular foods and prescribe related labeling requirements for some of these foods. For example, § 102.22 requires that the name of a protein hydrolysate shall include the identity of the food source from which the protein was derived.

Part 104, which pertains to nutritional quality guidelines for foods, cross-references several labeling provisions in part 101 but contains no separate information collection requirements.

Part 105 contains special labeling requirements for hypoallergenic foods, infant foods, and certain foods represented as useful in reducing or maintaining body weight.

The disclosure and other information collection requirements in the previously mentioned regulations are placed primarily upon manufacturers, packers, and distributors of food products. Because of the existence of exemptions and exceptions, not all of the requirements apply to all food producers or to all of their products. Some of the regulations affect food retailers, such as supermarkets and restaurants.

The purpose of the food labeling requirements is to allow consumers to be knowledgeable about the foods they purchase. Nutrition labeling provides information for use by consumers in selecting a nutritious diet. Other information enables a consumer to comparison shop. Ingredient information also enables consumers to avoid substances to which they may be sensitive. Petitions or other requests submitted to FDA provide the basis for the agency to permit new labeling statements or to grant exemptions from certain labeling requirements. Recordkeeping requirements enable FDA to monitor the basis upon which certain label statements are made for food products and whether those statements are in compliance with the requirements of the act or the FPLA.

In the **Federal Register** of February 27, 2007 (72 FR 8744), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received one comment that was outside the scope of the request for comments.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/Part	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
101.3, 101.22, part 102, and part 104	25,000	1.03	25,750	.5	12,875	0
101.4, 101.22, 101.100, part 102, part 104, and part 105	25,000	1.03	25,750	1	25,750	0
101.5	25,000	1.03	25,750	0.25	6,438	0
101.9, 101.13(n), 101.14(d)(3), 101.62, and part 104	25,000	1.03	25,750	4	103,000	0
101.9(g)(9) and 101.36(f)(2)	12	1	12	4	48	0
101.9(j)(18) and 101.36(h)(2)	10,000	1	10,000	8	80,000	0
101.10	300,000	1.5	450,000	0.25	112,500	0
101.12(b)	29	2.3	67	1	67	0
101.12(e)	25	1	25	1	25	0
101.12(g)	5,000	1	5,000	1	5,000	0
101.12(h)	5	1	5	80	400	$533,600
101.13(d)(1) and 101.67	200	1	200	1	200	0
101.13(j)(2), 101.13(k), 101.54, 101.56, 101.60, 101.61, and 101.62	5,000	1	5,000	1	5,000	0
101.13(q)(5)	300,000	1.5	450,000	0.75	337,500	0
101.14(d)(2)	300,000	1.5	450,000	0.75	337,500	0
101.15	160	10	1,600	8	12,800	0
101.22(i)(4)	25	1	25	1	25	0
101.30 and 102.33	1,500	5	7,500	1	7,500	0

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section/Part	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating & Maintenance Costs
101.36	300	40	12,000	4	48,000	0
101.42 and 101.45	1,000	1	1,000	0.5	500	0
101.45(c)	5	4	20	4	80	0
101.69	3	1	3	25	75	0
101.70	5	1	5	80	400	$889,332
101.79(c)(2)(ii)(D)	1,000	1	1,000	0.25	250	0
101.79(c)(2)(iv)	100	1	100	0.25	25	0
101.100(d)	1,000	1	1,000	1	1,000	0
101.105 and 101.100(h)	25,000	1.03	25,750	0.5	12,875	0
101.108	0	0	40	0	0	
Total					1,109,833	$1,422,932

[1]There are no capital costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
101.12(e)	25	1	25	1	25
101.13(q)(5)	300,000	1.5	450,000	0.75	337,500
101.14(d)(2)	300,000	1.5	450,000	0.75	337,500
101.22(i)(4)	25	1	25	1	25
101.100(d)(2)	1,000	1	1,000	1	1,000
101.105(t)	100	1	100	1	100
Total					676,150

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

The estimated annual reporting and recordkeeping burdens are based on agency communications with industry and FDA's knowledge of and experience with food labeling and the submission of petitions and requests to the agency. Where an agency regulation implements an information collection requirement in the act or the FPLA, only any additional burden attributable to the regulation has been included in FDA's burden estimate.

No burden has been estimated for those requirements where the information to be disclosed is information that has been supplied by FDA. Also, no burden has been estimated for information that is disclosed to third parties as a usual and customary part of a food producer's normal business activities. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

Dated: May 8, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–9219 Filed 5–11–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0165]

Agency Information Collection Activities; Proposed Collection; Comment Request; Hazard Analysis and Critical Control Point Procedures for the Safe and Sanitary Processing and Importing of Juice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the

Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on recordkeeping requirements for applying hazard analysis and critical control point (HAACP) procedures for safe and sanitary processing for processors of fruit and vegetable juice.

DATES: Submit written or electronic comments on the collection of information by July 13, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Hazard Analysis and Critical Control Point (HACCP) Procedures for the Safe and Sanitary Processing and Importing of Juice—21 CFR Part 120 (OMB Control Number 0910–0466)—Extension

FDA's regulations in part 120 (21 CFR part 120) mandate the application of HACCP procedures to fruit and vegetable juice processing. HACCP is a preventative system of hazard control that can be used by all food processors to ensure the safety of their products to consumers. A HACCP system of preventive controls is the most effective and efficient way to ensure that these food products are safe. FDA's mandate to ensure the safety of the Nation's food supply is derived principally from the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, *et seq.*). Under the act, FDA has authority to ensure that all foods in interstate commerce, or that have been shipped in interstate commerce, are not contaminated or otherwise adulterated, are produced and held under sanitary conditions, and are not misbranded or deceptively packaged; under section 701 (21 U.S.C. 371), the act authorizes the agency to issue regulations for its efficient enforcement. The agency also has authority under section 361 of the Public Health Service Act (42 U.S.C. 264) to issue and enforce regulations to prevent the introduction, transmission, or spread of communicable diseases from one State to another other State. Information development and recordkeeping are essential parts of any HACCP system. The information collection requirements are narrowly tailored to focus on the development of appropriate controls and document those aspects of processing that are critical to food safety. Through these regulations, FDA is implementing its authority under section 402(a)(4) of the act (21 U.S.C. 342(a)(4)).

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Sections	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Record	Total Hours
120.6(c) and 120.12(a)(1) and (b)	1,875	365	684,375	0.1	68,437.5
120.7; 120.10(a) and 120.12(a)(2), (b), and (c)	2,300	1.1	2,530	20	50,600
120.8(b)(7) and 120.12(a)(4)(i) and (b)	1,450	14,600	21,170,000	0.01	211,700
120.10(c) and 120.12(a)(4)(ii) and (b)	1,840	12	22,080	0.1	2,208
120.11(a)(1)(iv) and (a)(2) and 120.12 (a)(5)	1,840	52	95,680	0.1	9,568
120.11(b) and 120.12(a)(5) and (b)	1,840	1	1,840	4	7,360
120.11(c) and 120.12(a)(5) and (b)	1,840	1	1,840	4	7,360
120.14(a)(2), (c), and (d)	308	1	308	4	1,232
Total					358,466

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

Table 1 of this document provides a breakdown of the total estimated annual recordkeeping burden. FDA bases this hour burden estimate on its experience with the application of HACCP principles in food processing.

The burden estimates in table 1 of this document are based on an estimate of the total number of juice manufacturing plants (i.e., 2,300) affected by the regulations. Included in this total are 850 plants currently identified in FDA's official establishment inventory plus 1,220 very small apple juice manufacturers and 230 very small orange juice manufacturers. The total burden hours are derived by estimating the number of plants affected by each portion of this final rule and multiplying the corresponding number by the number of records required annually and the hours needed to complete the record. These numbers were obtained from the agency's final regulatory impact analysis prepared for these regulations.

Moreover, these estimates assume that every processor will prepare sanitary standard operating procedures and a HACCP plan and maintain the associated monitoring records and that every importer will require product safety specifications. In fact, there are likely to be some small number of juice processors that, based upon their hazard analysis, determine that they are not required to have a HACCP plan under these regulations.

Dated: April 27, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–9220 Filed 5–11–07; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0182]

Agency Information Collection Activities; Proposed Collection; Comment Request; Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Maintaining a Data Bank

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information contained in the guidance entitled ''Information Program on Clinical Trials for Serious or Life-Threatening Diseases and Conditions'' dated March 18, 2002.

DATES: Submit written or electronic comments on the collection of information by July 13, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Maintaining a Data Bank (OMB Control Number 0910–0459)—Extension

In the **Federal Register** of March 18, 2002 (65 FR 12022), FDA issued a guidance to industry on recommendations for investigational new drug application (IND) sponsors on submitting information about clinical trials for serious or life- threatening diseases to a Clinical Trials Data Bank developed by the National Library of Medicine (NLM), National Institutes of Health (NIH). This information is especially important for patients and their families seeking opportunities to participate in clinical trials of new drug treatments for serious or life-threatening diseases. The guidance describes three collections of information: Mandatory submissions, voluntary submissions, and certifications.

Mandatory Submissions

Section 113 of the Food and Drug Administration Modernization Act (FDAMA) of 1997 (the Modernization Act) (Public Law 105–115) requires that sponsors shall submit information to the Clinical Trials Data Bank when the clinical trial: (1) Involves a treatment for a serious or life-threatening disease and (2) is intended to assess the effectiveness of the treatment. The guidance discusses how sponsors can fulfill the requirements of section 113 of the Modernization Act. Specifically, sponsors should provide: (1) Information about clinical trials, both federally and privately funded, of experimental treatments (drugs, including biological products) for patients with serious or life-threatening diseases; (2) a description of the purpose of the experimental drug; (3) patient eligibility criteria; (4) the location of clinical trial sites; and (5) a point of contact for patients wanting to enroll in the trial.

Senate 1789, ''Best Pharmaceuticals for Children Act'' (Public Law 107–109) (BPCA), established a new requirement for the Clinical Trials Data Bank mandated by section 113 of FDAMA. Information submitted to the data bank must now include ''a description of

whether, and through what procedure, the manufacturer or sponsor of the investigation of a new drug will respond to requests for protocol exception, with appropriate safeguards, for single-patient and expanded protocol use of the new drug, particularly in children.'' The guidance was updated on January 27, 2004, to include a discussion of how sponsors can fulfill the BPCA requirements.

As part of the resubmission process for OMB approval, this information collection request (ICR) has been revised to include the burden associated with new requirements imposed by the Centers for Medicare and Medicaid Services (CMS). On September 19, 2000, the Health Care Financing Administration (now CMS) implemented a Clinical Trial Policy through the National Coverage Determination process. The Clinical Trial Policy was developed in response to a June 7, 2000, executive memorandum, issued by President Clinton, requiring Medicare to pay for routine patient costs in clinical trials. The original policy suggested that a registry be established into which studies meeting the criteria for coverage under the policy would be enrolled for administrative purposes. This registry was never established.

On July 10, 2006, CMS opened a reconsideration of its national coverage determination on clinical trials. The purpose of the reconsideration is to further refine the policy to rename it the Clinical Research Policy (CRP) to address several ambiguities, including the link between the CRP and the Coverage with Evidence Development concept, and the authority to allow the agency to pay for the costs of limited investigational items. One requirement to qualify for coverage of clinical costs under the proposed policy is that the study must be enrolled in the NLM Clinical Trials Data Bank.

Voluntary Submissions

Section 113 of the Modernization Act also specifies that sponsors may voluntarily submit information pertaining to results of clinical trials, including information on potential toxicities or adverse effects associated with the use or administration of the investigational treatment. Sponsors may also voluntarily submit studies that are not trials to test effectiveness, or not for serious or life-threatening diseases, to the Clinical Trials Data Bank.

Certifications

Section 113 of the Modernization Act specifies that the data bank will not include information relating to a trial if the sponsor certifies to the Secretary of Health and Human Services (the Secretary) that disclosure of the information would substantially interfere with the timely enrollment of subjects in the investigation, unless the Secretary makes a determination to the contrary.

Description of Respondents: A sponsor of a drug or biologic product regulated by the agency under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act (42 U.S.C. 262) who submits a clinical trial to test effectiveness of a drug or biologic product for a serious or life-threatening disease.

For the purposes of CMS, the respondents will be providers that are conducting or sponsoring clinical trials that are seeking to have the clinical costs of their studies reimbursed by Medicare.

Burden Estimate: The information required under section 113(a) of the Modernization Act is currently submitted to FDA under 21 CFR part 312, and this collection of information is approved under OMB Control Number 0910–0014 until May 31, 2009, and, therefore, does not represent a new information collection requirement. Instead, preparation of submissions under section 113 of the Modernization Act involves extracting and reformatting information already submitted to FDA. Procedures (where and how) for the actual submission of this information to the Clinical Trials Data Bank are addressed in the guidance.

The Center for Drug Evaluation and Research (CDER) received 4,858 new protocols in 2005. CDER anticipates that protocol submission rates will remain at or near this level in the near future. Of these new protocols, an estimated two-thirds[1] are for serious or life-threatening diseases and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 4,858 protocols per year is 3,239 new protocols per year. An estimated 50 percent[1] of the new protocols for serious or life-threatening diseases submitted to CDER are for clinical trials involving assessment for effectiveness, and are subject to the mandatory reporting requirements under section 113 of the Modernization Act. Fifty percent of 3,239 protocols per year is 1,620 new protocols per year subject to mandatory reporting. The remaining 3,238 new protocols per year are subject to voluntary reporting.

The Center for Biologics Evaluation and Research (CBER) received 474 new protocols in 2005. CBER anticipates that protocol submission rates will remain at or near this level in the near future. An estimated two-thirds[1] of the new protocols submitted to CBER are for clinical trials involving a serious or life-threatening disease, and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 474 new protocols per year is 316 new protocols per year. An estimated 50 percent[1] of the new protocols for serious or life-threatening diseases submitted to CBER are for clinical trials involving assessments for effectiveness. Fifty percent of 316 protocols per year is an estimated 158 new protocols per year subject to the mandatory reporting requirements under section 113 of the Modernization Act. The remaining 316 new protocols per year are subject to voluntary reporting.

The estimated total number of new protocols for serious or life-threatening diseases subject to mandatory reporting requirements under section 113 of the Modernization Act is 1,620 for CDER plus 158 for CBER, or 1,778 new protocols per year. The remainder of protocols submitted to CDER or CBER will be subject to voluntary reporting, including clinical trials not involving a serious or life-threatening disease as well as trials in a serious or life-threatening disease but not involving assessment of effectiveness. Therefore, the total number of protocols (5,332) minus the protocols subject to mandatory reporting requirements (1,778) will be subject to voluntary reporting, or 3,554 protocols.

Our total burden estimate includes multi-center studies and accounts for the quality control review of the data before it is submitted to the data bank. The number of IND amendments submitted in 2005 for protocol changes (e.g., changes in eligibility criteria) was 7,597 for CDER and 855 for CBER. The number of IND amendments submitted in 2005 for new investigators was 11,287 for CDER and 532 for CBER. The number of protocol changes and new investigators was apportioned proportionally between mandatory and voluntary submissions. We recognize that single submissions may include information about multiple sites.

Generally, there is no submission to FDA when an individual study site is no longer recruiting study subjects. For this analysis, we assumed that the number of study sites closed each year is similar to

[1] Estimate obtained from a review of 2,062 protocols submitted to CDER between January 1, 2002, and September 30, 2002.

the number of new investigator amendments received by FDA (11,287 CDER and 532 CBER).

Generally, there is no submission to FDA when the study is closed to enrollment. We estimate the number of protocols closed to enrollment each year is similar to the number of new protocols submitted (4,858 CDER and 474 CBER).

The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted under section 113(a) of the Modernization Act, including the time it takes to extract and reformat the information. FDA has been advised that some sponsors lack information system capabilities enabling efficient collection of company-wide information on clinical trials subject to reporting requirements under section 113(a) of the Modernization Act. The estimation of burden under section 113(a) reflects the relative inefficiency of this process for these firms.

Based on its experience reviewing INDs, consideration of the information in the previous paragraphs, and further consultation with sponsors who submit protocol information to the Clinical Trials Data Bank, FDA estimated that approximately 4.6 hours on average would be needed per response. The estimate incorporates 2.6 hours for data extraction and 2.0 hours for reformatting based on data collected from organizations currently submitting protocols to the Clinical Trials Data Bank. We considered quality control issues when developing the current burden estimates of 2.6 hours for data extraction and the 2.0 hours estimated for reformatting. Additionally, the Internet-based data entry system developed by NIH incorporates features that further decrease the sponsor's time requirements for quality control procedures. The Clinical Trials Data Bank was set up to receive protocol information transmitted electronically by sponsors. Approximately 10 percent of sponsors electronically transmit information to the Clinical Trials Data Bank. If the sponsor chooses to manually enter the protocol information, the data entry system allows it to be entered in a uniform and efficient manner primarily through pull-down menus. As sponsors' familiarity with the data entry system increases, the hourly burden will continue to decrease.

A sponsor of a study subject to the requirements of section 113 of the Modernization Act will have the option of submitting data under that section or certifying to the Secretary that disclosure of information for a specific protocol would substantially interfere with the timely enrollment of subjects in the clinical investigation. FDA has no means to accurately predict the proportion of protocols subject to the requirements of section 113 of the Modernization Act that will be subject to a certification submission. To date, no certifications have been received. It is anticipated that the burden associated with such certification will be comparable to that associated with submission of data regarding a protocol. Therefore, the overall burden is anticipated to be the same, regardless of whether the sponsor chooses data submission or certification for nonsubmission. Table 1 of this document reflects the estimate of this total burden.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

New Protocols	Recruitment Complete	Protocol Changes	New Investigators	Site Closed	Total Responses	Hours per Response	Total Hours
CDER (mandatory)	1,620	1,620	2,507	3,725	13,197	4.6	60,706
CBER (mandatory)	158	158	282	176	950	4.6	4,370
CDER (voluntary)	3,238	3,238	5,090	7,562	26,690	4.6	122,774
CDER (voluntary)	316	316	573	356	1,917	4.6	8,818
Total							196,668

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

CMS Burden Estimate:

The burden associated with CMS' requirements is the time and effort necessary for the provider to extract the data elements from the study protocol and reformatting and entering the information into the data bank. We estimate that approximately 745 clinical research studies will register on the NLM data bank. The number was derived from a search of the database on September 1, 2006 restricting the search by age (e.g., > 65 years of age); sponsor (e.g., NIH, industry, other federal agency, university/organization); Phase II, III or IV; and by type of study (e.g., cancers and other neoplasms, diagnosis, and devices). The age, sponsor, and study phase was applied to each of the three separate searches by type of study. The following number of studies by study type, including trials no longer recruiting was 562 for diagnosis, 164 for cancers and other neoplasms, and 19 for devices. In determining the total number of hours requested, the CMS estimate uses the same assumptions used by the FDA to estimate its total number of burden hours. Therefore, the total annual burden associated with this requirement is 27,480 hours (5,974 responses x 4.6 hours per response).

We believe the combined estimate of burden attributable to FDA and CMS requirements, 224,148 burden hours (196,668 burden hours + 27,480 burden hours) accurately reflects the total burden associated with this information collection request. We recognize that companies who are less familiar with the data entry system and the Clinical Trials Data Bank will require greater than 4.6 hours per response. However, as sponsor familiarity with the system increases, the hourly estimate will decrease.

Dated: May 8, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–9221 Filed 5–11–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Evaluation of User Satisfaction With NIH Internet Sites

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. The proposed information collection was previously published in the **Federal Register** on January 22, 2007, in Volume 72, No. 13, pg. 2700, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Evaluation of User Satisfaction with NIH Internet Sites. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* Executive Order 12862 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. With this submission, the NIH, Office of Communications and Public Liaison, seeks to obtain OMB's generic approval to conduct customer satisfaction surveys. Since the late 1980's, the NIH has seized the opportunity to disseminate information and materials via the Internet. Today, rapid technological changes of the WWW warrant on-going constituent and resource analysis. With survey information, the NIH is enabled to serve, and respond to, the ever-changing demand by the public. The 'public' includes individuals (such as patients, educators, students, etc.) and interested communities (such as national or local organizations/institutions) and business. Survey information will augment current Web content, delivery, and design research that is used to understand the Web user, and more specifically, the NIH user community. Primary objectives are to (1) classify NIH Internet users; (2) summarize and better understand customer needs; and (3) quantify the effectiveness/efficiency of current tools and delivery. Overall, the Institutes, Centers, and Offices of the NIH will use the survey results to identify strengths and weaknesses in current Internet strategies. Findings will help to (1) understand user community and how to better serve Internet users; (2) discover areas requiring improvement in either content or delivery; (3) realize how to align Web offerings with identified user need(s); and (4) explore methods to offer and deliver information with efficacy and equity. *Frequency of Response:* On occasion [As needed on an on-going and potentially concurrent basis (by Institute, Center, or Office)]. *Affected Public:* Users of the Internet. Primarily, this is an individual at their place(s) of access including, but not limited to, home or/and work environments. *Type of Respondents:* Public users of the NIH Internet site, *http://www.nih.gov,* which may include organizations, medical researchers, physicians and other health care providers, librarians, students, as well as individuals of the general public. *Estimated Number of Respondents:* 104,000. *Number of Respondents Per Respondent:* 1. *Average Burden Hours Per Response:* 0.084. *Burden Hours Requested:* 8684. Total annualized cost to respondents is estimated at $130,260. There are also no capital costs, operating costs and/or maintenance costs to report.

SURVEY TITLE: WEB CUSTOMER SATISFACTION SURVEY—ANNUAL REPORTING BURDEN*

[Web-based; Required for Federal Register requests under PRA, Paperwork Reduction Act.]

Survey Area	Number of respondents	Frequency of response	Average burden per response (hours)	Burden hours
NIH Organization-wide (1 entity)	4000			334
Overall customer satisfaction	2000	1	0.1002	200
Specific indicator: Top-level/Entry pages	1000	1	0.0668	67
Specific indicator: Tools and initiatives	1000	1	0.0668	67
Individual Institute/Office	100000			8350
Overall customer satisfaction	50000	1	0.1002	5010
Specific indicator: Top-level/Entry pages	25000	1	0.0668	1670
Specific indicator: Tools and initiatives	25000	1	0.0668	1670
Total	104000		0.084	8684

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dennis Rodrigues, NIH Office of Communications and Public Liaison, 9000 Rockville Pike, Bldg. 31, Rm. 5B58, Bethesda, Maryland 20892–2094, or call non toll-free at (301) 435–2932.

You may also e-mail your request to *dr3p@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: May 8, 2007.

John Burklow,

Associate Director for Communications and Public Liaison, Office of the Director, National Institutes of Health.

[FR Doc. E7–9173 Filed 5–11–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R01 Grant Application Review.

Date: June 4, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 751, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7798, *muston@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Neural Mechanisms of Fat Preference.

Date: June 19, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; BARC Ancillary Studies.

Date: June 29, 2007.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barbara A. Woynarowska, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Translational Research.

Date: July 17, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: May 7, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2344 Filed 5–11–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: June 4, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6908, *ak41o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 3, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2345 Filed 5–11–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Training Grant and Career Development Review Committee.

Date: May 31–June 1, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Carlyle Suites, 1731 New Hampshire Avenue, NW., Washington, DC 20009.
Contact Person: Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders A.
Date: June 21–22, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Carlyle Suites, 1731 New Hampshire Ave., NW., Washington, DC 20009.
Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders B.
Date: June 21–22, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Admiral Fell Inn, 888 South Broadway, Historic Fells Point, Baltimore, MD 21231.
Contact Person W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–4056.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders K.
Date: June 28, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Shanta Rajaram, PhD, Scientific Review Administrator, Division of Extramural Research, NIH/NINDS/SRB, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders C.
Date: June 28–29, 2007.
Time: 8:30 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892, (301) 496–0660, *benzingw@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 3, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2346 Filed 5–11–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.
Date: June 3–5, 2007.
Time: June 3, 2007, 7 p.m. to 10 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Time: June 4, 2007, 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.
Time: June 4, 2007, 5 p.m. to 8 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Time: June 5, 2008, 8:30 a.m. to 11 a.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Hyatt Regaency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Alan P. Koretsky, PhD, Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders, & Stroke, NIH, 35 Convent Drive, Room 6A 908, Bethesda, MD 20892, 301–435–2232, *koretskya@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biologicial Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 3, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2347 Filed 5–11–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.
Date: June 4–5, 2007.
Time: June 4, 2007, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hilton Washington/Rockville, (Formerly Double Tree Hotel), 1750 Rockville Pike, Rockville, MD 20852.

Time: June 5, 2007, 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate the NIMH Intramural Laboratories, PIs, and Training Fellows.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Time: June 5, 2007, 2 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Contact Person: Richard K. Nakamura, PhD, Acting Scientific Director, Division of Intramural Research Programs, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 8229, Bethesda, MD 20892–9669, 301–443–3675, *rnakamur@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 3, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2348 Filed 5–11–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5119-N–01]

Notice of Proposed Information Collection: Comment Request; Economic Opportunities for Low- and Very Low-Income Persons

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement concerning the Section 3 program will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 13, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Juanina B. Harris, Reports Liaison Officer, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW., Room 5124, Washington, DC 20410 telephone (202) 402–6979.

FOR FURTHER INFORMATION CONTACT: Staci Gilliam, Director, Economic Opportunity Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 5234, Washington, DC 20410, telephone (202) 402–3468 (This is not a toll-free number). Hearing or speech-impaired individuals may access this number TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 34, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Enhance the Section 3 Program, (2) Enhance the quality, utility, and clarity of the information to be collected; and; (3) Minimize the burden of the collection of information on those who respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Economic Opportunity for Low- and Very Low-Income Persons.

OMB Control Number, if applicable: 2529–0043.

Description of the need for the information and proposed use:

A. The Section 3 Summary Report (Revised HUD form 60002)

The information will be used by the Department to monitor program recipients' compliance with the requirements of Section 3 of the Housing and Urban Development Act of 1968. HUD Headquarters will use the information to assess the results of the Department's efforts to meet the statutory objectives of Section 3. The data collected will be used by recipients as a self-monitoring tool. If the information is used, it will be used to prepare the mandatory reports to Congress assessing the effectiveness of Section 3.

B. Updated Section 3 Brochure (HUD–1476–FHEO, Revised)

The Section 3 Brochure will be used to disseminate information about the Section 3 program. It provides information regarding the program and provides instructions on filing a complaint.

C. Monitoring Review Feedback Form (HUD form 60003)

The information on this form will be used to improve and enhance Section 3 outreach and education efforts.

D. Complaint register HUD form 958

The information will be used in order to respond to and investigate complaints filed alleging noncompliance with Section 3.

Agency form numbers, if applicable: Form HUD 60002 Revised, HUD 958, HUD 1476–FHEO Revised, and HUD form 60003.

Members of affected public: State and local governments or their agencies, public and private non-profit organizations, low and very low income residents, Public Housing Authorities or other public entities.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: On an annual basis approximately 5,500 respondents (HUD recipients) will submit one report to HUD. It is estimated that two hours per annual reporting period will be required of the recipients to prepare the Section 3 report for a total of 11,000 hours.

Status of the proposed information collection: Reinstatement of a currently approved collection of information from HUD recipients.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 10, 2007.

Kim Kendrick,

Assistant Secretary for Fair Housing & Equal Opportunity.

[FR Doc. E7–9215 Filed 5–11–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5130–N–02]

Privacy Act of 1974; Notice of Matching Program: Matching Tenant Data in Assisted Housing Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of a computer matching program between the Department of Housing and Urban Development (HUD) and the Rural Housing Service (RHS), Department of Agriculture.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and the Office of Management and Budget's (OMB) Guidance on the statute, HUD is announcing a new a matching program involving comparisons between data provided by applicants or participants in HUD's assisted housing programs and applicants for RHS's rural housing programs. The matching program will be carried out to detect excessive or duplicate housing assistance as result of Hurricanes Katrina and Rita.

The matching program will be accomplished by comparing income, family size, family address, family identity, and benefit data for individuals participating in HUD's assisted housing programs and subsidized multifamily housing programs with rural housing assistance data maintained by RHS in its HS Multifamily Programs (MFH), Multifamily Information System (MFIS), Single Family Housing Programs (SFH), Dedicated Loan Origination and Servicing System (DLOS), and Guaranteed Loan System (GLS) databases within its system of records known as System of Records titled ''USDA/Rural Development,'' last published 63 FR 38546 (July 17, 1998). Specifically, HUD will compare the RHS identity, income, family size, and benefit data to tenant-reported data included in HUD's system of records known as: (1) the Tenant Housing Assistance and Contract Verification Data (HUD/H–11), last published at 62 FR 11909 (March 13, 1997); and (2) the Public and Indian Housing Information Center (HUD/PIH–4), last published at 67 FR 20986 (April 29, 2002). The tenant comparisons will identify, based on criteria established by HUD, tenants whose incomes, family size, address, or benefit levels, etc. that require further verification to determine if the tenants received excessive or duplicate rental assistance. The program also provides for the verification of the matching results and the initiation of appropriate administrative or legal actions.

DATES: *Effective Date:* Computer matching is expected to begin June 13, 2007, unless comments are received which will result in a contrary determination, or 40 days after a copies of the underlying matching agreement is signed, approved by HUD and RHS Data Integrity Boards, and sent to both Houses of Congress, whichever is later.

Comments Due Date: June 13, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: For Privacy Act: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4176, Washington, DC 20410, telephone number (202) 402–8062. A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

For further information from recipient agency: Bryan Saddler, Counsel to the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8260, Washington, DC 20410, telephone number (202) 708–1613.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act (CMPPA) of 1988, an amendment to the Privacy Act of 1974 (5 U.S.C. 552a), OMB's guidance on this statute entitled ''Final Guidance Interpreting the Provisions of Public Law 100–503, the CMPPA of 1988'' (OMB Guidance), and OMB Circular No. A–130 requires publication of notices of computer matching programs. Appendix I to OMB's Revision of Circular No. A–130, ''Transmittal Memorandum No. 4, Management of Federal Information Resources,'' prescribes Federal agency responsibilities for maintaining records about individuals. In compliance with the CMPPA and Appendix I to OMB Circular No. A–130, copies of this notice are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and OMB's Office of Information and Regulatory Affairs.

I. Authority

This matching program is being conducted pursuant to the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza, 2006 (Pub. L. 109–148); section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544); section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701–1750g); the United States Housing Act of 1937 (42 U.S.C. 1437–1437z); section 101 of the Housing and Community Development Act of 1965 (12 U.S.C. 1701s); the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*); the Quality Housing and Work Responsibility Act of 1998 (42 U.S.C. 1437a(f)); the Inspector General Act of 1978 (5 U.S.C. App. 3); Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–53); and 65 FR 24732 and 64 FR 54930.

Chapter 9, Title I, of the Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza, requires HUD to provide Tenant-Based Rental Assistance only to tenants who received housing assistance prior to the hurricanes and to ''those which were homeless or in emergency shelters in the declared disaster area prior to Hurricanes Katrina or Rita.'' It also requires, with respect to Community Development Fund assistance, that HUD establish procedures to prevent recipients from receiving any duplication of benefits.

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 authorizes HUD and housing agencies (HAs) (but not private owners/management agents for subsidized multifamily projects) to request wage and claim information from State Wage Information Collection Agencies (SWICAs) responsible for administering State unemployment laws in order to undertake computer matching of individual's income and eligibility for HUD housing assistance. This Act authorizes HUD to require applicants and participants to sign a consent form authorizing HUD or the HA to request wage and claim information from the SWICAs.

The Inspector General Act authorizes the HUD Inspector General to undertake programs to detect and prevent fraud and abuse in all HUD programs.

RHS, pursuant to section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) 42 U.S.C. 5155, Pub. L. 93–288, as amended, and 7 CFR part 1951, subpart O must assure that no person receiving disaster assistance receives unauthorized assistance.

II. Objectives To Be Met by the Matching Program

HUD's primary objectives in implementing the computer matching

program are: (a) To identify individuals who are receiving housing benefits in excess of those to which they are entitled; and (b) to identify duplicate disaster assistance payments. In meeting these objectives HUD also is carrying out a responsibility under 42 U.S.C. 1437f(K) to ensure that income data provided to POAs by household members is complete and accurate, and under 42 U.S.C. 5155 to avoid the duplication of Federal assistance payments.

The matching program identifies tenants receiving inappropriate (excessive or insufficient) rental assistance resulting from under or over-reported household income (including other Federal assistance) or composition. When excessive rental assistance amounts are identified, some tenants move out of assisted housing units; other tenants agree to repay excessive rental assistance. These actions may increase rental assistance or the number of units available to serve other beneficiaries of HUD programs. When tenants continue to be eligible for rental assistance, but at a reduced level, the tenants will be required to increase their contributions toward rent.

III. Program Description

This computer matching program, to the extent that it involves the use of SSA, IRS or SWICA data is fully described at 69 FR 11033. With respect to RHS data, the matching program will be accomplished by comparing income, family size, family address, family identity, and benefit data for individuals participating in HUD's assisted housing programs and subsidized multifamily housing programs with rural housing assistance data maintained by RHS in its systems of records known as ''USDA/Rural Development'', last published 63 FR 38546 (July 17, 1998). Specifically, HUD will compare the RHS identity, income, family size, and benefit data to tenant-reported data included in HUD's system of records known as: (1) The Tenant Housing Assistance and Contract Verification Data (HUD/H–11), last published at 62 FR 11909 (March 13, 1997); and (2) the Public and Indian Housing Information Center (HUD/PIH–4), last published at 67 FR 20986 (April 29, 2002). The tenant comparisons will identify, based on criteria established by HUD, tenants whose incomes, family size, address, or benefit levels, etc. require further verification to determine if the tenants received excessive or duplicate rental assistance. The program also provides for the verification of the matching results and the initiation of appropriate administrative or legal actions.

A. Income Verification

Any match (*i.e.*, a ''hit'') will be further reviewed by HUD, the POA, or the HUD Office of Inspector General (OIG), RHS, or the Department of Agriculture Office of Inspector to determine whether the information reported to the POA is correct and complies with HUD and POA requirements, and whether the tenant received duplicate housing assistance from RHS. Specifically, current or prior wage information and other data will be sought directly from employers.

B. Administrative or Legal Actions

Regarding all the matching described in this notice, HUD anticipates that POAs will take appropriate action in consultation with tenants to: (1) Resolve income disparities between tenant-reported and independent income source data, and (2) use correct income amounts in determining housing rental assistance.

POAs must compute the rent in full compliance with all applicable occupancy regulations. POAs must ensure that they use the correct income and correctly compute the rent. The POAs may not suspend, terminate, reduce, or make a final denial of any housing assistance to any tenant as the result of information produced by this matching program until: (a) The tenant has received notice from the POA of its findings and informing the tenant of the opportunity to contest such findings and (b) either the notice period provided in applicable regulations of the program, or 30 days, whichever is later, has expired. In most cases, POAs will resolve income discrepancies in consultation with tenants. Additionally, serious violations, which POAs, HUD Program staff, or HUD OIG verify, should be referred for full investigation and appropriate civil and/or criminal proceedings.

IV. Records To Be Matched

This computer matching program, to the extent that it involves the use of SSA, IRS or SWICA data is fully described at 69 FR 11033. With respect to RHS data, the match will involve tenant records obtained directly from POAs and subsidized multifamily projects included in the Tenant Housing Assistance and Contract Verification Data (HUD/H–11) and the Public and Indian Housing Information Center (HUD/PIH–4). These records contain information about individuals who are participants in the Federal low income and Section 8 housing assistance programs. Specifically, the tenant records include these data elements:

(1) SSNs for each family member;

(2) Family control number to identify each tenant with a particular family;

(3) Head of Household Indicator;

(4) Last Name, First Name, Middle Initial, and Address for household;

(5) Sex;

(6) Birth Date;

(7) Reported Income by source, description and amount;

(8) Program Code; and

(9) Recertification Date.

The RHS will provide HUD with files from the USDA/Rural Development. The notice for this system was published at 63 FR 38546. The disclosure from USDA/Rural Development will be made in accordance with routine use ''5.'' HUD will match the tenant records to the RHS records on disaster assistance applicants to compare tenant reported income. For matched tenant's SSNs (*i.e.*, ''hits''), HUD will match the following information from USDA/Rural Development: the RHS applicant or co-applicant name(s), address(es), social security number(s), assistance date(s), and rental/loan/grant assistance amount(s).

V. Period of the Match

The computer matching program will be conducted according to an agreement between HUD and the RHS. The computer matching agreement for the planned matches will terminate either when the purpose of the computer matching program is accomplished, or 18 months from the date the agreement is signed, whichever comes first. The agreement may be extended for one 12-month period, with the mutual agreement of all involved parties, if the following conditions are met:

(1) Within 3 months of the expiration date, all Data Integrity Boards review the agreement, find that the program will be conducted without change, and find a continued favorable examination of benefit/cost results; and

(2) All parties certify that the program has been conducted in compliance with the agreement.

The agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the date the agreement is signed (whichever comes first), by the mutual agreement of all involved parties within 30 days of written notice.

Dated: May 3, 2007.

Lisa Schlosser,

Chief Information Officer.

[FR Doc. E7–9170 Filed 5–11–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council. Primary objectives of the meeting will include discussion of the following topics: Habitat/geomorphic mapping, gravel augmentation planning, Trinity River Restoration Program (TRRP) budget, Integrated Assessment Plan, reimbursability of TRRP program costs, TAMWG communications with the Trinity Management Council, TAMWG membership/quorum/bylaws in regard to voting. Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed. The meeting is open to the public.

DATES: The Trinity Adaptive Management Working Group will meet from 9 a.m. to 5 p.m. on Tuesday, June 19, 2007.

ADDRESSES: The meeting will be held at the Weaverville Victorian Inn, 1709 Main St., 299 West, Weaverville, CA 96093. For more information, please contact the U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521. For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: Randy A. Brown of the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, telephone: (707) 822–7201. Randy A. Brown is the working group's Designated Federal Officer. For questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, telephone: (530) 623–1800.

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG).

Dated: April 25, 2007.

Randy A. Brown,

Designated Federal Officer, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. E7–9185 Filed 5–11–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Call for Nominations to the National Geospatial Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Call for nominations, National Geospatial Advisory Committee.

SUMMARY: The Department of the Interior, after consultation with the General Services Administration, is establishing the National Geospatial Advisory Committee under the authority of the Federal Advisory Committee Act (FACA). The Committee will provide advice and recommendations to the Federal Geographic Data Committee (FGDC), through the FGDC Chair (the Secretary of the Interior or designee), related to management of Federal geospatial programs, the development of the National Spatial Data Infrastructure (NSDI), and the implementation of Office of Management and Budget (OMB) Circular A–16 and Executive Order 12906. The Committee will review and comment upon geospatial policy and management issues and will provide a forum to convey views representative of non-Federal stakeholders in the geospatial community.

DATES: Requests to participate on this Committee must be postmarked by June 28, 2007.

ADDRESSES: Send nominations electronically to *ngacnominations@fgdc.gov*, or by mail to John Mahoney, U.S. Geological Survey, U.S. Department of the Interior, 909 First Avenue, Suite 422, Seattle, WA 98104.

Nominations should include:

1. A statement summarizing the nominee's qualifications and interest in Committee membership and describing the nominee's ability to represent a stakeholder group.

2. A biographical sketch, resume, or vita.

3. A list of three references or endorsements.

4. Contact information for the nominee.

FOR FURTHER INFORMATION CONTACT: John Mahoney, USGS (206–220–4621).

SUPPLEMENTARY INFORMATION: The Committee will conduct its operations in accordance with the provisions of the FACA. It will report to the Secretary of the Interior through the Chair of the FGDC Steering Committee and will function solely as an advisory body. The Committee will provide recommendations and advice to the Department and the FGDC on policy and management issues related to the effective operation of Federal geospatial programs.

The Secretary of the Interior will appoint Committee members and their alternates to the Committee to serve 2-year terms. The Committee will be comprised of approximately 20–25 representatives, who will be selected to generally achieve a balanced representation of the viewpoints of the various stakeholders involved in national geospatial activities and the development of the NSDI.

Nominations will be reviewed by the FGDC. Additional information may be requested from nominees. Final selection and appointment of committee members will be made by the Secretary of the Interior.

The Committee is expected to meet approximately 3–4 times per year. Committee members will serve without compensation. Travel and per diem costs will be provided for Committee members by USGS. The USGS will provide necessary support services to the Committee. Committee meetings will be open to the public. Notice of committee meetings will be published in the **Federal Register** at least 15 days before the date of the meeting. The public will have an opportunity to provide input at these meetings.

In accordance with FACA, a copy of the Committee's charter will be filed with the Committee Management Secretariat, General Services Administration. A draft charter for the NGAC is available at: *http://www.fgdc.gov/participation/steering-committee/meeting-minutes/feb07-sc/faca/charter-draft*.

Dated: May 8, 2007.

Ivan DeLoatch,

Staff Director, Federal Geographic Data Committee.

[FR Doc. 07–2358 Filed 5–11–07; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 26, 2007. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW, 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 29, 2007.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARIZONA

Apache County

Chinle Franciscan Mission Historic District, Indian Service Rte 7, across road and SW of the Chinle Judicial complex and Police Station, Chinle, 07000506

ARKANSAS

Arkansas County

Stuttgart Commercial Historic District, Roughly bounded by 1st St., College St., 6th St., and Maple St., Stuttgart, 07000502

Ashley County

Parkdale Methodist Church, S. Church St., Parkdale, 07000505

Faulkner County

Castleberry—Harrington Historic District, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) Castleberry Rd., Republican, 07000503

Van Buren County

Patterson, Walter, House, (Mixed Masonry Buildings of Silas Owens, Sr. MPS) 1800 U.S. 65N, Clinton, 07000504

CALIFORNIA

Amador County

Paugh, William H., House, 406 Pitt St., Jackson, 07000507

CONNECTICUT

Windham County

Hemlock Glen Industrial Archeological District, Address Restricted, Hampton, 07000508

DISTRICT OF COLUMBIA

District of Columbia

Engine Company 12, (Firehouses in Washington DC MPS) 1626 N. Capitol St., NW, Washington, 07000537

Engine Company 17, (Firehouses in Washington DC MPS) 1235 Monroe St. NE, Washington, 07000538

Engine Company 23, (Firehouses in Washington DC MPS) 2119 G, NW, Washington, 07000540

Engine Company 26, (Old), (Firehouses in Washington DC MPS) 2715 22nd St. NE, Washington, 07000536

Engine Company 29, (Firehouses in Washington DC MPS) 4811 MacArthur Blvd. NW, Washington, 07000534

Truck Company F, (Firehouses in Washington DC MPS) 1336–1338 Park Rd. NW, Washington, 07000539

Truck House No. 13, (Firehouses in Washington DC MPS) 1342 Florida Ave. NE, Washington, 07000535

FLORIDA

Polk County

Griffin Grammar School, 3315 Kathleen Rd., Lakeland, 07000509

HAWAII

Hawaii County

Puako Petroglyph Archeological District (Boundary Increase and Boundary Decrease), Address Restricted, Puako, 07000513

MASSACHUSETTS

Essex County

Walker Body Company Factory, Oak St. at River Court, Amesbury, 07000512

Norfolk County

Elm Park and Isaac Sprague Memorial Tower, 305 Washington St., Wellesley, 07000511

Suffolk County

Goldsmith Block, 41 Ruggles St., 746–750 Shawmut Ave., Boston, 07000510

OHIO

Cuyahoga County

Euclid Avenue Historic District (Boundary Increase), 205 St. Clair Ave., 1370 Ontario St., 1796–1808 E. 13th St., Cleveland, 07000524

OKLAHOMA

Bryan County

Durant Downtown Historic District, Roughly bounded by 4th Ave., Lost St., Evergreen St. and First Ave., Durant, 07000517

Comanche County

Lawton National Guard Armory, 600 Northwest Cache Rd., Lawton, 07000519

Garvin County

Flynt Building, (Territorial Commercial Buildings of Chandler TR) 720 Manvel Ave., Chandler, 07000516

Greer County

Hotel Franklin, 217 West Jefferson, Mangum, 07000520

Kay County

White Eagle Park, N of White Eagle, White Eagle, 07000522

Noble County

Perry Lake Park, 1520 S. 4th St., Perry, 07000523

Oklahoma County

Lake Overholser Dam, NW 16th St. and E. Lake Overholser Dr., Oklahoma City, 07000518

Oklahoma City Municipal Building, 200 N. Walker Ave., Oklahoma City, 07000521

Taft Junior High School, 2901 NW 23rd. St., Oklahoma City, 07000515

Pawnee County

First State Bank of Maramec, Jct. Second Ave. and Hickory St., Maramec, 07000514

PUERTO RICO

Arecibo Municipality, National Astronomy and Ionosphere Center, Esperanza Ward, San Rafael Sector, Rd. 625, Arecibo, 07000525

RHODE ISLAND

Newport County

Borden Farm, 2951 and 2967 E. Main Rd., Portsmouth, 07000528

Providence County

Metcalf—Franklin Farm, 142 Abbott Run Valley Rd., Cumberland, 07000526

Washington County

Hale House, 2625A Commodore Oliver Hazard Perry Hwy., South Kingstown, 07000527

SOUTH DAKOTA

Charles Mix County

Pratt & Cjolme Building, 500 S. Main, Platte, 07000532

Hutchinson County

United Brethren Church in Christ, Lots 5 through 10 in Block 20, Milltown, 07000531

Lawrence County

Whitewood Historic District, 1005–1021 Meade St., Whitewood, 07000529

Turner County

Glud Theatre, 119 N. Main St., Viborg, 07000530

TENNESSEE

Shelby County

Squire's Rest, 8993 Barret Rd., Barretville, 07000533

WISCONSIN

Pierce County

Glen Park Municipal Swimming Pool, 355 Park St., River Falls, 07000542

WYOMING

Albany County

Mountain View Hotel, 2747 WY 130, Centennial, 07000541

[FR Doc. E7–9171 Filed 5–11–07; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–409 and 731–TA–909 (Review)]

Low Enriched Uranium From France

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the antidumping and countervailing duty orders on low enriched uranium (''LEU'') from France.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping and countervailing duty orders on LEU from France would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* April 9, 2007.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On April 9, 2007, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act.[1] The Commission found that both the domestic and respondent interested party group responses to its notice of institution (72 F.R. 144, January 3, 2007) were adequate.[2] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 8, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–9148 Filed 5–11–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 5, 2006, Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Codeine-N-Oxide (9053)	I
Morphine-N-Oxide (9307)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the Schedule I controlled substances for internal testing; the Schedule II controlled substances will be manufactured in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with the DEA to bulk manufacture such a substance, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 2401 Jefferson Davis Highway, Alexandria, Virginia 22301; and must be filed no later than July 13, 2007.

Dated: May 7, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–9200 Filed 5–11–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Parole Commission

[(Public Law 94–409) (5 U.S.C. 552b)]

Record of Vote of Meeting Closure

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 1:30 p.m., on Thursday, April 26, 2007, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide four petitions for reconsideration pursuant to 28 CFR 2.27. Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Cranston J. Mitchell, Deborah A.

[1] Commissioner Okun did not participate.

[2] Commissioner Williamson dissented with respect to the adequacy of the respondent interested party group response, finding that the respondent interested party group response was inadequate. Commission Williamson also found that other circumstances warranted conducting full reviews.

Spagnoli, Isaac Fulwood, Jr., and Patricia Cushwa.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: April 27, 2007.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 07–2379 Filed 5–9–07; 4:24 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[SGA/DFA–PY 06–14]

Preparing Ex-Offenders for the Workplace Through Beneficiary-Choice Contracting; Solicitation for Grant Applications (SGA)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; amendment.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** on April 16, 2007, announcing the availability of funds and solicitation for grant applications to address the specific workforce challenges of ex-offenders and produce positive outcomes with a particular focus on employment and reduced recidivism. The document is hereby amended.

FOR FURTHER INFORMATION CONTACT: Melissa Abdullah, Grants Management Specialist, Telephone (202) 693–3346.

Amendment

In the **Federal Register** of April 16, 2007, in FR Volume 72, Number 72:

1. On page 19027, in the middle column, Part I, Service Model, the following is added: Grants must be for a geographically-defined city or local community that serves participants within that area.

2. On page 19028, in the left column, Part I, Services Coordinator, stated the following: Perform all other aspects of managing the Federal grant-including fiscal controls and responsibility.

This section is amended to add: The applicant and fiscal agent for this grant must be the same organization.

3. On page 19032, starting in the left column, Part II (3) Other Eligibility Requirements, Beneficiary Eligibility, stated the following: Individuals aged 18 to 29 who have been convicted of a Federal or State crime through the adult criminal justice system, are returning from a State institution, and are not currently enrolled in a traditional program may be served by these grants.

This sentence is replaced with: Individuals aged 18 to 29 who have been convicted of a Federal or State crime through the adult criminal justice system and are returning from a State or Federal institution may be served by these grants.

4. On page 19032, in the right column, Part IV (2) Content and Form of Application Submission, stated the following: The additional materials may not exceed (15) fifteen pages in addition to the Technical Proposal.

This sentence is replaced with: The additional materials may not exceed (20) twenty pages in addition to the Technical Proposal.

Signed at Washington, DC, this 7th day of May, 2007.

Eric Luetkenhaus,

Grant Officer, Employment & Training Administration.

[FR Doc. E7–9172 Filed 5–11–07; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998 (WIA); Notice of Incentive Funding Availability for Program Year (PY) 2005 Performance; Correction

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice; correction.

SUMMARY: The Employment and Training Administration (ETA) published in the **Federal Register** on April 30, 2007, an announcement from the Department of Labor, in collaboration with the Department of Education, regarding which states are eligible to apply for Workforce Investment Act (WIA) (Pub. L. 105–220, 29 U.S.C. 2801 et seq.) incentive awards under WIA section 503. The April 30, 2007, announcement did not include the complete list of states; the list is now revised to include all eligible states.

FOR FURTHER INFORMATION CONTACT: Karen A. Staha or Traci DiMartini, U.S. Department of Labor, Employment and Training Administration, Office of Performance and Technology, 200 Constitution Avenue, NW., Room S–5206, Washington, DC 20210. Telephone number: 202–693–3031 (this is not a toll-free number). Fax: 202–693–3490. E-mail: *staha.karen@dol.gov* or *dimartini.traci@dol.gov*. Information may also be found at the ETA Performance Web site: *http://www.doleta.gov/performance*.

Correction

In the **Federal Register** published on April 30, 2007, in the third column, on page 21307, corrected the **DATES** caption to read:

DATES: The ten eligible states must submit their applications for incentive funding to the Department of Labor by June 14, 2007.

On page 21308, in the chart published in the second and third columns, the eligible states and amount of each award is revised to read:

State	Amount of award
1. Arizona	$1,478,972
2. Delaware	912,966
3. Illinois	3,000,000
4. Iowa	1,079,834
5. Massachusetts	1,500,386
6. Missouri	1,627,366
7. Oregon	1,522,101
8. Tennessee	1,757,992
9. Virginia	1,623,378
10. Washington	1,850,193

On page 21310, the PY 2005–06 Exceeded State Performance Levels chart (see Appendix) was revised to indicate that Washington State is eligible for an incentive under WIA title IB, Adult Education and Family Literacy Act, and Perkins Act criteria.

Dated: May 10, 2007.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

APPENDIX

State	PY 2005–06 Exceeded State Performance Levels			
	WIA (Title I)	AEFLA (Adult Education)	Perkins Act (Vocational Education)	WIA Title I; AEFLA; Perkins Act
Alabama	X	X		
Alaska			X	

APPENDIX—Continued

State	PY 2005–06 Exceeded State Performance Levels			
	WIA (Title I)	AEFLA (Adult Education)	Perkins Act (Vocational Education)	WIA Title I; AEFLA; Perkins Act
Arizona	X	X	X	X
Arkansas			X	
California			X	
Colorado		X	X	
Connecticut		X	X	
District of Columbia		X	X	
Delaware	X	X	X	X
Florida	X		X	
Georgia		X	X	
Hawaii			X	
Idaho		X	X	
Illinois	X	X	X	X
Indiana		X	X	
Iowa	X	X	X	X
Kansas		X	X	
Kentucky	X		X	
Louisiana		X	X	
Maine			X	
Maryland		X	X	
Massachusetts	X	X	X	X
Michigan	X	X		
Minnesota	X	X		
Mississippi		X	X	
Missouri	X	X	X	X
Montana		X	X	
Nebraska		X	X	
Nevada			X	
New Hampshire		X		
New Jersey	X		X	
New Mexico				
New York		X	X	
North Carolina			X	
North Dakota	X	X		
Ohio		X	X	
Oklahoma			X	
Oregon	X	X	X	X
Pennsylvania			X	
Puerto Rico			X	
Rhode Island				
South Carolina		X	X	
South Dakota	X	X		
Tennessee	X	X	X	X
Texas		X	X	
Utah			X	
Vermont			X	
Virginia	X	X	X	X
Washington	X	X	X	X
West Virginia		X	X	
Wisconsin		X	X	
Wyoming		X	X	

[FR Doc. E7–9262 Filed 5–11–07; 8:45 am]
BILLING CODE 4510–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that eight meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows (ending times are approximate):

Folk & Traditional Arts (application review): May 31–June 1, 2007 in Room 716. This meeting, from 9 a.m. to 5:45 p.m. on May 31 and from 9 a.m. to 4 p.m. on June 2, will be closed.

Media Arts (application review): June 4–6, 2007 in Room 716. A portion of this meeting, from 10:30 a.m. to 11:30 a.m. on June 6, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 5:45 p.m. on June 4, from 9 a.m. to 6 p.m. on June 5, and from 9 a.m. to 10:30 a.m. and from 11:30 a.m. to 1 p.m. on June 6, will be closed.

Musical Theater (application review): June 12–13, 2007 in Room 714. A portion of this meeting, from 1 p.m. to 2 p.m. on June 13, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 5 p.m. on June 12 and from 9 a.m. to 1 p.m. and 2 p.m. to 5 p.m. on June 13, will be closed.

Local Arts Agencies (application review): June 13–14, 2007 in Room 730.

This meeting, from 9 a.m. to 5:30 p.m. on June 13 and from 8:45 a.m. to 12 p.m. on June 14, will be closed.

Presenting (application review): June 19, 2007 in Room 716. This meeting, from 9 a.m. to 6:15 p.m., will be closed.

Presenting (application review): June 20, 2007 in Room 716. this meeting, from 9 a.m. to 4 p.m., will be closed.

Theater (application review): June 19–22, 2007 in Room 714. A portion of this meeting, from 11:30 a.m. to 12:30 p.m. on June 22, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on June 19–21 and from 9 a.m. to 11:30 a.m. and 12:30 p.m. to 3 p.m. on June 22, will be closed.

Design (application review): June 21–22, 2007 in Room 730. This meeting, from 9 a.m. to 5:30 p.m. on June 21 and from 9 a.m. to 12 p.m. on June 22, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 21, 2007, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: May 8, 2007.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E7–9182 Filed 5–11–07; 8:45 am]

BILLING CODE 7537–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

DATE OF MEETING: May 1, 2007.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 72 FR 20149, April 23, 2007.

ADDITION: Postal Regulatory Commission Opinion and Recommended Decision on Reconsideration in Docket No. R2006–1.

At its closed meeting on May 1, 2007, the Board of Governors of the United States Postal Service voted unanimously to add this item to the agenda of its closed meeting and that no earlier announcement was possible. The General Counsel of the United States Postal Service certified that in her opinion discussion of this item could be properly closed to public observation.

CONTACT PERSON FOR MORE INFORMATION: Wendy A. Hocking, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000.

Wendy A. Hocking,

Secretary.

[FR Doc. 07–2378 Filed 5–9–07; 4:17 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request; copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rules 7a–15 thru 7a–37; OMB Control No. 3235–0132; SEC File No. 270–115.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rules 7a–15 through 7a–37 (17 CFR 260.7a–15–7a–37) under the Trust Indenture Act of 1939 set forth the general requirements relating to applications, statements and reports that must be filed under the Act by issuers and trustees qualifying indentures under that Act for offerings of debt securities. The respondents are persons and entities subject to the Trust Indenture Act requirements. Rules 7a–15 through 7a–37 are disclosure guidelines and do not directly result in any collection of information. The Rules are assigned only one burden hour for administrative convenience.

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; or send an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 7, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9175 Filed 5–11–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 6a–4; SEC File No. 270–496; OMB Control No. 3235–0554.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995,[1] the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 6 of the Securities Exchange Act of 1934 (''Act'')[2] sets out a framework for the registration and regulation of national securities exchanges. Under the Commodity Futures Modernization Act of 2000, a

[1] 44 U.S.C. 3501 *et seq.*

[2] 15 U.S.C. 78f.

futures market may trade security futures products by registering as a national securities exchange. Rule 6a–4[3] sets forth these registration procedures and directs futures markets to submit a notice registration on Form 1–N. Form 1–N calls for information regarding how the futures market operates, its rules and procedures, its criteria for membership, its subsidiaries and affiliates, and the security futures products it intends to trade. Rule 6a–4 also would require entities that have submitted an initial Form 1–N to file: (1) Amendments to Form 1–N in the event of material changes to the information provided in the initial Form 1–N; (2) periodic updates of certain information provided in the initial Form 1–N; (3) certain information that is provided to the futures market's members; and (4) a monthly report summarizing the futures market's trading of security futures products. The information required to be filed with the Commission pursuant to Rule 6a–4 is designed to enable the Commission to carry out its statutorily mandated oversight functions and to ensure that registered and exempt exchanges continue to be in compliance with the Act.

The respondents to the collection of information are futures markets.

The Commission estimates that the total annual burden for all respondents to provide the amendments and periodic updates under Rule 6a–4 would be 105 hours (15 hours/respondent per year × seven respondents) and $10,066 ($1438/response × seven responses/year). The Commission estimates that the total annual burden for the filing of the supplemental information and the monthly reports required under Rule 6a–4 would be 87.5 hours (25 filings/respondent × seven respondents × 0.5 hours/response). The SEC estimates that the total annual cost for all supplemental filings would be $3675 (25 filings/respondent per year × seven respondents × $21/response).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: May 7, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9180 Filed 5–11–07; 8:45 am]

BILLING CODE 8010–01–P

[3] 17 CFR 240.6a–4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55719; File No. SR–Amex–2006–17]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Amendment Nos. 3 and 4 Relating to Procedures for At-Risk Cross Transactions

May 7, 2007.

On February 17, 2006, the American Stock Exchange LLC (''Amex'' 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 adopt a new crossing procedure, the ''at-risk cross,'' as an alternative to the Exchange's existing facilitation cross procedure. On November 9, 2006, the Exchange filed Amendment No. 1 to the proposed rule change, and on December 1, 2006, the Exchange filed Amendment No. 2 to the proposed rule change. The proposed rule change, as modified by Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on January 17, 2007.[3] On March 28, 2007, the Exchange filed Amendment No. 3 to the proposed rule change, and on May 3, 2007, the Exchange filed Amendment No. 4 to the proposed rule change. Amendment Nos. 3 and 4 are described in Item II below. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended by Amendment Nos. 3 and 4, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55068 (January 9, 2007), 72 FR 2044 (''Notice'').

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to revise the procedures applicable to cross transactions in equity options to provide procedures for at-risk cross transactions. The text of the proposed rule change is available at the Amex, on the Amex's Web site at *http://amex.com*, 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to provide an alternative crossing procedure to supplement the existing facilitation cross procedure in Commentary .02 to Amex Rule 950–ANTE(d). In this manner, the Amex would permit ''at-risk'' cross transactions by member firms. A complete description and statement of purpose of the proposed rule change, as modified by Amendment Nos. 1 and 2, may be found in the notice of filing previously published for comment in the **Federal Register**.[4]

In Amendment No. 3, the Exchange made technical and clarifying changes to the proposal[5] and stated that the proposed at-risk cross procedure would not apply to options classes that are part of the Exchange's options penny pilot

[4] *See* Notice, *supra* note 3.

[5] Specifically, the Exchange made a clarifying change to the language of Commentary .03(vii) to Amex Rule 950–ANTE(d). The Exchange also confirmed that if a public customer order either on the book or represented in the trading crowd has priority over the at-risk cross, the member firm would be permitted to participate only in those contracts remaining after the public customer's order has been filled. Further, the Exchange represented that if there is a public customer order on the book or represented in the trading crowd on the same side of the market as, and priced at or better than, the public customer order that is part of the at-risk cross, the public customer order on the book or represented in the trading crowd would have priority.

program.[6] In Amendment No. 4, the Exchange proposes to allow the proposed at-risk crossing procedure to apply to options classes that are part of the options penny pilot program.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[8] in general and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest, to foster cooperation and coordination with persons engaged in facilitating transactions in securities and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[6] *See* Securities Exchange Act Release No. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR–Amex–2006–106).

[7] In addition, Amendment No. 4 makes non-substantive rule text changes and shows the text of the final proposal as marked against the current text of Amex Rule 950–ANTE(d).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2006–17 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–2006–17. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–17 and should be submitted on or before May 29, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9176 Filed 5–11–07; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55724; File No. SR–CBOE–2007–39]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding Penny Price Improvement

May 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 24, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its Rules regarding penny price improvement for options not currently quoted in one-cent increments. The text of the proposed rule change is set forth below. Proposed new language is *italicized;* and proposed deletions are [bracketed].

* * * * *

Rule 6.13B. Penny Price Improvement

The Exchange may designate one or more options trading on the Hybrid System for inclusion in the Penny Price Improvement Program. Under this program, the Exchange will allow all users to provide price improvement beyond the Exchange's disseminated quotation (''Penny Pricing'') for classes or series that are not already quoted in one-cent increments and for which the Simple Auction Liaison system in Rule 6.13A is not in effect.

(a) Electronic Penny Pricing. Electronic penny prices may be established as follows:

(1) Market-Makers. Market-Makers may electronically provide the Exchange with indications of interest that are superior to their own quotations in increments no smaller than one-cent. Such indications shall be firm for all interest received by the Exchange. The Exchange shall disseminate such

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

interest using standard quoting increments by rounding the limit price to the nearest standard quoting increment that does not violate the limit price.

(2) Orders. Public Customers and all other users may electronically submit to the Exchange orders priced in one-cent increments. The Exchange shall disseminate such orders using standard quoting increments by rounding the limit price to the nearest standard quoting increment that does not violate the limit price.

All Penny Pricing submitted pursuant to (1) or (2) above shall be filed by the System for order allocation purposes but shall not be visible. The Exchange may append an indicator to its disseminated quotation to indicate the existence of Penny Pricing in the relevant side of a series when it exists, but no information regarding the price and size of the Penny Pricing shall be made available.

If an order is received by the Hybrid System that could trade against Penny Pricing and where the Exchange's disseminated quotation is the NBBO, it will automatically execute against the Penny Pricing pursuant to the Exchange's normal allocation procedures.

(b) Open Outcry Penny Pricing. Oral bids (offers) provided by in-crowd market participants may be expressed in one-cent increments in response to an order represented in open outcry provided that: (1) The oral bids (offers) better the corresponding bid (offer) in the Exchange's disseminated quotation; and (2) any resulting transaction(s) is consistent with the requirements of Rule 6.83.

The appropriate Procedure Committee may also determine on a class-by-class basis to make the split-price priority provisions of Rule 6.47 applicable to a class that is subject to Penny Pricing under this rule.

For purposes of this rule, ''in-crowd market participants'' includes in-crowd Market-Makers, an in-crowd DPM or LMM, and Floor Brokers or PAR Officials representing orders in the trading crowd.

(c) Prior to effecting any transactions in open outcry in one-cent increments, Exchange members must electronically ''sweep'' any Penny Pricing interest in the Hybrid System so as not to violate the priority of such Penny Pricing.

(d) All pronouncements regarding the applicability of this rule will be announced to the membership via Regulator Circular.

* * * * *

Rule 6.45 Priority of Bids and Offers—Allocation of Trades

Except as provided by Rules, including but not limited to Rule 6.2A, 6.8, 6.9, 6.13, *6.13B*, 6.45A, [Rule] 6.47, [Rule] 6.74, [Rule] 8.87 and [CBOE] *Exchange* Regulatory Circulars approved by the [SEC] *Commission* concerning Participation *Entitlements* [Rights], the following rules of priority shall be observed with respect to bids and offers:

(a)–(e) No change.

* * * Interpretations and Policies:

.01–.02 No change.

* * * * *

Rule 6.45A Priority and Allocation of Equity Option Trades on the CBOE Hybrid System

6.45A Generally: No change.

(a)–(e) No change.

* * * Interpretations and Policies:

.01 Principal Transactions: Order entry firms may not execute as principal against orders they represent as agent unless: (i) Agency orders are first exposed on the Hybrid System for at least three (3) seconds, (ii) the order entry firm has been bidding or offering for at least (3) seconds prior to receiving an agency order that is executable against such bid or offer, or (iii) the order entry firm proceeds in accordance with the crossing rules contained in Rule 6.74. *This paragraph also shall apply to orders resting on the Hybrid System in penny increments pursuant to Rule 6.13B. In such cases, agency orders priced in penny increments are deemed ''exposed'' pursuant to (i) above, and order entry firm orders priced in penny increments are deemed bids or offers pursuant to (ii) above.*

.02 Solicitation Orders. Order entry firms must expose orders they represent as agent for at least three (3) seconds before such orders may be executed electronically via the electronic execution mechanism of the Hybrid System, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders. *This paragraph also shall apply to agency orders resting on the Hybrid System in penny increments pursuant to Rule 6.13B. In such cases, agency orders priced in penny increments are deemed ''exposed'' pursuant to this paragraph.*

* * * * *

Rule 6.45B Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System

6.45B Generally: No change.

(a)–(d) No change.

* * * Interpretations and Policies:

.01 Principal Transactions: Order entry firms may not execute as principal against orders they represent as agent unless: (i) Agency orders are first exposed on the Hybrid System for at least three (3) seconds, (ii) the order entry firm has been bidding or offering for at least (3) seconds prior to receiving an agency order that is executable against such bid or offer, or (iii) the order entry firm proceeds in accordance with the crossing rules contained in Rule 6.74. *This paragraph also shall apply to orders resting on the Hybrid System in penny increments pursuant to Rule 6.13B. In such cases, agency orders priced in penny increments are deemed ''exposed'' pursuant to (i) above, and order entry firm orders priced in penny increments are deemed bids or offers pursuant to (ii) above.*

.02 Solicitation Orders. Order entry firms must expose orders they represent as agent for at least three (3) seconds before such orders may be executed electronically via the electronic execution mechanism of the Hybrid System, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders. *This paragraph also shall apply to agency orders resting on the Hybrid System in penny increments pursuant to Rule 6.13B. In such cases, agency orders priced in penny increments are deemed ''exposed'' pursuant to this paragraph.*

* * * * *

Rule 6.47. Priority on Split-Price Transactions Occurring in Open Outcry

(a)–(c) No change.

* * * Interpretations and Policies:

.01 No change.

.02 *The availability of split-price priority when an order is executed in a one-cent increment pursuant to Rule 6.13B shall be determined in accordance with Rule 6.13B(b).*

* * * * *

Rule 6.74. Crossing Orders

(a)–(f) No change.

* * * Interpretations and Policies:

.01–.08 No change.

.09 For purposes of paragraphs (a), (b), and (d), the minimum increment for bids and offers shall be one cent for orders that are subject to the open outcry penny price improvement under Rule 6.13B. Open outcry penny price improvement under Rule 6.13B shall not be available for orders executed pursuant to paragraphs (c) and (f).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to allow Exchange users the expanded ability to effect transactions in penny increments in classes and/or series trading on CBOE's Hybrid System that are not already quoting in penny increments.[3] The Exchange would designate the classes/series eligible for this penny pricing, and the penny pricing would be available electronically and in open outcry. As proposed, all limit orders electronically sent to CBOE (regardless of sender origin type) could be expressed in a one-cent increment. The Exchange would round the limit price to the nearest permissible quoted increment for display purposes, but would maintain the one-cent increment limit price for trade allocation purposes. For example, the CBOE market is 1–1.20 and an order is received to buy 10 contracts at 1.08. CBOE would disseminate a 1.05 bid for 10 contracts, and any subsequent sell market order received by the Exchange would trade at 1.08 for up to 10 contracts (after that, the quote would revert back to 1–1.20).[4]

An Exchange Market-Maker could also provide the Exchange with indications to trade in one-cent increments that improve on the Market-Maker's disseminated quotation. To the extent there is trading interest from multiple sources at the same one-cent increment price, priority will be established in the exact same manner as priority at a standard quoting increment (*i.e.*, normal allocation procedures are used). The Exchange may attach an indicator to its publicly disseminated quote indicating the existence of penny pricing for the series, but the size and price of any penny pricing will not be displayed or made available to anyone. If the indicator feature is activated, it will apply to all classes/series participating in the penny pricing program.

With respect to open outcry, crowd members would be able to provide price improvement in one-cent increments over the Exchange's Best Bid or Offer (''BBO''). The Exchange has represented that any resulting trade would not cause a trade-through of another options exchange. Further, prior to executing any order in open outcry in one-cent increments, members would be required to electronically ''sweep'' any penny pricing interest that may exist. The ''sweep'' would ensure that better-priced orders resting in one-cent increments are executed prior to the open outcry transaction and would also ensure that same priced orders receive executions consistent with existing rules governing priority of orders in the Hybrid book when trading with an order represented in open outcry (CBOE Rules 6.45A(b) and 6.45B(b)).

The applicability of split-price priority under CBOE Rule 6.47 to transactions effected under proposed CBOE Rule 6.13B would be determined by the appropriate option procedure committee, and the mechanics of split-price priority in those instances would be the same as the mechanics of split-price priority in five- and ten-cent increments.

In addition, open outcry penny pricing would generally be available in instances where a Floor Broker is attempting to cross an order pursuant to CBOE Rule 6.74. However, it would not be available in those instances where (i) a Floor Broker is attempting to cross orders during the opening rotation in open outcry [5] or (ii) a Floor Broker is utilizing the Exchange's SizeQuote Mechanism.[6]

Lastly, the restrictions contained in Interpretations and Policies .01 and .02 under CBOE Rules 6.45A and 6.45B would continue to apply to trading in penny increments, including the 3-second exposure requirements, contained in those Interpretations and Policies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposal will provide an opportunity for customers to receive price improvement on their orders.

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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File

[3] In File No. SR–CBOE–2006–42, the Exchange proposed to allow penny price improvement in open outcry. That filing has been withdrawn and most of its provisions have been incorporated into this filing, which also contemplates electronic penny price improvement.

[4] The Exchange has represented that the system would not execute an order at a price that would cause a trade-through of another options exchange.

[5] *See* CBOE Rule 6.74(c), which provides procedures for a floor broker to cross orders during the opening rotation for a class of options.

[6] *See* CBOE Rule 6.74(f), which describes the SizeQuote Mechanism.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

No. SR–CBOE–2007–39 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 No. SR–CBOE–2007–39. 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 at *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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2007–39 and should be submitted on or before June 4, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55722; File No. SR–ISE–2007–24]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Market Data Revenue Rebates

May 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2007, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been substantially prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on April 23, 2007, and Amendment No. 2 on May 3, 2007. The ISE filed this proposed rule change which establishes dues, fees or other charges among its members pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2)[4] thereunder, and, as such, it has become 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

The ISE is proposing to amend its Schedule of Fees relating to its sharing of market data revenues. The text of the proposed rule change is available at the ISE, the Commission's Public Reference Room, and *http://www.iseoptions.com/legal/proposed_rule_changes.asp*.

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

The purpose of this proposed rule change is to amend the Exchange's Schedule of Fees to clarify that while the Exchange will continue to rebate back to Equity Electronic Access Members (''EAMs'') fifty percent (50%) of its market data revenues, it will now do so based on the Allocation Amendment of Regulation NMS enacted under the Act—*i.e.*, allocated by quoting shares and trading shares.[5] The Exchange will be retroactively applying this formula to market data revenues rebated back to Equity EAMs as of April 1, 2007.

Currently, the ISE rebates back fifty percent (50%) of the market data revenue received by the Exchange to Equity EAMs that are the liquidity providers on trades executed in the displayed market. The Allocation Amendment of Regulation NMS modifies the existing formulas for allocating revenues to the SRO participants, namely, introducing: (1) ''Quoting Shares''—the allocation of revenues based on the extent to which automated quotations displayed by SROs equal the national best bid or offer in NMS stocks; and (2) implementing a new calculation method for allocating revenue based on ''Trade Shares.'' Under this new formula fifty percent (50%) of revenues will be allocated for Quoting Shares and fifty percent (50%) will be allocated for Trading Shares. Accordingly, the Exchange seeks to continue to rebate back to the Equity EAMs fifty percent (50%) of market data revenue the Exchange receives, but to allocate rebates based on this new formula—*i.e.*, the ISE will rebate to Equity EAMs, on a symbol basis, fifty percent (50%) of the Trading Share revenue received for that symbol and fifty percent (50%) of the Quoting Share revenue for that symbol.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[6] that an exchange have an equitable allocation of reasonable dues, fees, and other charges

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 53828 (May 18, 2006) (order exempting self-regulatory organizations (''SROs'') from compliance with the Allocation Amendment until April 1, 2007).

[6] 15 U.S.C. 78f(b)(4).

among its members and other persons using its facilities.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and Rule 19b–4(f)(2) thereunder,[8] in that the proposed rule change establishes or changes a member due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–ISE–2007–24 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–ISE–2007–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2007–24 and should be submitted on or before June 4, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

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[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19, 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55720; File No. SR–NYSEArca–2007–22]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Listing and Annual Fees for Derivative Securities Products and Closed-End Funds

May 7, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 27, 2007, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NYSE Arca. On May 1, 2007, NYSEArca filed Amendment No. 1 to the proposed rule change.[3] On May 3, 2007, NYSEArca filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca, through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), is proposing to amend its Schedule of Fees and Charges (''Fee Schedule'') to revise the listing fees applicable to Derivative Securities Products, Closed-End Funds and Structured Products listed on NYSE Arca, L.L.C. (''NYSE Arca Marketplace''), the equities facility of NYSE Arca Equities. The Exchange also proposes related modifications to the Fee Schedule. The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and *http://www.nysearca.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca has determined to revise the listing fees specifically applicable to Derivative Securities Products (or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supersedes the original filing in its entirety.

[4] Amendment No. 2 conforms a single category in the annual fee chart for Derivative Securities Products in the purpose section with the Fee Schedule; and amends the purpose section to reflect that an additional issuer listed a series of Investment Company Units on the Exchange on March 28, 2007.

''Products''), Closed-End Funds and Structured Products,[5] as follows:

(1) Eliminate the Application Processing Fee for Derivative Securities Products, Closed-End Funds and Structured Products;

(2) Impose an original listing fee of $5,000 per Derivative Securities Product;

(3) Reduce, for some Derivative Securities Products, the Annual Fee; and

(4) Establish a listing and annual fee schedule for Closed-End Funds based on New York Stock Exchange LLC (''NYSE'') fees for Closed-End Funds as set forth in Section 902.04 of the NYSE Listed Company Manual.

This filing also proposes a number of related modifications to the Fee Schedule. The proposed revisions will apply as of January 1, 2007 (with the exception of listing fees for Closed-End Funds).

Summary of Current and Proposed Fees

1. Application Processing Fee

Currently, NYSE Arca levies a non-refundable application processing fee of $500 for all applications to list ''Funds'' (which term currently encompasses Exchange-Traded Funds and Closed-End Funds) submitted at the same time by a Fund issuer or ''family'' regardless of the number of Funds to be listed. This fee is currently credited towards the applicable initial Listing Fee if the application is approved, or if the Fund issuer or ''family'' is not subject to an initial Listing Fee, towards the applicable Annual Fee. With this filing, NYSE Arca proposes to eliminate such Application Processing Fee and will impose no such fee for Derivative Securities Products, Closed-End Funds or Structured Products.

2. Listing Fee

Currently, NYSE Arca charges a one-time Listing Fee of $20,000 for the first Fund listed by a Fund issuer or Fund ''family,'' but does not currently charge a Listing Fee for subsequent additional listings of Funds from the same Fund issuer or ''family,'' regardless of whether one or more previously listed Funds remains listed on NYSE Arca.[6] Further, this Listing Fee applies regardless of whether the Fund(s) lists in conjunction with an initial public offering, transfers from another marketplace, or concurrently lists or is already listed on another exchange or market.

a. Derivative Securities Products

With this filing, NYSE Arca proposes separate Listing Fees for Derivative Securities Products and Closed-End Funds. For Derivative Securities Products, NYSE Arca Equities proposes a Listing Fee fixed at $5,000 per Derivative Securities Product. The proposed Listing Fee applies regardless of whether the Product lists in conjunction with an initial public offering, transfers from another marketplace, or concurrently lists or is already listed on another exchange or market.

b. Closed-End Funds[7]

When a Closed-End Fund lists a class of common stock, or first lists a class of preferred stock in a case where common stock is not already listed, NYSE Arca Equities proposes Listing Fees as follows:

Number of securities issued	Total listing fee
Up to and including 10 million ..	$20,000
Over 10 million up to and including 20 million	30,000
Over 20 million	40,000

(1) Listing Additional Securities by a Closed-End Fund

In the case of the following types of additional listings, Listing Fees are calculated on a per share basis for each class according to the Listing Fee schedule below:

- At the time it first lists, a Closed-End Fund lists one or more classes of preferred stock or warrants in addition to a primary class of common stock or preferred stock;
- Once listed, a Closed-End Fund lists additional shares of a class of previously listed securities; or
- Once listed, a Closed-End Fund lists a new class of preferred stock or warrants.

To the extent that an issuer lists more than one class of the same type of security, the class with the greatest number of shares issued will be deemed the primary class.

When determining Listing Fees, calculations are made at each level of the schedule up to the last level applicable to the number of securities being listed. The total Listing Fee equals the sum of the amounts calculated at each level of the schedule. (Examples are provided below, under ''Calculating Listing Fees.'')

Number of securities issued	Fee per share
Up to and including 2 million ..	$0.01475
Over 2 million up to and including 4 million	0.0074
Over 4 million up to and including 300 million	0.0035
Over 300 million	0.0019

(2) Limitations on Closed-End Fund Listing Fees

Fund Family Discount. If two or more closed-end funds from the same fund family list at approximately the same time, the Exchange will cap the collective Listing Fee for those funds at $75,000. The Exchange will consider funds from the same fund family to be listing at approximately the same time if an issuer provides notice that such funds will be listed as part of the same transaction. A fund family consists of closed-end funds with a common investment adviser or investment advisers who are ''affiliated persons'' as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

Limitation on Listing Fees for Additional Class of Common Shares. A Closed-End Fund that applies to list a new class of common shares in addition to its primary class will be charged a fixed Listing Fee of $5,000 in lieu of the per share schedule.

Minimum Listing Fee for Subsequent Listing of Additional Securities. NYSE Arca will impose a minimum application fee for a subsequent listing of additional securities of $2,500. When listing additional securities, an issuer is billed Listing Fees in an amount equal to the greater of the $2,500 minimum supplemental listing application fee and the fee calculated on a per share basis. This applies to the listing of additional shares of an already listed equity security or to the listing of an additional class of equity security (other than a new class of common shares).

Fee for Certain Changes. NYSE Arca will charge a $2,500 fee for changes that involve modifications to Exchange

[5] For purposes of this proposal, Derivative Securities Products include securities qualified for listing and trading on NYSE Arca under the following NYSE Arca Equities Rules: Rule 5.2(j)(3) (Investment Company Units), 5.2(j)(5) (Equity Gold Shares), 8.100 Portfolio Depositary Receipts), 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares), 8.202 (Currency Trust Shares), 8.300 (Partnership Units), and 8.400 (Paired Trust Securities), as these rules may be amended from time to time.

Closed-End Funds are a type of investment company registered under the Investment Company Act of 1940 that offer a fixed number of shares. Their assets are professionally managed in accordance with the Closed-End Fund's investment objectives and policies, and may be invested in stocks, fixed income securities or a combination of both.

[6] Footnote 1 to the Exchange's current Fee Schedule states that Fund ''families'' are those with a common investment advisor or investment advisors, which are ''affiliated persons'' as defined in the securities laws.

[7] These fees are substantially identical to the fees charged by the NYSE for Closed-End Funds. *See* NYSE Listed Company Manual, Section 902.04.

records, for example, changes of name, par value, title of security or designation.

Application Fee for Technical Original Listings and Reverse Stock Splits. NYSE Arca will apply a $5,000 application fee for a Technical Original Listing if the change in the issuer's status is technical in nature and the shareholders of the original issuer receive or retain a share-for-share interest in the new issuer without any change in their equity position or rights. For example, a change in a Closed-End Fund's state of incorporation or a reincorporation or formation of a holding company that replaces a listed Closed-End Fund would be considered a Technical Original Listing. The $5,000 application fee also will apply to a reverse stock split.

Maximum Listing Fee for Stock Splits and Stock Dividends. Listing fees on shares issued in conjunction with stock splits and stock dividends will be capped at $150,000 per split or issuance.

Maximum Listing Fee for Issuance of Additional Shares of a Listed Class. Listing Fees on the issuance of additional shares of an already listed class of stock are capped at $500,000 per transaction, for example, in the case where shares are issued in conjunction with a merger or consolidation where a listed company survives, subsequent public offerings of a listed security and conversions of convertible securities into a listed security.

Discounts on Listing Fees. In the case of transactions such as a consolidation between two or more listed issuers that result in the formation of a new issuer, or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer, where at the conclusion of the transaction a previously unlisted issuer immediately lists, Listing Fees for that new issuer are calculated at a rate of 25% of total Listing Fees for each class of securities being listed (to the extent that the total calculated listing fee for a class of common stock would be greater than $250,000, the calculation would be 25% of the $250,000 maximum for a new listing of common stock).

No discount will be applied where a listed issuer survives the merger or consolidation, or in the case of a backdoor listing (*i.e.*, resulting from a merger, acquisition or consolidation which has the effect of circumventing the standards for original listing).

Listing Fees for Pre-emptive Rights. Preemptive rights representing equity securities are not subject to a separate Listing Fee. As of the date that preemptive rights are exercised, Listing Fees will accrue on the securities issued and the issuer will be billed for those Listing Fees at the beginning of the following year.

(3) Calculating Listing Fees

Treasury stock, restricted stock and shares issued in conjunction with the exercise of an over-allotment option, if applicable, are included in the number of shares a Closed-End Fund is billed for at the time a security is first listed.

The following are examples of how Listing Fees would be calculated by a closed-end fund in the case of an original listing and a subsequent additional issuance of common stock:

Example A: A closed-end fund listing 50 million common shares in the context of an initial public offering or transfer from another market would pay total Listing Fees of $40,000.

Example B: The same closed-end fund subsequently applies to list an additional 5 million shares of common stock that are immediately issued. The closed-end fund will pay total Listing Fees of $17,500 for the subsequent listing. Since the closed-end fund already has 50 million shares outstanding, the Listing Fee for the additional 5 million shares is calculated at a rate of $0.0035 per share.

c. Structured Products

The Fee Schedule is being amended to specify that the $20,000 Listing Fee, in addition to Initial Public Offerings, applies to an initial listing (e.g., a listing transfer to NYSE Arca from another exchange).

3. Annual Fees

Currently, NYSE Arca charges Annual Fees specifically for Exchange-Traded Funds and Closed-End Funds based on the aggregate total shares outstanding of such Funds listed by the same Fund issuer or Fund ''family,'' as follows:

Aggregate total shares outstanding	Annual fee
Less than 10 million	$5,000
10 million to less than 30 million	10,000
30 million to less than 50 million	15,000
50 million to less than 100 million	20,000
100 million to less than 250 million	30,000
250 million to less than 500 million	40,000
500 million to less than 750 million	50,000
750 million to less than one billion	60,000
Greater than one billion	80,000

Annual Fees are assessed beginning in the first full calendar year following the year of listing. The aggregate total shares outstanding is calculated based on the total shares outstanding as reported by the Fund issuer or Fund ''family'' in its most recent periodic filing with the Commission or other publicly available information. Annual Fees are not pro-rated or reduced for Funds that delist for any reason. Annual Fees apply regardless of whether any of these Funds is listed elsewhere.

a. Derivative Securities Products

NYSE Arca Equities proposes revised Annual Fees for Derivative Securities Products based on total shares outstanding for each issue, as follows:

Aggregate total shares outstanding (each issue)	Annual fee
Less than 25 million	$2,000
25 million up to 49,999,999	4,000
50 million up to 99,999,999	8,000
100 million up to 249,999,999	15,000
250 million up to 499,999,999	20,000
500 million and over	25,000

The revised Annual Fee for Derivative Securities Products will be billed quarterly in arrears effective as of January 1, 2007. As such, billing for the first calendar quarter of 2007, for example, will be based on the number of shares outstanding for an issue on March 30, 2007. For example, for an issue with 45 million shares outstanding on March 30, 2007, the Annual Fee payable for the quarter would be $1,000 ($4,000 Annual Fee divided by 4). If, at the end of the second calendar quarter of 2007, the number of shares outstanding for such issue increased to 55 million, the Annual Fee payable for such quarter would be $2,000 ($8,000 Annual Fee divided by 4). The Exchange believes it is appropriate to apply the revised Annual Fees to issuers of the specified securities as of January 1, 2007 to permit the Exchange to apply the fee in the same manner to all such issuers listed on the Exchange, including those listed in the first quarter of 2007. The revised Annual Fee is expected to be lower for some issuers than the current Annual Fee.

b. Closed-End Funds

(1) Annual Fee Schedule for Primary Listed Security

NYSE Arca Equities proposes the following Annual Fee Schedule for a Closed-End Fund's primary class of listed security (common stock, or preferred stock if no common stock is listed) and will be equal to the greater of the minimum fee or the fee calculated on a per share basis:

Per Share Rate—$0.00093 per share

Minimum Fee—$25,000

The Annual Fee for Closed-End Funds is payable in January each year, and issuers are subject to Annual Fees in the year of listing, pro-rated based on days listed that calendar year.

(2) Additional Classes of Listed Equity Issues

The Annual Fee for equity issues other than the primary class of security listed will be the greater of the minimum or the fee calculated on a per share basis:

Per Share Rate—$0.00093 per share
Minimum Fee—$5,000

(3) Limitations on Annual Fees

Fund families that list between 3 and 14 Closed-End Funds will receive a 5% discount off the calculated Annual Fee for each fund listed, and those with 15 or more listed Closed-End Funds will receive a discount of 15%. No fund family shall pay aggregate Annual Fees in excess of $1,000,000 in any given year.

In the case of transactions involving listed issuers (such as a consolidation between two or more listed issuers that results in the formation of a new issuer, or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer), where at the conclusion of the transaction a previously unlisted issuer immediately lists, Annual Fees will not be charged to that new issuer for the year in which it lists to the extent that the transaction concludes after March 31. To the extent that the transaction concludes on or before March 31 in any calendar year, however, the newly listing issuer will be charged pro rata Annual Fees from the date of listing to the end of the year.

In addition, to the extent that a listed issuer is involved in a consolidation between two or more listed issuers that results in the formation of a new issuer, or a merger or consolidation between a listed issuer and an unlisted issuer that results in the unlisted issuer surviving or the creation of a new issuer, or a merger between two listed issuers where one listed issuer survives, and the transaction concludes on or before March 31 in any calendar year, the non-surviving listed issuer(s) will only be subject to pro rata Annual Fees for that year through the date of the conclusion of the transaction. To the extent that the transaction concludes after March 31, the non-surviving listed issuer(s) will be subject to full Annual Fees for that year.

4. Implementation

NYSE Arca proposes to implement these revised fees, as applicable, to all issuers of Derivative Securities Products, Closed-End Funds and Structured Products as of January 1, 2007 with the exception of listing fees for Closed-End Funds, which will take effect as of the date of Commission approval of the proposed rule change. The Exchange believes such implementation date is appropriate under the circumstances described below. NYSE Arca believes this proposal will streamline and clarify the fees applicable to Derivative Securities Products and Closed-End Funds, making them easier to understand and apply while continuing to provide for adequate support of the ongoing costs of issuer services, including regulatory oversight and product and service offerings. Further, this proposal aligns NYSE Arca listing and annual fees for Derivative Securities Products and Closed-End Funds with the fees charged by the NYSE, further simplifying the Fee Schedule and helping NYSE Arca to compete more effectively for listings.

For Derivative Securities Products, the proposed Listing Fees provide an alternative fee structure and will in certain circumstances be lower for issuers than the previous Fee Schedule. The Exchange believes it is appropriate to apply these potential cost savings to issuers as of January 2007.[8]

As discussed above, the revised Annual Fee for Derivative Securities Products will be billed quarterly in arrears, beginning after the first calendar quarter in 2007, effective as of January 1, 2007. The Annual Fee is expected to be lower for some Derivative Securities Products issuers than the current Annual Fee, but may be higher in some cases depending on the number of funds listed by the same issuer and the shares outstanding for each fund.[9] The proposed Annual Fee for Closed-End Funds will apply as of January 1, 2007, and, for issuers listed in calendar year 2007, will be pro-rated based on days listed in 2007.[10]

2. Statutory Basis

NYSE Arca believes that the proposal is consistent with Section 6(b)[11] of the Act, in general, and Section 6(b)(4)[12] of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Arca does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NYSE Arca has neither solicited nor received written comments on the proposed modifications to its fee schedule.

Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

[8] The Exchange notes that, with one exception discussed below, the only Derivative Securities Products currently listed on the Exchange are Investment Company Units (Exchange-Traded Funds) of one issuer of two separate trusts, which were listed on the Exchange in 2006. Because these listings were transfers from another national securities exchange, the issuer incurred no listing fee, in accordance with Commentary .04 to the Exchange's Fee Schedule (which will cease to have effect on December 31, 2007). The Exchange has advised the issuer of the proposed changes to the Listing and Annual Fees. These two trusts listed six and 13 funds, respectively. Except for Commentary .04, the listing fee for each trust would have been $20,000. For new Derivative Securities Product issues, an issuer listing five or more issues would incur a higher listing fee under the proposed schedule than under the current schedule (*e.g.*, an issuer listing six funds would pay $30,000, and $5,000 for each subsequent fund listed.) An additional issuer listed a series of Investment Company Units on the Exchange on March 28, 2007, and the issuer would incur an initial listing fee of $20,000 under the current fee schedule and $5,000 under the proposed schedule.

[9] Taking the example of the two trusts discussed above (*see* preceding footnote), the two trusts would have incurred Annual Fees of $30,000 and $50,000, respectively, based on the total aggregate shares of each trust outstanding at year-end 2006 (assuming the funds of each trust had been listed the entire year and the shares outstanding remained constant throughout the year). Under the proposed fee schedule, Annual Fees will be based on total shares outstanding of each fund. Accordingly, under the same circumstances described above, the trusts would incur an Annual Fee of $20,000 and $81,000, respectively, based on shares outstanding of each of their funds.

[10] The Exchange notes that application of the proposed Annual Fee as of January 1, 2007 for Closed-End Funds will potentially impact only a few issuers. Following discussions, beginning in 2006, with Closed-End Fund issuers about changes to the Annual Fee, eight of these funds delisted from the Exchange. The Exchange dually lists three Closed-End Funds, one of which is pending delisting.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSEArca–2007–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–22 and should be submitted on or before June 4, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9177 Filed 5–11–07; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55723; File No. SR–NYSEArca–2007–38]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Rule 6.80 Governing Accommodation Transactions (Cabinet Trades)

May 8, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 17, 2007, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On May 7, 2007, NYSE Arca filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comment 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 NYSE Arca Rule 6.80 governing Accommodation Transactions, also referred to as Cabinet Trades. The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and *http://www.nysearca.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed 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

An ''accommodation'' or ''cabinet'' trade refers to trades in listed options on the Exchange that may be considered worthless or which are not actively traded. Exchange Rule 6.80, Accommodation Transactions (Cabinet Trades), which sets forth specific procedures for engaging in cabinet trades, currently (i) permits cabinet trades to occur via open outcry at a cabinet price of $1 per option contract when the class does not trade on the NYSE Arca automated electronic trading system,[3] and (ii) requires Market Makers and Floor Brokers who wish to conduct a cabinet transactions to place their orders with a Trading Official.

The primary purpose of this rule change is to amend Exchange Rule 6.80 to authorize Floor Brokers and Market Makers to initiate cabinet trades. Under the existing procedures, Market Makers and Floor Brokers are only permitted to (i) place cabinet orders with a Trading Official and (ii) respond at a cabinet price to a request for a quote from a Trading Official. Pursuant to the proposed amendment, Market Makers and Floor Brokers will also be permitted to initiate a cabinet trade in the trading crowd on their own, without the need to first place the order with a Trading Official. This will save the additional time and process involved in a Market Maker or Floor Broker needing to first place a cabinet order that they are initiating, with a Trading Official, who would then in turn represent and execute the order on behalf of the Market Maker or Floor Broker. Permitting Market Makers and Floor Brokers to initiate cabinet orders and trades on their own accord will provide Market Makers and Floor Brokers with additional flexibility and will facilitate the fair, orderly and efficient handling of cabinet transactions on the Exchange. Permitting Market Makers and Floor Brokers to represent cabinet orders is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Cabinet orders were previously eligible for automated electronic trading on the PCX Plus system. NYSE Arca decommissioned the PCX Plus electronic trading system during the fourth quarter of 2006 and replaced it with the OX electronic trading system. As a result, the Exchange proposes to delete the name ''PCX Plus'' from the text of Rule 6.80. At this time no issues have been designated for cabinet trading on OX or any other Exchange sponsored electronic system.

similar to and consistent with Rule 6.54 of the Chicago Board Option Exchange.[4]

The second purpose of this rule change is to make clear that Floor Brokers and Market Makers who enter into either opening or closing cabinet transactions may do so as long as they first yield priority to all corresponding orders in the cabinet book. Rule 6.80 currently provides that all bids and offers for cabinet transactions, both opening and closing, must be placed with a Trading Official, and that opening orders must yield to closing orders in the cabinet. The Exchange now proposes that both opening and closing transactions may be represented by Floor Brokers and Market Makers, so long as they first yield priority to all corresponding orders in the cabinet.

The Exchange also proposes to include a provision in Rule 6.80 stating that the rules governing cabinet trading do not apply to issues that trade as part of the Penny Pilot program. Although cabinet trades involve orders priced at $1 per option contract, the specific terms and conditions for cabinet trading are not applicable to option classes participating in the Penny Pilot.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2007–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–38. 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 Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–38 and should be submitted on or before June 4, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–9195 Filed 5–11–07; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* Securities Exchange Act Release No. 53808 (May 16, 2006), 71 FR 29371 (May 22, 2006) (File no. SR–CBOE–2006–33) (permitting Floor Brokers to represent cabinet orders); Securities Exchange Act Release No. 55081 (January 10, 2007), 72 FR 2317 (January 18, 2007) (File no. SR–CBOE–2007–02) (permitting Market Makers to represent cabinet orders).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii). Rule 19b–4(f)(6)(iii) requires the Exchange to give written notice to the Commission of its intent to file the proposed rule change at least five business days prior to filing. The Exchange complied with this requirement.

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10866 and # 10867]

Kansas Disaster # KS–00018

AGENCY: U.S. Small Business Administration

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1699–DR), dated 5/6/2007.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 5/4/2007 and continuing.

Effective Date: 5/6/2007.

Physical Loan Application Deadline Date: 7/5/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 2/6/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business

Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/06/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Kiowa

Contiguous Counties (Economic Injury Loans Only):

Kansas: Barber, Clark, Comanche, Edwards Ford, Pratt.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10866C and for economic injury is 108670.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–9163 Filed 5–11–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10864 and # 10865]

Massachusetts Disaster # MA–00009

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Massachusetts dated 5/07/2007.

Incident: Severe Storms and Flooding.

Incident Period: 4/15/2007 through 4/19/2007.

Effective Date: 5/7/2007.

Physical Loan Application Deadline Date: 7/6/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 2/7/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Essex.

Contiguous Counties:

Massachusetts: Middlesex, Suffolk.

New Hampshire: Hillsborough, Rockingham.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses wth Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10864 B and for economic injury is 10865 0.

The Commonwealth and State which received an EIDL Declaration # are Massachusetts and New Hampshire.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: May 7, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–9164 Filed 5–11–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10868]

Missouri Disaster # MO–00010 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Missouri, dated 5/8/2007.

Incident: Severe Winter Storms and Flooding.

Incident Period: 1/12/2007 through 1/22/2007.

DATES: *Effective Date:* 5/08/2007.

EIDL Loan Application Deadline Date: 2/8/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Dallas, Greene, Jasper, Laclede, Lawrence, St. Louis.

Contiguous Counties:

Missouri:

Barry, Barton, Camden, Christian, Dade, Franklin, Hickory, Jefferson, Newton, Polk, Pulaski, St. Charles, St. Louis City, Stone, Texas, Webster, Wright.

Illinois:

Madison, Monroe, Saint Clair.

Kansas:

Cherokee, Crawford.

The Interest Rate is: 4.000.

The number assigned to this disaster for economic injury is 108680.

The States which received an EIDL Declaration # are: Missouri, Illinois, and Kansas.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: May 8, 2007.

Steven C. Preston,

Administrator.

[FR Doc. E7–9204 Filed 5–11–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10857 and # 10858]

New Hampshire Disaster Number NH–00004

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–1695–DR) , dated 4/27/2007.

Incident: Severe Storms and Flooding.

Incident Period: 4/15/2007 and continuing through 4/23/2007.

DATES: *Effective Date:* 5/7/2007.

Physical Loan Application Deadline Date: 6/26/2007.

EIDL Loan Application Deadline Date: 1/28/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of New Hampshire, dated 4/27/2007 is hereby amended to establish the incident period for this disaster as beginning 4/15/2007 and continuing through 4/23/2007.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–9189 Filed 5–11–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10852 and # 10853]

New York Disaster Number NY–00045

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–1692–DR), dated 4/24/2007.

Incident: Severe Storms and Inland and Coastal Flooding.

Incident Period: 4/14/2007 through 4/18/2007.

Effective Date: 5/3/2007.

Physical Loan Application Deadline Date: 6/25/2007.

EIDL Loan Application Deadline Date: 1/24/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of New York, dated 4/24/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Albany, Dutchess, Richmond.

Contiguous Counties:

New York: Columbia, Greene, Rensselaer, Saratoga, Schenectady, Schoharie.

Connecticut: Litchfield.

Massachusetts: Berkshire.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–9161 Filed 5–11–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10862 and # 10863]

Texas Disaster Number TX–00251

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–1697–DR), dated 5/1/2007.

Incident: Severe Storms and Tornadoes.

Incident Period: 4/21/2007 through 4/24/2007.

DATES: *Effective Date:* 5/7/2007.

Physical Loan Application Deadline Date: 7/2/2007.

EIDL Loan Application Deadline Date: 2/1/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Texas, dated 5/1/2007 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Denton.

Contiguous Counties:

Texas: Collin, Cooke, Dallas, Grayson, Tarrant, Wise

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–9186 Filed 5–11–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10870]

Vermont Disaster # VT–00003

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Vermont (FEMA–1698–DR), dated 5/4/2007.

Incident: Severe Storms and Flooding.

Incident Period: 4/15/2007 through 4/21/2007.

DATES: *Effective Date:* 5/4/2007.

Physical Loan Application Deadline Date: 7/3/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/04/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Bennington, Caledonia, Essex, Orange, Rutland, Windham, Windsor.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10870.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–9188 Filed 5–11–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10869]

West Virginia Disaster # WV–00005

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA–1696–DR), dated 5/1/2007.

Incident: Severe Storms, Flooding, Landslides, and Mudslides.

Incident Period: 4/14/2007 through 4/18/2007.

DATES: *Effective Date:* 5/1/2007.

Physical Loan Application Deadline Date: 7/2/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 5/1/2007, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Boone, Cabell, Lincoln, Logan, Mingo, Wayne, Wyoming

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 10869.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–9187 Filed 5–11–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2007–28156]

Notice of Request for Extension of Currently Approved Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to renew an information collection. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on February 26, 2007. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by June 13, 2007.

ADDRESSES: You may send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, or e-mail at *oira_submission@omb.eop.gov*, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2007–28156.

FOR FURTHER INFORMATION CONTACT: Chung Eng, 202–366–8043, Office of Transportation Operations, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Work Zone Safety and Mobility.

OMB Control #: 2125–0600 (expiration date July 31, 2007).

Background: As amended on September 9, 2004, 23 CFR part 630, subpart J ''Work Zone Safety and Mobility'' requires State and local transportation agencies that receive Federal-aid highway funding to use available work zone information and data to assess and manage the work zone impacts of highway projects. While this Rule does not require the reporting or submission of work zone data, it does:

- Require agencies to use work zone data at both the project and process levels to manage and improve work zone safety and mobility;
- At the project level, require agencies to use field observations, available work zone crash data, and operational information to manage the work zone impacts of individual projects;
- At the process level, require agencies to analyze work zone crash and operational data from multiple projects to improve agency processes and procedures, and continually pursue the improvement of overall work zone safety and mobility; and
- Recommend that agencies maintain elements of the data and information resources that are necessary to support the use of work zone data for the activities above.

Most of the data needed to conduct work zone performance monitoring during project implementation as well as post-implementation assessments should be readily available from pre-existing sources. However, data collection or data storage and retrieval systems may need to be altered to take full advantage of available information resources.

Respondents: The State Departments of Transportation (or equivalent) in the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico.

Frequency: Continuous.

Estimated Total Annual Burden Hours: The estimated total annual burden for all respondents is 83,200 hours. This involves responses from 52 State Departments of Transportation or equivalent with an estimated average time of 1,600 hours per respondent over the course of a year. This estimate only includes the burden on the respondents to provide information that is not usually and customarily collected.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: May 8, 2007.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E7–9157 Filed 5–11–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Agency Actions on Proposed Highways in Colorado

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(1)(1). The actions relate to various proposed highway projects in the State of Colorado. Those actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal agency actions on any of the listed highway projects will be barred unless the claim is filed on or before November 13, 2007. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such calim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Vanderhoof, Environmental Program Manager, Federal Highway Administration, 12300 W. Dakota Ave., Room 180, Lakewood, CO 80228. Office Hours: 7 a.m.-4:30 p.m. MST, Monday through Friday. Phone: 720–963–3013. E-mail: *michael.vanderhoof@fhwa.dot.gov.,* or Brad Beckham, Environmental Programs Branch Manager, Colorado Department of Transportation, 4201 East Arkansas, Denver, CO 80222. Phone: 303–757–9533. E-mail: *brad.beckham@dot.state.co.us.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Colorado that are listed below. The actions by the Federal agencies on a project, and the laws under which such actions were taken, are described in the environmental assessment (EA), or environmental impact statement (EIS) issued in connection with the project, and in other documents in the FHWA administrative record for the project. The EA, or Final EIS (FEIS), and other documents from the FHWA administrative record files for the listed projects are available by contacting the FHWA or the Colorado Department of Transportation (CDOT) at the addresses provided above. Project information may also be available through the CDOT Web site at *http://www.dot.state.co.us/TravelInfo/Studies.htm,* or at public libraries in the relevant project areas.

This notice applies to all Federal agency decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351].
2. Federal-Aid Highway Act [23 U.S.C. 109].
3. Clean Air Act, 42 U.S.C. 7401–7671(q).
4. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303];
5. Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536].
6. Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.].*
7. Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 402, Section 401, Section 319).
8. E.O. 11990, Protection of Wetlands.
9. E.O. 11988, Floodplain Management.
10. E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

The projects subject to this notice are:

1. *Project:* South Interstate 25 (I–25) and US 85 Corridor. Location: Cities of Highlands Ranch, Lone Tree, and Castle Rock, Douglas County. Project Reference Number: IM 0252–317. This project involves the construction of one new lane in each direction on US 85 from C–470 to Meadows Parkway, and on I–25 between C–470 and Douglas Lane. This will include improvements to ten interchanges, improvement of bicycle/pedestrian facilities, construction of a new park and ride, a new frontage road and improvements to various other roadway features. The improvements are proposed to address present and future transportation inadequacies and safety problems in the two roadway corridors. The project length is 17 miles on I–25 and 16 miles on US 85. A FEIS/Draft Section 4(f) Evaluation was completed in May 2001, a Record of Decision (ROD)/Final Section 4(f) Evaluation was issued on 8/14/01, and a Revised ROD/Final Section 4(f) Evaluation was issued on 10/25/02.

2. *Project:* Crystal Valley/Dawson Ridge Parkway/I–25 Interchange. Location: City of Castle Rock, Douglas County. Project Reference Number: CC C470–022. The preferred alternative includes constructing a new diamond interchange with Crystal Valley/Dawson Ridge Parkway crossing over I–25 at the intersection of I–25 and Douglas Lane on the east, and Territorial Road on the west. The purpose of the project is to enhance the local ancillary roadway network and eliminate one railroad crossing, thereby improving safety of access. An Environmental Assessment and draft Section 4(f) Evaluation was completed on September 20, 2004 and a Finding of No Significant Impact (FONSI)/Final Section 4(f) Evaluation was issued on 2/28/05.

3. *Project:* I–70/32nd Avenue Interchange. Location: Cities of Wheat Ridge and Lakewood. Project reference Number: IM 0703–294. The proposed action is to improve the I–70/32nd Avenue interchange, State Highway (SH) 58 from McIntyre Street to I–70, and adjacent portions of 32nd Avenue. The purpose is to relieve traffic congestion at the I–70/32nd Avenue interchange and to address future transportation demands on the local street network due to regional growth and commercial development. An Environmental Assessment was completed on October 23, 2006 and a FONSI was issued on February 28, 2007.

4. *Project:* State Highway (SH) 9, Frisco to Breckenridge. Location: Cities of Frisco and Breckenridge, Summit County. Project Reference Number: STA 009A–021. The proposed action will improve the existing two lane highway to a four-lane roadway that will include necessary turn lanes, acceleration/deceleration lanes, curb and gutter, medians, and shoulders The project extends from Frisco (milepost 97) south to Breckenridge (milepost 85). The

purpose of the improvement is to improvement safety and mobility on the route. A FEIS was completed on March 4, 2004 and a ROD was issued on May 24, 2004.

5. *Project:* US 285, Foxton Road to Bailey. Location: Cities of Bailey, Pine Junction, Shaffer's Crossing, and Conifer, Jefferson and Park Counties. Project Reference Number: NH 2854–093. The Preferred Alternative is to widen US 285 to four through lanes with a depressed rural median between the top of Crow Hill and Foxton Road, and two through lanes and a passing lane between Bailey and the top of Crow Hill. Shoulder, clear zone, access, and safety improvements will be included the entire length of the project. The primary purpose is to improve travel time and enhance safety along the 14.7 mile section of road. An Environmental Assessment was completed in August 11, 2004 and a FONSI issued on June 30, 2005.

6. *Project:* I–25 through Colorado Springs. Location: Cities of Colorado Springs and Monument, El Paso County. Project Reference Number IM 0252–316. This project will widen 26 miles of I–25 between SH 105 and South Academy Boulevard. A six lane section would be constructed south of the US 24 bypass to South Academy and north of Briargate to SH 105. The central 12 mile section from the Briargate Parkway to the US 24 bypass would be constructed to 8 lanes. The project will include interchange reconstruction, HOV lanes, congestion management, transit and park and ride accommodations and bicycle/pedestrian accommodations. The purpose is to provide additional capacity to relieve existing and projected future traffic congestion. An Environmental Assessment was completed on March 29, 2004 and a FONSI issued on September 10, 2004. *http://www.i25coloradosprings.com/ea/EAcontents.htm*.

7. *Project:* Eagle Airport Interchange. Location: Town of Eagle, Eagle County. Project Reference Number: IM 0702–229. the proposed action is to construct a new interchange on Interstate 70 and a connector road to improve access to the Eagle County Airport. The project is located approximately 3 miles west of Eagle, Colorado. An Environmental Assessment was completed in August 2004 and a FONSI issued on June 23, 2005. *http://www.i70-eagle-airport-interchange-ea.com*.

8. *Project:* US 550, New Mexico State Line to Durango. Location: South of City of Durango, La Plata County. Project Reference Number: NH 5501–011. The project includes extending the existing four-lanes on US 550 between the New Mexico/Colorado State Line and County Road 220 (MP 1.0 to MP 15.4). The purpose of the project is to improve safety, address future highway capacity needs, improve access conditions, and address roadway deficiencies. The roadway will generally follow the existing highway alignment with alignment shifts east and west as needed to improve highway geometry. An Environmental Assessment was completed on July 27, 2005 and a FONSI issued on December 21, 2005.

9. *Project:* 120th Avenue Extension, Quebec to US 85. Location: City of Thornton, Adams county, SH 128 (120th Avenue). Project Reference Number: STU C120–007. The proposed action is to construct a four-lane extension of 120th Avenue from Quebec Street east 2.5 miles to US 85. This will require a new bridge over the south Platte River. The project length is 2.5 miles. An Environmental Assessment was completed on February 1, 1996 and a FONSI was issued on July 31, 2003.

10. *Project:* SH 128 (120th Avenue) over US 36. Location: City and County of Broomfield. Project Reference Number: DEMO 0361–067. This project proposes to construct a new six-lane roadway across US 36 to connect 120th Avenue and SH 128. The purpose of the project is to accommodate existing and future east-west traffic, reduce out of direction travel, and alleviate congestion. The project length is 1.2 miles. An Environmental Assessment/Draft Section 4(f) Evaluation was completed March 30, 2005 and a FONSI/Final Section 4(f) was issued on January 17, 2006.

11. *Project:* Wadsworth/Grandview Railroad Separation. Location: City of Arvada, Jefferson County. Project Reference Number: TCSP TCSE–002. This project proposes to reconstruct the Wadsworth bypass 25 feet below ground and construct two bridges to carry Burlington Northern Santa Fe RR and Grandview over the Bypass. This action will improve safety and eliminate the traffic congestion and delays caused by the existing at-grade railroad crossing. The project length is less than 0.5 miles. An Environmental Assessment was completed May 9, 2005 and FONSI issued August 31, 2005.

12. *Project:* I–225 and Colfax Avenue Interchange. Location: City of Aurora, Adams and Arapahoe Counties. Project Reference Number: STU 2254–068. The proposed action is to expand the existing I–225/Colfax Avenue interchange to add an I–225 connection to the north at 17th Street via collector distributor roads. The purpose is to relieve congestion at the I–225/Colfax Avenue Interchange. The project length is less than one mile. An Environmental Assessment was completed on October 20, 2005 and FONSI was issued on April 24, 2007.

13. *Project:* I–25 at 126th Avenue Interchange. Location: Cities of Westminster and Thornton, Adams County. Project Reference Number: CC 0253–175. The proposed action is to construct a new interchange at 136th Avenue and I–25. The project length is less than 1 mile. The purpose of the improvement is to improve access and congestion. An Environmental Assessment/Draft Section 4(f) Evaluation was completed on May 15, 2002 and a FONSI/Final Section 4(f) Evaluation was issued on January 8, 2003.

14. *Project:* I 70/SH 58 Interchange. Location: City of Golden, Jefferson County. Project Reference Number: IM 0703–246. The proposed action is to improve the I–70/SH 58 interchange by adding eastbound SH 58 to westbound I 70 and eastbound I–70 to westbound SH 58 movements. This will require shifting SH 58 and realigning all existing ramps plus constructing a new Eastbound SH 58 to westbound I–70 ramp and constructing a new flyover ramp from eastbound I–70 to westbound SH 58. The purpose is to reduce traffic on local arterials and improve traffic operations on I–70. The project length is less than 1 mile. An Environmental Assessment was completed in July 2002 and a FONSI was issued on September 1, 2004.

15. *Project:* US 34 Business Route. Location: City of Greeley, Weld County. Project Reference Number: STA 0342–037. This project involves the reconstruction of US 34 Business Route from a two lane to a four lane facility between 71st Avenue and State Highway 257 in the west side of Greeley, Colorado. The project length is approximately 4.2 miles. The purpose is to accommodate future travel demand and improve mobility, safety, and access. An Environmental Assessment was completed on September 28, 2005 and a Finding of No Significant Impact issued on May 2, 2006.

16. *Project:* US 287 from SH 1 to the LaPorte Bypass. Location: Cities of Fort Collins and LaPorte, Larimer County. Project Reference Number STA 2873–100. This project will reconstruct US 287 from two to four lanes for two miles between SH 1 and the Laporte Bypass intersection east of the community of LaPorte. The purpose is to improve safety and accommodate existing and future traffic. An Environmental Assessment was completed on October

1, 2004 and a Finding of no Significant Impacts was issued on June 14, 2006.

17. *Project:* U.S. Highway 160 from Durango to Bayfield. Location: Cities of Durango Gem Village, and Bayfield, La Plata County. Project Reference Number FC–NH(CX) 160–2 (048). The project proposes a 25.9km (16.2 mi) long, four-lane highway with shifts, realignments and grade separations in some locations. The project will also correct substandard roadway design, intersection deficiencies and relocate the existing U.S. 160/550 intersection. This fully access-controlled facility improvement will begin at milepost 88.0 east of Durango and end at milepost 104.2 located east of Bayfield. The project length is 1.9km (1.2 mi) extending from milepost 16.6, located at the U.S. 160/550 (south) intersection, to milepost 15.4, located south of the U.S. 550/County Road 220 intersection. A Final Environmental Impact Statement for the project was approved on May 12, 2006. A Record of Decision was issued on November 7, 2006. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at *http://www.dot.state.co.us/US160/EIS/index.cfm* or viewed at public libraries in the project area.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: U.S.C. 139(1)(1).

David A. Nicol,

Federal Highway Administration, Colorado Division Administrator, Lakewood, CO.

[FR Doc. 07–2350 Filed 5–11–07; 8:45 am]

BILLING CODE 4910–RY–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

[Waiver Petition Docket Number FRA–2007–28049]

The Union Pacific Railroad Company (UP) seeks a waiver of compliance with the Locomotive Safety Standards of 49 CFR 229.123, which requires each lead locomotive to be equipped with an end plate, pilot plate, or snow plow that extends across both rails at a maximum clearance of 6 inches. UP requests the waiver for four locomotive hump sets utilized in hump yard service in Houston, Texas. UP also requests that they be able to use these locomotives for transfer movements between Settagast Yard and Englewood Yard, a distance of less than 1 mile, at a speed not to exceed 10 mph. The railroad indicates that due to the height of the retarders, it is not uncommon for locomotive pilots to strike the retarders. If the waiver is granted, UP would increase the height of the pilot plates on locomotives assigned to hump yard service in Houston to eight and three-fourths inches. With the exception of transfer movements between Settagast and Englewood yards, the locomotives would be restricted to trailing position outside the hump yard and when moving over the railroad for service or reassignment.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2007–28049) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

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). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on May 7, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–9169 Filed 5–11–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

City of Placentia, California

[Docket Number FRA–2006–24654]

The City of Placentia, California (the City) and BNSF Railway Company (BNSF) have petitioned for a third extension to the waiver originally granted on June 21, 2006, in FRA Docket Number FRA–2006–24654. In the aforementioned waiver, FRA agreed to extend the original deadline of June 24, 2006, set forth in 49 CFR 222.42 for continuation of an intermediate partial quiet zone, until September 22, 2006. On September 21, 2006, FRA granted a joint request from the City and BNSF to extend the September 22 deadline until January 20, 2007. Subsequently, on January 19, 2007, FRA granted another joint request from the City and BNSF to extend the January 20 deadline to May 20, 2007.

In the current request, the City and BNSF state that they are working towards establishing a new 24-hour quiet zone and that the City has completed installation of its quiet zone safety improvements, but they will be unable to meet the May 20, 2007, deadline due to technical problems with BNSF's radio communications system and the need to conduct a 30-day test

period of the radio communications system after the installation of necessary radio equipment has been completed. The City and BNSF seek to retain the current partial quiet zone in order to avoid disruption and confusion in the interim, and state that safety will not be compromised.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. Each comment shall specifically set forth the basis upon which it is made and contain a concise statement of the interest of the commenter in the proceeding. FRA does not anticipate the need to schedule a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity to comment, they should notify FRA in writing within 15 days of the date of publication of this notice and specify the basis for their request.

All communications concerning these proceedings should identify the docket number set forth above and may be submitted by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site;
- Fax: (202) 493–2251;
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

Communications received within 15 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. FRA reserves the right to grant temporary relief to avoid lapse of the existing partial quiet zone while the comment period is open, after considering any comments filed prior to the initial date of decision. All written communications concerning this proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are available for inspection and copying on the Internet at the docket facility's Web site: *http://dms.dot.gov*.

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 the Department of Transportation's complete Privacy Act Statement, which was published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Privacy Act Statement may also be found at *http://dms.dot.gov*.

Issued in Washington, DC, on May 7, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–9167 Filed 5–11–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket Number FRA–2007–27972]

Applicant: CSX Transportation, Incorporated, Mr. C. M. King, Chief Engineer, Communications and Signals, 500 Water Street, SC J–350, Jacksonville, Florida 32202.

CSX Transportation, Incorporated (CSXT) seeks approval of the proposed modification of the traffic control system on the yard track at Milepost 293.00 near Florence, South Carolina, on the Florence Division, Charleston Subdivision. The proposed changes consist of a reduction of the limits of the control point, including: conversion of the Number 5 power-operated switch to hand operation, removal of associated controlled signals S3 and N3, and installation of the new controlled signal SE1 to govern movements over the Number 3 power-operated switch.

The reason given for the proposed changes is that present day operation does not warrant retention of the power-operated switch.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without a public hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning this proceeding should be identified by Docket Number FRA–2007–27972 and may be submitted by one of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic site;
- Fax: 202–493–2251;
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001; or
- 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.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that 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*.

Issued in Washington, DC on May 7, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–9168 Filed 5–11–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer Billings, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.

2. Extensive public comment under review.

3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.

4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application.

M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on May 7, 2007.

Delmer Billings,

Director, Special Permits & Approvals Programs, Office of Hazardous Materials, Special Permits & Approvals.

MODIFICATION TO SPECIAL PERMITS

Application No.	Applicant	Reason for delay	Estimated date of completion
10481–M	M–1 Engineering Limited, Bradford, West Yorkshire	4	05–31–2007
14167–M	Trinityrail, Dallas, TX	1,3,4	06–30–2007

NEW SPECIAL PERMIT APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
14343–N	Valero St. Charles Norco, LA	1	05–31–2007
14423–N	Accutest Laboratories, Dayton, NJ	4	05–31–2007
14436–N	BNSF Railway Company, Topeka, KS	4	06–30–2007
14385–N	Kansas City Southern Railway, Company Kansas City, MO	4	06–30–2007
14402–N	Lincoln Composites, Lincoln, NE	1	12–31–2007

[FR Doc. 07–2343 Filed 5–11–07; 8:45am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–C, Farmers' Cooperative Association Income Tax Return.

DATES: Written comments should be received on or before July 13, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Farmers' Cooperative Association Income Tax Return.

OMB Number: 1545–0051.

Form Number: Form 990–C.

Abstract: Form 990–C is used by farmers' cooperatives to report the tax imposed by Internal Revenue Code section 1381. The IRS uses the information on the form to determine whether the cooperative has correctly computed and reported its income tax liability.

Current Actions: There are no changes being made to the burden at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 5,600.

Estimated Time per Respondent: 153 hours, 1 minute.

Estimated Total Annual Burden Hours: 856,912.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal

revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will 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 shall have 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 of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–9152 Filed 5–11–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–NA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–NA, United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States.

DATES: Written comments should be received on or before July 13, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States.

OMB Number: 1545–0531.

Form Number: 706–NA.

Abstract: Form 706–NA is used to compute estate and generation-skipping transfer tax liability for nonresident alien decedents in accordance with section 6018 of the Internal Revenue Code. IRS uses the information on the form to determine the correct amount of tax and credits.

Current Actions: Due to a revision of Form 706–NA, there were 647 words deleted, causing a decrease in burden hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 800.

Estimated Time per Respondent: 4 hours, 29 minutes.

Estimated Total Annual Burden Hours: 3,584.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will 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 shall have 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 of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 4, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–9153 Filed 5–11–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel will be conducted at the Internal Revenue Service, 1750 Pennsylvania Avenue , Washington, DC 20006. The Committee will be discussing issues pertaining to the IRS administration of the Earned Income Tax Credit.

DATES: The meeting will be held Saturday, June 2, 2007 from 9 a.m. through 12 noon ET.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Earned Income Tax Credit Committee of the Taxpayer Advocacy Panel will be held Saturday, June 2, 2007 from 9 a.m. to 12 p.m. ET at 1750 Pennsylvania Avenue, Washington, DC 20006. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For information or to confirm attendance, contact Audrey Y. Jenkins as noted above. Notification of intent to participate in the meeting must be made with Ms. Jenkins. If you would like a written statement to be considered, send written comments to Ms. Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post your comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: May 6, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–9160 Filed 5–11–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Committee of the Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 20, 2007 at 2:30 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Committee of the Taxpayer Advocacy Panel will be held Wednesday, June 20, 2007 at 2:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: May 7, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–9156 Filed 5–11–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Committee of the Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, and Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 19, 2007, from 11:30 a.m. ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Committee of the Taxpayer Advocacy Panel will be held Tuesday, June 19, 2007, from 11:30 a.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: May 7, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–9158 Filed 5–11–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the AD Hoc Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the AD Hoc Committee of the Taxpayer Advocacy Panel will be conducted in Washington, DC. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 13, Thursday, June 14, and Friday, June 15, 2007.

FOR FURTHER INFORMATION CONTACT: Inez De Jesus at 1–888–912–1227 (toll-free), or 954–423–7977 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Wednesday, June 13, 2007 from 1 p.m. to 5 p.m.; Thursday, June 14, 2007 from 8 a.m. to 5 p.m.; and Friday, June 15, 2007 from 8 a.m. to 12 p.m. ET. Notification of intent to attend the meeting must be made with Inez De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or write Inez De Jesus, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: May 6, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–9159 Filed 5–11–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be

conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 5, 2007.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be held Tuesday, June 5, 2007 from 9 a.m. Pacific Time to 10:30 a.m. Pacific Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: May 6, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–9165 Filed 5–11–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VBBS)]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Policy, Planning and Preparedness, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Policy, Planning and Preparedness (OPP&P), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection of information, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine whether burial needs of veterans and eligible family members are met.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 13, 2007.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to Clarisa Rodrigues Coelho, Office of Policy and Planning, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420 or e-mail *clarisa.rodriguesCoelho@va.gov*. Please refer to ''OMB Control No. 2900–NEW (VBBS)'' in any correspondence. During the comment period, comments may be viewed online through the Federal docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Clarisa Rodrigues Coelho at (202) 273–6499 or FAX (202) 273–5993.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, the Office of Policy, Planning and Preparedness invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Burial Benefits Survey.

OMB Control Number: 2900–New (VBBS).

Type of Review: New collection.

Abstract: The data collected by the Veterans Burial Benefits Survey will be used to determine whether the burial needs of veterans and eligible family members are met, to provide veterans and their families with timely and accurate symbolic expressions of remembrance, and ensue that national cemeteries are maintained as shrines dedicated to preserving our Nation's history, nurturing patriotism, and honoring the service and sacrifice of veterans.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 7,219 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 28,878.

Dated: May 1, 2007.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 07–2383 Filed 5–11–07; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
May 14, 2007

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for Petroleum Refineries; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2007–0011; FRL–8309–1]

RIN 2060–AN72

Standards of Performance for Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules.

SUMMARY: EPA is proposing amendments to the current Standards of Performance for Petroleum Refineries. This action also proposes separate standards of performance for new, modified, or reconstructed process units at petroleum refineries. Unless otherwise noted, the term new includes modified or reconstructed units. The proposed standards for new process units include emissions limitations and work practice standards for fluid catalytic cracking units, fluid coking units, delayed coking units, process heaters and other fuel gas combustion devices, fuel gas producing units, and sulfur recovery plants. These proposed standards reflect demonstrated improvements in emissions control technologies and work practices that have occurred since promulgation of the current standards.

DATES: *Comments.* Written comments must be received on or before July 13, 2007.

Public Hearing. If anyone contacts EPA by June 4, 2007 requesting to speak at a public hearing, a public hearing will be held on June 13, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0011, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail: U.S. Postal Service, send comments to:* EPA Docket Center (6102T), New Source Performance Standards for Petroleum Refineries Docket, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery: In person or by courier, deliver comments to:* EPA Docket Center (6102T), New Source Performance Standards for Petroleum Refineries Docket, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0011. 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* 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 *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the 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 EPA Docket Center, Standards of Performance for Petroleum Refineries Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Robert B. Lucas, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number: (919) 541–0884; *fax number:* (919) 541–0246; *e-mail address: lucas.bob@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Categories and entities potentially regulated by this proposed rule include:

Category	NAICS code [1]	Examples of regulated entities
Industry	32411	Petroleum refiners.
Federal government		Not affected.
State/local/tribal government		Not affected.

[1] North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility would be regulated by this action, you should examine the applicability criteria in 40 CFR 60.100 and 40 CFR 60.100a. If you have any questions regarding the applicability of this proposed action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments to EPA?

Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2007–0011. 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.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action is available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing by June 4, 2007, a public hearing will be held on June 13, 2007. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held should contact Mr. Bob Lucas, listed in the **FOR FURTHER INFORMATION CONTACT** section, at least 2 days in advance of the hearing.

E. How is this document organized?

The supplementary information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. What should I consider as I prepare my comments to EPA?
C. Where can I get a copy of this document?
D. When would a public hearing occur?
E. How is this document organized?
II. Background Information
A. What is the statutory authority for the proposed standards and proposed amendments?
B. What are the current petroleum refinery NSPS?
III. Summary of the Proposed Standards and Proposed Amendments
A. What are the proposed amendments to the standards for petroleum refineries (40 CFR part 60, subpart J)?
B. What are the proposed requirements for new fluid catalytic cracking units and new fluid coking units (40 CFR part 60, subpart Ja)?
C. What are the proposed requirements for new sulfur recovery plants (SRP) (40 CFR part 60, subpart Ja)?
D. What are the proposed requirements for new process heaters and other fuel gas combustion devices (40 CFR part 60, subpart Ja)?
E. What are the proposed work practice and equipment standards (40 CFR part 60, subpart Ja)?
IV. Rationale for the Proposed Amendments (40 CFR part 60, subpart J)
A. How is EPA proposing to change requirements for refinery fuel gas?
B. How is EPA proposing to amend definitions?
C. How is EPA proposing to revise the coke burn-off equation?
D. What miscellaneous corrections are being proposed?
V. Rationale for the Proposed Standards (40 CFR part 60, subpart Ja)
A. What is the performance of control technologies for fluid catalytic cracking units?
B. What is the performance of control technologies for fuel gas combustion?
C. What is the performance of control technologies for process heaters?
D. What is the performance of control technologies for sulfur recovery systems?
E. How did EPA determine the proposed standards for new petroleum refining process units?
VI. Modification and Reconstruction Provisions
VII. Request for Comments
VIII. Summary of Cost, Environmental, Energy, and Economic Impacts
A. What are the impacts for petroleum refineries?
B. What are the secondary impacts?
C. What are the economic impacts?
D. What are the benefits?
IX. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

II. Background Information

A. What is the statutory authority for the proposed standards and proposed amendments?

New source performance standards (NSPS) implement Clean Air Act (CAA) section 111(b) and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The primary purpose of the NSPS is to attain and maintain ambient air quality by ensuring that the best demonstrated emission control technologies are installed as the industrial infrastructure is modernized. Since 1970, the NSPS have been successful in achieving long-term emissions reductions in numerous industries by assuring cost-effective controls are installed on new, reconstructed, or modified sources.

Section 111 of the CAA requires that NSPS reflect the application of the best system of emission reductions which (taking into consideration the cost of achieving such emission reductions, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. This level of control is commonly referred to as best demonstrated technology (BDT).

Section 111(b)(1)(B) of the CAA requires EPA to periodically review and revise the standards of performance, as necessary, to reflect improvements in methods for reducing emissions.

B. What are the current petroleum refinery NSPS?

NSPS for petroleum refiners (40 CFR part 60, subpart J) apply to fluid catalytic cracking unit catalyst regenerators and fuel gas combustion devices that commence construction or modification after June 11, 1973. Fluid catalytic cracking unit catalyst regenerators are subject to standards for particulate matter (PM), opacity, and carbon monoxide (CO). Fluid catalytic cracking unit catalyst regenerators that commence construction after January 17, 1984 are also subject to standards for sulfur dioxide (SO_2) (or a feed sulfur content limit). Fuel gas combustion devices are subject to concentration limits for hydrogen sulfide (H_2S) as a surrogate for SO_2 emissions.

The current NSPS also apply to all Claus sulfur recovery plants (SRP) of more than 20 long tons per day (LTD) that commence construction or modification after October 4, 1976. Claus SRP are subject to standards for either SO_2 or both reduced sulfur compounds and H_2S.

The NSPS were originally promulgated on March 8, 1974 and have been amended several times. Significant changes to emission limits since the original promulgation date include the addition of the sulfur oxide standards for SRP and fluid catalytic cracking units (see 43 FR 10869, March 15, 1978 and 54 FR 34027, August 17 1989).

III. Summary of the Proposed Standards and Proposed Amendments

We are proposing several amendments to provisions in the existing NSPS in 40 CFR part 60, subpart J. Many of these amendments are technical clarifications and corrections that are also included in the proposed standards in 40 CFR part 60, subpart Ja. For example, we are proposing language to change the definition of fuel gas to indicate that vapors collected and combusted to comply with certain wastewater and marine vessel loading provisions are not considered fuel gas and are exempt from 40 CFR 60.104(a)(1). These gas streams are not required to be monitored. In a related amendment, we are proposing to clarify that monitoring is not required for fuel gases that are identified as inherently low sulfur or can demonstrate a low sulfur content. We are also revising the coke burn-off equation to account for oxygen (O_2)-enriched air streams. Other amendments include clarification of definitions and correction of grammatical and typographical errors.

The proposed standards in 40 CFR part 60, subpart Ja include emission limits for fluid catalytic cracking units, fluid coking units, SRP, and fuel gas combustion devices. They also include work practice standards for minimizing the quantity of fuel gas streams flared from all refinery process units and for minimizing the SO_2 emissions from process units that are subject to standards of performance for SO_2 emissions. Proposed equipment standards would reduce emissions of volatile organic compounds (VOC) from delayed coker units. Only those affected facilities that begin construction, modification, or reconstruction after May 14, 2007 would be affected by the proposed standards in 40 CFR part 60, subpart Ja. Units for which construction, modification, or reconstruction began on or before May 14, 2007 would continue to comply with the applicable standards under the current NSPS in 40 CFR part 60, subpart J, as amended.

A. What are the proposed amendments to the standards for petroleum refineries (40 CFR part 60, subpart J)?

We are proposing to amend the definition of ''fuel gas'' to exempt vapors that are collected and combusted in an air pollution control device installed to comply with a specified wastewater or marine vessel loading emissions standard. The thermal combustion control devices themselves would still be considered affected fuel gas combustion devices, and all auxiliary fuel fired to these devices would be subject to the fuel gas limit; however, continuous monitoring would not be required for the collected vapors that are being incinerated because these gases would not be considered fuel gases under the proposed definition of ''fuel gas'' in subpart J.

We are also proposing to exempt certain fuel gas streams from all continuous monitoring requirements. Monitoring is currently not required for events that are exempt from the requirements in 40 CFR 60.104(a)(1) (flaring of process upset gases or flaring of gases from relief valve leakage or emergency malfunctions). Additionally, monitoring would not be required for inherently low sulfur fuel gas streams. These streams include pilot gas flames, gas streams that meet commercial-grade product specifications with a sulfur content 30 parts per million by volume (ppmv) or less, fuel gases produced by process units that are intolerant to sulfur contamination, and fuel gas streams that an owner or operator can demonstrate are inherently low-sulfur. Owners and operators would be required to document the exemption for which each fuel gas stream applies and ensure that the stream remains qualified for that exemption.

We are proposing to amend the definitions of ''Claus sulfur recovery plant,'' ''oxidation control system,'' and ''reduction control system'' to clarify that a SRP may consist of multiple units, that sulfur pits are part of the Claus SRP, and that the oxidized or reduced sulfur is recycled to the beginning of a sulfur recovery train within the SRP. We are also proposing to add a fourth term to the coke burn-off rate equation to account for the use of O_2-enriched air.

Finally, the proposed amendments include a few technical corrections to fix references and other miscellaneous errors in subpart J. The specific changes are detailed in section IV.D of this preamble.

B. What are the proposed requirements for new fluid catalytic cracking units and new fluid coking units (40 CFR part 60, subpart Ja)?

The proposed standards for new fluid catalytic cracking units include emission limits for PM, SO_2, nitrogen oxides (NO_X), and CO. One difference from the existing standards in subpart J is that new fluid coking units would be subject to the same standards as fluid catalytic cracking units. Other differences from the existing standards are that the proposed PM and SO_2 emission limits are more stringent and the NO_X emission limit is a new requirement. Unlike the existing standards, the proposed standards include no opacity limit because the opacity limit was intended to ensure compliance with the PM limit and because we are now proposing that sources use direct PM monitoring or parameter monitoring to ensure compliance with the PM limit.

The proposed PM emission limit for new fluid catalytic cracking units and new fluid coking units is 0.5 kilogram (kg) per Megagram (kg/Mg) (0.5 pound (lb)/1,000 lb) of coke burn-off in the regenerator. Initial compliance with this emission limit would be determined using Method 5 in Appendix A to 40 CFR part 60. Procedures for computing the PM emission rate using the total PM concentration, effluent gas flow rate, and coke burn-off rate would be the same as in 40 CFR part 60, subpart J, as amended. To demonstrate ongoing compliance, an owner or operator must either monitor PM emission control device operating parameters or use a PM continuous emission monitoring system (CEMS). If operating parameters will be used to demonstrate ongoing compliance, the owner or operator must monitor the same parameters during the initial performance test, and develop operating parameter limits for the applicable parameters. The operating limits must be based on the lowest hourly average values for the applicable parameters measured over the three test runs. The owner or operator must also conduct additional performance tests at least once every 24 months to verify compliance with the PM emission limit and confirm or reestablish operating limits. If ongoing compliance will be demonstrated using a PM CEMS, the CEMS must meet the conditions in Performance Specification 11. Thus, separate performance tests are not required because the equivalent of an initial performance test will be part of the initial correlation test for the PM CEMS, and periodic response correlation audits (every 5 years) will

include the equivalent of performance tests. We are co-proposing requiring reconstructed and modified fluid catalytic cracking units to meet the current standards in 40 CFR part 60, subpart J, and we are requesting comments on the effects of the proposed PM standard on modified or reconstructed facilities and if it is appropriate to adopt a different standard for these sources.

The proposed SO_2 emission limits for new fluid catalytic cracking units and new fluid coking units are to maintain SO_2 emissions to the atmosphere less than or equal to 50 ppmv on a 7-day rolling average basis, and less than or equal to 25 ppmv on a 365-day rolling average basis (both limits corrected to 0 percent moisture and 0 percent excess air). Initial compliance with the proposed 50 ppmv SO_2 emission limit would be demonstrated by conducting a performance evaluation of the SO_2 CEMS in accordance with Performance Specification 2 in appendix B of 40 CFR part 60, with Method 6, 6A, or 6C of 40 CFR part 60, appendix A as the reference method. Ongoing compliance with both proposed SO_2 emission limits would be determined using the CEMS to measure SO_2 emissions as discharged to the atmosphere, averaged over the 7-day and 365-day averaging periods. Rolling average concentrations would be calculated once per day using the applicable number of daily average values. We are co-proposing requiring reconstructed and modified fluid catalytic cracking units to meet the current standards in 40 CFR part 60, subpart J, and we are requesting comments on the effects of the proposed SO_2 standard on modified or reconstructed facilities.

The proposed NO_X emission limits for new fluid catalytic cracking units and new fluid coking units are 80 ppmv on a 7-day rolling average basis (dry at 0 percent excess air). Initial compliance with the 80 ppmv emission limit would be demonstrated by conducting a performance evaluation of the CEMS in accordance with Performance Specification 2 in appendix B to 40 CFR part 60, with Method 7 of 40 CFR part 60, subpart A as the Reference Method. Ongoing compliance with this emission limit would be determined using the CEMS to measure NO_X emissions as discharged to the atmosphere, averaged over 7-day periods. We are also co-proposing no new standards for NO_X emissions from fluid coking units and for modified or reconstructed fluid catalytic cracking units.

The proposed CO emission limit for new fluid catalytic cracking units and new fluid coking units is 500 ppmv (1-hour average, dry at 0 percent excess air). Initial compliance with this emission limit would be demonstrated by conducting a performance evaluation for the CEMS in accordance with Performance Specification 4 in appendix B to 40 CFR part 60, with Method 10 or 10A in 40 CFR part 60, appendix A as the Reference Method. For Method 10, the integrated sampling technique is to be used. Ongoing compliance with this emission limit would be determined on an hourly basis using the CEMS to measure CO emissions as discharged to the atmosphere. An exemption from monitoring may be requested if the owner or operator can demonstrate that average CO emissions are less than 50 ppmv (dry basis). This limit and the compliance procedures are the same as in the existing NSPS for fluid catalytic cracking units.

C. What are the proposed requirements for new sulfur recovery plants (SRP) (40 CFR part 60, subpart Ja)?

The proposed standards include SO_2 emission limits for all SRP. The proposed emission limit for new SRP greater than 20 LTD is 250 ppmv or less of combined SO_2 and reduced sulfur compounds as discharged to the atmosphere (reported as SO_2 on a dry basis at 0 percent excess air). For a SRP with a capacity of 20 LTD or less, the proposed standard is mass emissions of combined SO_2 and reduced sulfur compounds equal to 1 weight percent or less of sulfur recovered. In addition, the proposed standards include an H_2S concentration limit of 10 ppmv or less (dry basis at 0 percent excess air) for all new SRP. Both SO_2 and H_2S concentration limits would be determined hourly on a 12-hour rolling average basis. As in the amendments to subpart J, the proposed definition of a SRP would include the sulfur pit.

Initial compliance with the emission limit for combined SO_2 and reduced sulfur compounds is demonstrated by conducting a performance evaluation for the SO_2 CEMS in accordance with Performance Specification 2 in appendix B to 40 CFR part 60, with Method 6, 6A, or 6C in 40 CFR part 60, appendix A as the Reference Method to determine the SO_2 concentration, and Method 15 in 40 CFR part 60, appendix A as the Reference Method to determine the SO_2-equivalent concentration of the reduced sulfur compounds. The results of the test using Method 15 are also used to demonstrate initial compliance with the H_2S concentration limit. Initial compliance with the mass sulfur emission limit is demonstrated by conducting a performance test as described above to determine the combined SO_2 and SO_2-equivalent concentration, and then converting that concentration to a mass fraction using the volumetric flow rate of effluent gas and the mass rate of sulfur recovery during the performance test.

Ongoing compliance with the combined SO_2 and reduced sulfur compounds emission limit would be determined using a CEMS that uses an air or O_2 dilution and oxidation system to convert the reduced sulfur to SO_2 and then measures the total resultant SO_2 concentration. An O_2 monitor would also be required for converting the measured combined SO_2 concentration to the concentration at 0 percent O_2. Ongoing compliance with the mass sulfur emission limit would be determined using the same types of CEMS. A flow monitor that continuously monitors the volumetric flow rate of gases released to the atmosphere would be required so that the mass emitted can be calculated. The hourly sulfur production rates would also have to be tracked so that mass fraction emitted can be calculated and compared with the proposed 1 percent emission limit.

Ongoing compliance with the H_2S concentration limit would be determined using either an H_2S CEMS or, if the SRP is equipped with an oxidation control system or followed by incineration, by continuous monitoring of the operating temperature and O_2 concentration. Minimum operating limits for the operating temperature and O_2 concentration would be established during the performance test.

D. What are the proposed requirements for new process heaters and other fuel gas combustion devices (40 CFR part 60, subpart Ja)?

The proposed standards for new process heaters include both SO_2 and NO_X emission limits. Because of this, the fuel gas combustion units as defined in the existing subpart J standards were divided into two separate affected sources: ''process heaters'' and ''other fuel gas combustion devices.'' The primary sulfur oxides emission limit for new process heaters and other fuel gas combustion devices is 20 ppmv or less SO_2 (dry at 0 percent excess air) on a 3-hour rolling average basis and 8 ppmv or less on a 365-day rolling average basis. For process heaters that use only fuel gas and other fuel gas combustion devices, we are proposing an alternative concentration limit of 160 ppmv or less H_2S or total reduced sulfur (TRS) in the fuel gas on a 3-hour rolling average basis (as in the existing NSPS) and 60 ppmv or less H_2S or TRS in the fuel gas on a

365-day rolling averaging basis. The TRS concentration limit is required for new fuel gas combustion devices that combust fuel gas generated from coking units (as either the only fuel or as a mixture of fuel gases from other units). On the other hand, new fuel gas combustion devices that do not combust fuel gas generated from coking units are required to monitor H_2S concentrations. Compliance would be demonstrated either by measuring H_2S (or TRS) in the fuel gas or by measuring SO_2 in the exhaust gas.

Initial compliance with the 20 ppmv SO_2 limit or the 160 ppmv H_2S or TRS concentration limits would be demonstrated by conducting a performance evaluation for the CEMS. The performance evaluation for an SO_2 CEMS would be conducted in accordance with Performance Specification 2 in appendix B to 40 CFR part 60, with Method 6, 6A, or 6C as the Reference Method. The performance evaluation for an H_2S CEMS would be conducted in accordance with Performance Specification 7 in 40 CFR part 60, with Method 11, 15, 15A, or 16 as the Reference Method. The performance evaluation for a TRS CEMS would be conducted in accordance with Performance Specification 7 in 40 CFR part 60, with Method 16 as the Reference Method. Ongoing compliance with the proposed sulfur oxides emission limits would be determined using the applicable CEMS to measure either H_2S or TRS in the fuel gas being used for combustion or SO_2 in the exhaust gas to the atmosphere, averaged over the 3-hour and 365-day averaging periods.

Similar to proposed clarifications for 40 CFR part 60, subpart J, we are proposing a definition of ''fuel gas'' that includes exemptions for vapors collected and combusted in an air pollution control device installed to comply with specified wastewater or marine vessel loading provisions. Also similar to subpart J, we are proposing to exempt from continuous monitoring fuel gas streams exempt under 40 CFR 60.102a(i) and fuel gas streams that are inherently low in sulfur. We are also proposing to streamline the process for an owner or operator to demonstrate that a fuel gas stream not explicitly exempted from continuous monitoring is inherently low sulfur.

The proposed NO_X emission limits for new process heaters is 80 ppmv on a 7-day rolling average basis (dry at 0 percent excess air). Initial compliance with the 80 ppmv emission limit would be demonstrated by conducting a performance evaluation of the CEMS in accordance with Performance Specification 2 in appendix B to 40 CFR part 60, with Method 7 of 40 CFR part 60, subpart A as the Reference Method. Ongoing compliance with this emission limit would be determined using the CEMS to measure NO_X emissions as discharged to the atmosphere, averaged over 7-day periods.

E. What are the proposed work practice and equipment standards (40 CFR part 60, subpart Ja)?

Three work practice standards are proposed to reduce both VOC and SO_2 emissions from flares, start-up/shutdown/malfunction events, and delayed coker units. First, the proposed rule requires all new fuel gas producing units at a refinery to be designed and operated in such a way that the fuel gas produced by the new process units does not routinely discharge to a flare. Second, a requirement for a start-up, shutdown and malfunction plan that includes procedures to minimize discharges either directly to the atmosphere or to the flare gas system during the planned startup or shutdown of these units, procedures to minimize emissions during malfunctions of the amine treatment system or sulfur recovery plant, and procedures for conducting a root-cause analysis of an emissions limit exceedance or process start-up, shutdown, upset, or malfunction that causes a discharge into the atmosphere, either directly or indirectly, from any refinery process unit subject to the provisions of this subpart in excess of 500 lb per day (lb/d) of SO_2. Third, the proposed rule would require delayed coking units to depressure to 5 lbs per square inch gauge (psig) during reactor vessel depressuring and vent the exhaust gases to the fuel gas system. For new, reconstructed, or modified units, we are co-proposing to require only the last of these work practice standards, the requirement to depressure coking units to the flare.

IV. Rationale for the Proposed Amendments (40 CFR part 60, subpart J)

Because we are proposing a new subpart to 40 CFR part 60 for affected sources at petroleum refineries beginning construction, reconstruction, or modification after May 14, 2007, our proposed amendments to subpart J of 40 CFR part 60 would impact only those affected sources that are already subject to 40 CFR part 60, subpart J. The proposed amendments to this subpart include clarifications of the current requirements and technical corrections to the regulatory language. These changes to subpart J of 40 CFR part 60 are discussed below.

A. How is EPA proposing to change requirements for refinery fuel gas?

As we conducted our review of 40 CFR part 60, subpart J, we found that the definition of ''fuel gas'' has been broadly interpreted by States and EPA Regions over the last 30 years. Because of the increasing complexity of petroleum refineries, this interpretation may be more inclusive than originally intended in the 1970s. We agree that the interpretation ensures that all streams that could be considered fuel gas and have the potential for high-sulfur emissions are included in the regulatory requirements, but we recognize that this broad definition has resulted in application of the fuel gas concentration limits to fuel gas streams and combustion devices that were not originally considered in the standards development process. Furthermore, had these extended applications been considered in the standards development process, some of the applications would have been found to be either technically or economically infeasible. The existing requirements in subpart J of 40 CFR part 60 do recognize and limit the applicability of the fuel gas concentration limits to certain gas streams. For example, 40 CFR 60.101(d) excludes gases generated by catalytic cracking unit catalyst regenerators and fluid coking burners from the definition of ''fuel gas.'' These gases were excluded because the sulfur in the gases generated by the catalytic cracking unit catalyst regenerators and fluid coking burners is in the form of sulfur oxides rather than H_2S. As such, these gases are not amenable to amine treatment, which was the primary treatment technique on which the fuel gas concentration limits were based. In addition, 40 CFR 60.104(a)(1) exempts process upset gases or fuel gas released to the flare as a result of relief valve leakage or emergency malfunctions from the fuel gas H_2S concentration limits. In this case, it was determined that requiring treatment of these gases was either technically or economically infeasible. Therefore, it is entirely in keeping with the regulatory intent of the NSPS and the specific requirements in 40 CFR part 60, subpart J to exclude or exempt sources based on technical and economic considerations.

Since the development of the refinery fuel gas concentration limits in the early 1970s, EPA has developed numerous other standards in which incineration was promoted as a best air pollution management practice for certain organic vapors which had traditionally been

released directly to the atmosphere. These gas streams were never considered in the development of the 40 CFR part 60, subpart J standards because they were not directed to a fuel gas combustion device at the time. As such, the technical and economical feasibility of meeting the fuel gas concentration limits was not specifically evaluated for these gas streams at that time. During our review, we evaluated the application of the fuel gas concentration limits to a variety of process gas streams that did not exist in the early 1970s. We concluded that most of these gas streams are amenable to amine treatment and that it is both technically and economically feasible to treat those gas streams to meet the fuel gas concentration limits. However, we identified a few specific streams that are not readily amenable to amine treatment (or direct diversion to the SRP) and/or are not cost-effective to amine treatment due to the typically low (but potentially variable) H_2S content and the typical location of these gas streams in relationship to the primary processing units at the refinery.

As a result of this evaluation, we are proposing to change the requirements of the fuel gas concentration limits in keeping with a broad definition of fuel gas, but recognizing the technical and economic issues related to certain fuel gas streams or combustion devices. Specifically, we are proposing to exempt from the definition of ''fuel gas'' vapors that are collected and combusted in an air pollution control device installed to comply with the Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems (40 CFR part 60, subpart QQQ), National Emission Standards for Benzene Waste Operations (40 CFR part 61, subpart FF), the National Emission Standards for Marine Tank Vessel Loading Operations (40 CFR part 63, subpart Y), or the National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries (40 CFR part 63, subpart CC), specifically either 40 CFR 63.647 or 40 CFR 63.651. The wastewater and marine vessel loading sources subject to these specific regulations are often located at the edge of the refinery property, if not off-site, and compliance with the regulations is generally demonstrated by capturing and combusting the organic vapors. The collected gases generally have low sulfur content, but variability in the products being loaded and in wastewater treatment process operations may result in the collected gases exceeding the current fuel gas concentration limits for short periods of time. Due to the typical low sulfur content of these gases, they are not generally suitable for amine treatment; due to the presence of O_2 in these collected gases, they cannot be routed to the fuel gas system. Furthermore, these sources are typically far from amine treatment or the SRP, and it is not economically reasonable to propose control beyond the existing regulations for these sources (e.g., requiring these streams to be routed to sulfur treatment rather than being combusted). Therefore, we are proposing to amend the definition of ''fuel gas'' in 40 CFR 60.101(d) to exclude from the fuel gas concentration limits the vapors collected and combusted in air pollution control devices to comply with the specified regulations in 40 CFR part 60, subpart QQQ, 40 CFR part 61, subpart FF, or 40 CFR part 63, subparts Y or CC. The thermal combustion control devices would still be considered affected fuel gas combustion devices and all auxiliary fuel fired to these devices would be subject to the fuel gas concentration limit; however, continuous monitoring would not be required for the collected vapors that are being incinerated because these gases would not be considered fuel gases under the proposed definition of ''fuel gas'' in subpart J.

We are also proposing to clarify that monitoring is not required for fuel gas streams that are exempt from the requirements in 40 CFR 60.104(a)(1). These streams include process upset gases or fuel gases that are released to the flare as a result of relief valve leakage or other emergency malfunctions. To clarify this point, the proposed introductory text for 40 CFR 60.105(a)(4)(iv) specifies that continuous monitoring is not required for streams that are exempt from 40 CFR 60.104(a)(1). We are also proposing to add the phrase ''for fuel gas combustion devices subject to 40 CFR 60.104(a)(1)'' after ''Instead of the SO_2 monitor in paragraph (a)(3) of this section'' in 40 CFR 60.105(a)(4). This proposed amendment is more consistent with the language in 40 CFR 60.105(a)(3). Given our intent not to require fuel gas monitoring of process upset gases, combustion devices such as emergency flares would likely not require monitoring unless sources other than process upset gases are burned, such as routine vents or sweep gas. We are aware of issues related to the identification and exemption of these units from fuel gas monitoring. We are requesting comment on the need to provide specific language exempting these units, and on appropriate methods for identifying emergency flares and verifying on an ongoing basis that no flaring of nonexempt gases is occurring.

In addition to the exemptions described in the previous paragraphs, we are proposing to exempt certain fuel gas streams from all monitoring requirements. These streams would still be subject to the fuel gas concentration limits, but since we do not expect that these streams would exceed this limit (except in the case of a process upset or malfunction, in which case the fuel gases would be exempt from meeting the limit), continuous monitoring of these streams is unnecessary. We have divided these streams into four overall categories, as specified in proposed 40 CFR 60.105(a)(4)(iv)(A) through (D). The first category includes pilot gas flames, which are fairly insignificant sources. Although previous determinations effectively excluded these gases from the requirements of the rule, we believe it is good air pollution control practice to fire pilot lights with natural gas or treated fuel gas. However, even when considering the pilot flame as part of the fuel gas combustion device, the potential for sulfur oxide emissions from these sources is insignificant and it is not cost-effective to require continuous monitoring of these gas streams. Therefore, we are changing in the monitoring requirements that monitoring of pilot flame fuel gas is not required.

The second category includes gas streams that meet commercial-grade product specifications with a sulfur content of 30 ppmv or less. Placing a limit on the sulfur content of the products that we are proposing to exempt from monitoring ensures that only low-sulfur products are excluded. The 30 ppmv limit for commercial-grade gas products was selected because it provides a sufficient margin of safety to ensure continuous compliance with the proposed annual average H_2S concentration limit of 60 ppmv regardless of normal fluctuations in the composition of commercial grade products.

We are requesting comment on the appropriateness of an additional exemption for gas streams that were generated from certain commercial-grade liquid products (e.g., displaced vapors from a storage tank or loading rack for gasoline or diesel fuel). The most straightforward approach would be to exempt gas streams associated with commercial liquid products that contain sulfur below some specified weight percent level. For example, we expect that most of the sulfur-containing compounds in gasoline meeting the Tier 2 sulfur standards or in diesel fuel

meeting the low-sulfur diesel fuel standards have high molecular weights and low vapor pressures such that gas streams in equilibrium with them would have sulfur contents below the proposed 30 ppmv level. To confirm this assumption, we are asking for data on the typical concentrations and vapor pressures of the most prevalent mercaptans, thiophenes, and other sulfur-containing compounds in these or other commercial liquid products.

We would use these data to calculate the corresponding vapor phase concentrations of gas streams in equilibrium with the liquid products using Raoult's Law. Given the extremely low concentrations of the sulfur-containing compounds in the liquid products, we are also seeking comment on whether Raoult's Law gives a realistic estimate of their vapor phase partial pressures. We are also interested in any test data to support this approach, and we are interested in any other approaches to develop an exemption for gas streams associated with commercial-grade liquid products.

The third category includes fuel gases produced by process units that are intolerant of sulfur contamination. There are a few process units within a refinery whose operation is dependent on keeping the sulfur content low. If there is too much sulfur in the gas streams entering these units, the process units could malfunction. Specifically, the methane reforming unit in the hydrogen plant, the catalytic reforming unit, and the isomerization unit are intolerant of sulfur in the process streams; therefore, these streams are treated to remove sulfur prior to processing in these units. Fuel gases subsequently formed in these process units are low in sulfur because the process feedstocks are necessarily low in sulfur. As such, we find that requiring continuous monitoring of the H_2S content in these gas streams or requiring each individual refinery to develop and implement an alternative monitoring plan (AMP) is unnecessary and creates needless obstacles to using the produced fuel gas directly in the heaters associated with these process units. We are asking for comment on whether fuel gas is generated from any other process units that are intolerant of sulfur. Comments recommending the exemption of fuel gas streams from other units should identify the problems sulfur cause in the unit, procedures used to reduce sulfur in the gas stream before it is processed in the unit, and the expected sulfur content of the outlet fuel gas stream.

For all of the above low-sulfur streams that an owner or operator determines are exempt from all monitoring requirements, the owner or operator must document which of the exemptions applies to each stream. If the refinery operations associated with an exempt stream change, the owner or operator must document the change and determine whether the stream continues to be exempt. If the refinery operations or the composition of an exempt stream change in such a way that the stream is no longer exempt from monitoring, the owner or operator must begin continuous monitoring within 15 days after the change occurs.

In addition, we are proposing a standardized, streamlined procedure to exempt from continuous monitoring streams that an owner or operator can demonstrate are inherently low-sulfur (i.e., consistently 5 ppmv or less H_2S) following the procedures specified in proposed 40 CFR 60.105(b). The information that an owner or operator must provide to EPA is similar to the information and items needed to apply for an AMP, as described in the EPA document ''Alternative Monitoring Plan for NSPS Subpart J Refinery Fuel Gas.'' In general, once an AMP is approved for an affected source, the owner or operator must continue to monitor the stream, although a methodology other than a continuous monitor may be used. For this specific exemption, however, once an application to demonstrate that a stream is inherently low-sulfur is approved by EPA, that stream is exempt from monitoring until there is a change in the refinery operation that affects the stream or the stream composition changes. If the sulfur content of the stream changes but is still within the range of concentrations included in the original application, the owner or operator will conduct H_2S testing on a grab sample as proof and record the results of the test. If the sulfur content of the stream changes such that the sulfur concentration is outside the range provided in the original application, the owner or operator must submit a new application that must be approved in order for the stream to continue to be exempt from continuous monitoring. If a new application is not submitted, the owner or operator must begin continuous monitoring within 15 days.

B. How is EPA proposing to amend definitions?

We are proposing to amend the definition of ''Claus sulfur recovery plant'' in 40 CFR 60.101(i). These changes would clarify that the SRP may consist of multiple units, and the types of units that are part of a SRP would be listed within the definition. Note that sulfur pits would be included as one of the units, which is consistent with the Agency's current interpretation of the existing definition.

In conjunction with this amendment, we are also proposing to amend the definitions of ''oxidation control system'' and ''reduction control system'' in 40 CFR 60.101(j) and 40 CFR 60.101(k), respectively. The amended definitions would specify that the oxidized or reduced sulfur is recycled to the beginning of a sulfur recovery train within the SRP and are consistent with the proposed definitions in 40 CFR 60.101a of subpart Ja. This clarification would ensure that thermal oxidizers that convert the sulfur to SO_2 but do not recycle and recover the oxidized sulfur are not considered oxidation control systems.

C. How is EPA proposing to revise the coke burn-off equation?

The current equation for calculating coke burn-off rate in 40 CFR 60.106(b)(3) assumes that each fluid catalytic cracking unit is using air with 21 percent O_2. However, there are some fluid catalytic cracking units that use O_2-enriched air, and for these units, the current equation is not completely accurate. Equation 1 in 40 CFR 63.1564(b)(4)(i) of the National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (40 CFR part 63, subpart UUU) includes an additional term to account for the use of an O_2-enriched air stream. For accuracy in the calculation of the coke burn-off rate, we are proposing to revise the coke burn-off rate equation in 40 CFR 60.106(b)(3) to be consistent with the equation in 40 CFR 63.1564(b)(4)(i). This revision also includes changing the constant values and the units of the resulting coke burn-off rate from Megagrams per hour (Mg/hr) and tons per hour (tons/hr) to kilograms per hour (kg/hr) and pounds per hour (lb/hr).

D. What miscellaneous corrections are being proposed?

See Table 1 of this preamble for the miscellaneous technical corrections not previously described in this preamble that we are proposing throughout 40 CFR part 60, subpart J.

TABLE 1.—PROPOSED TECHNICAL CORRECTIONS TO 40 CFR PART 60, SUBPART J

Section	Proposed technical correction and reason
60.100	Replace instances of ''construction or modification'' with ''construction, reconstruction, or modification.''
60.100(b)	Replace ''except Claus plants of 20 long tons per day (LTD) or less'' with ''except Claus plants with a design capacity of 20 long tons per day (LTD) or less'' to clarify that the size cutoff is based upon design capacity and sulfur content in the inlet stream rather than the amount of sulfur produced.
60.100(b)	Insert ending date for applicability of 40 CFR part 60, subpart J; sources beginning construction, reconstruction, or modification after this date will be subject to 40 CFR part 60, subpart Ja.
60.101	Rearrange definitions alphabetically for ease in locating a specific definition.
60.102(b)	Replace ''g/MJ'' with ''grams per Gigajoule (g/GJ)'' to correct units.
60.104(b)(1)	Replace ''50 ppm by volume (vppm)'' with ''50 ppm by volume (ppmv)'' for consistency in unit definition.
60.104(b)(2)	Add ''to reduce SO_2 emissions'' to the end of the phrase ''Without the use of an add-on control device'' at the beginning of the paragraph to clarify the type of control device to which this paragraph refers.
60.105(a)(3)	Add ''either'' before ''an instrument for continuously monitoring'' and replace ''except where an H_2S monitor is installed under paragraph (a)(4)'' with ''or monitoring as provided in paragraph (a)(4)'' to more accurately refer to the requirements of § 60.105(a)(4) and clarify that there is a choice of monitoring requirements.
60.105(a)(3)(iv)	Replace ''accurately represents the SO_2 emissions'' with ''accurately represents the SO_2 emissions'' to correct a typographical error.
60.105(a)(4)	Replace ''In place'' with ''Instead'' at the beginning of this paragraph to clarify that there is a choice of monitoring requirements.
60.105(a)(8)	Replace ''seeks to comply with § 60.104(b)(1)'' with ''seeks to comply specifically with the 90 percent reduction option under § 60.104(b)(1)'' to clearly identify the emission limit option to which the monitoring requirement in this paragraph refers.
60.105(a)(8)(i)	Change ''shall be set 125 percent'' to ''shall be set at 125 percent'' to correct a grammatical error.
60.106(e)(2)	Replace the incorrect reference to 40 CFR 60.105(a)(1) with a correct reference to 40 CFR 60.104(a)(1).
60.107(c)(1)(i)	Replace both occurrences of ''50 vppm'' with ''50 ppmv'' for consistency in unit definition.
60.107(f)	Redesignate current 40 CFR 60.107(e) as 40 CFR 60.107(f) to allow space for a new paragraph (e).
60.107(g)	Redesignate current 40 CFR 60.107(f) as 40 CFR 60.107(g) to allow space for a new paragraph (e).
60.108(e)	Replace the incorrect reference to 40 CFR 60.107(e) with a correct reference to 40 CFR 60.107(f).
60.109(b)(2)	Add a reference to 40 CFR 60.106(e)(3) to specify that determining whether a fuel gas stream is low-sulfur may not be delegated to States.
60.109(b)(3)	Redesignate current 40 CFR 60.109(b)(2) as 40 CFR 60.109(b)(3) to allow space for a new paragraph (b)(2).

V. Rationale for the Proposed Standards (40 CFR part 60, subpart Ja)

A. What is the performance of control technologies for fluid catalytic cracking units?

1. PM Control Technologies

Filterable PM emissions from fluid catalytic cracking units are predominately fine catalyst particles generated from the mechanical grinding of catalyst particles as the catalyst is continuously recirculated between the fluid catalytic cracking unit and the catalyst regenerator. Control of PM emissions from fluid catalytic cracking units relies on the use of post-combustion controls to remove solid particles from the flue gases. Electrostatic precipitators (ESP) and wet scrubbers are the predominant technologies used to control PM from fluid catalytic cracking units. Either of these PM control technologies can be designed to achieve overall PM collection efficiencies in excess of 95 percent.

Electrostatic Precipitator (ESP). An ESP operates by imparting an electrical charge to incoming particles, and then attracting the particles to oppositely charged metal plates for collection. Periodically, the particles collected on the plates are dislodged in sheets or agglomerates (by rapping the plates) and fall into a collection hopper. The normal PM control efficiency range for an ESP is between 90 and 99+ percent. One of the major advantages of an ESP is that it operates with essentially little pressure drop in the gas stream. They are also capable of handling high temperature conditions.

Wet Scrubbers. Wet scrubbers use a water spray to coat and agglomerate particles entrained in the flue gas. To improve wetting of fine particulates, either enhanced spray nozzles or venturi acceleration is used. The wetted particles are then removed from the flue gas through centrifugal separation. Wet scrubbers have similar collection efficiencies as dry ESP (90 to 98 percent), but they are also effective in removing SO_2 emissions. Wet scrubbers may also be more effective in controlling condensable PM as they often use water quench and thereby operate at lower temperatures than ESP used to control fluid catalytic cracking units. Wet scrubbers are generally more costly to operate than ESP due to higher pressure drops across the control device and because of water treatment and disposal costs. However, they become economically viable if significant SO_2 emissions reductions are also needed.

Fabric Filters. A fabric filter collects PM in the flue gases by passing the gases through a porous fabric material. The buildup of solid particles on the fabric surface forms a thin, porous layer of solids, which further acts as a filtration medium. Gases pass through this cake/fabric filter, and all but the finest-sized particles are trapped on the cake surface. Collection efficiencies of fabric filters can be as high as 99.99 percent. Fabric filters tend to be more efficient for fine particles (those less than 2.5 microns in diameter) than ESP or wet scrubbers.

The primary concern with fabric filters are maintenance requirements of the baghouses given the long run times of typical fluid catalytic cracking units. Small process upsets (e.g., pressure changes) in the fluid catalytic cracking unit and regenerator system can send high concentrations of particles to the control system. These particles would likely blind the filter bags, causing a shut-down of the unit to replace the filter bags. Wet scrubbers and ESP can more easily accommodate and control high concentrations of particles.

2. SO_2 Control Technologies

During combustion, sulfur compounds present in the deposited coke are predominately oxidized to gaseous SO_2. One approach to controlling SO_2 emissions from catalytic cracking units is to limit the maximum sulfur content in the feedstock to the

catalytic cracking unit. This can be accomplished by processing crude oil that naturally contains low amounts of sulfur or a feedstock that has been pre-treated to remove sulfur (i.e., hydrotreatment or hydrodesulfurization). A second approach is to use a post-combustion control technology that removes SO_2 from the flue gases. These technologies rely on either absorption or adsorption processes that react SO_2 with lime, limestone, or another alkaline material to form an aqueous or solid sulfur by-product. A third approach is the use of catalyst additives, which capture sulfur oxides in the regenerator and return them to the fluid catalytic cracking reactor where they are transformed to H_2S that is ultimately exhausted to the SRP.

Feedstock Selection or Pre-Treatment. The SO_2 emissions from the fluid catalytic cracking unit are directly related to the amount of sulfur deposited on the catalyst particles in the riser and reactor section of the unit. The amount of sulfur deposited on the catalyst is a function of both the amount of sulfur in the feedstocks and the relative composition of the sulfur-containing compounds in the feedstocks (mercaptans, thiosulfates). As the concentration of sulfur in the feedstocks is reduced, the SO_2 emissions from the regenerator portion of the unit are also reduced. Therefore, if a refinery processes ''sweet'' crude (oil naturally low in sulfur) or if a refinery removes sulfur from the feedstocks of the fluid catalytic cracking unit, the SO_2 emissions from the catalyst regenerator will be lower than from refineries that process feedstocks that have higher sulfur content. At a petroleum refinery, the primary means of removing sulfur compounds in the liquid feedstocks is catalytic hydrotreatment. Hydrotreatment typically reduces the sulfur content in process streams to between 20 and 1,000 parts per million by weight.

Alkali Wet Scrubbing. The SO_2 in a flue gas can be removed by reacting the sulfur compounds with a solution of water and an alkaline chemical to form insoluble salts that are removed in the scrubber effluent. Wet scrubbing processes used to control SO_2 are generally termed flue-gas desulfurization (FGD) processes. The normal SO_2 control efficiency range for SO_2 scrubbers is 80 percent to 90 percent for low efficiency scrubbers and 90 percent to 99 percent for high efficiency scrubbers. In recent fluid catalytic cracking unit applications, control guarantees of 25 ppmv SO_2 are commonly provided by FGD suppliers.

Spray Dryer Adsorption. An alternative to using wet scrubbers is to use spray dryer adsorber (SDA) technology. A SDA operates by the same principle as alkali wet scrubbing, except that instead of a bulk liquid (as in wet scrubbing) the flue gas containing SO_2 is contacted with fine spray droplets of hydrated lime slurry in a spray dryer vessel. This vessel is located downstream of the air heater outlet where the gas temperatures are in the range of 120 °C to 180 °C (250 °F to 350 °F). The SO_2 is absorbed in the slurry and reacts with the hydrated lime reagent to form solid calcium sulfite and calcium sulfate. The water is evaporated by the hot flue gases and forms dry, solid particles containing the reacted sulfur. Most of the SO_2 removal occurs in the spray dryer vessel itself, although some additional SO_2 capture has also been observed in downstream particulate collection devices. The SO_2 removal efficiencies of new lime spray dryer systems are generally greater than 90 percent. Only one refinery has ever used an SDA to control SO_2 from its fluid catalytic cracking unit; this system has since been removed in favor of feedstock hydrotreatment.

Catalyst Additives. One common method used by refineries to reduce SO_2 emissions from the fluid catalytic cracking unit is the use of catalyst additives (typically various types of metal oxides). The metal oxide reacts with some of the SO_3 in the catalyst regenerator to form a metal sulfate. The metal sulfate is then returned to the cracking unit where the sulfur is converted to a metal sulfide and then to H_2S and the original metal oxide. The H_2S is subsequently recovered in the SRP, and the metal oxide returns to the catalyst regenerator to repeat the process. The control efficiency of catalyst additives is difficult to assess, but is generally around 50 percent (ranging from 20 to 70 percent, depending on the application).

3. NO_X Control Technologies

NO_X are formed in a catalyst regenerator (and downstream CO boiler, if present) by the oxidation of molecular nitrogen (N_2) in the combustion air and any nitrogen compounds contained in the fuel (*i.e.*, thermal NO_X and fuel NO_X). The formation of NO_X from nitrogen in the combustion air is dependent on two conditions occurring simultaneously in the unit's combustion zone: high temperature and an excess of combustion air. Under these conditions, significant quantities of NO_X are formed, regardless of the fuel type burned. There are several NO_X emission control strategies that can be considered combustion controls (e.g., low NO_X burners or flue gas recirculation) that reduce the amounts of NO_X formed during combustion. These control technologies are primarily applicable to incomplete combustion fluid catalytic cracking units controlled by CO boilers. As there is limited or no direct flame in the catalyst regenerator during normal operations, these control strategies may be limited for complete combustion fluid catalytic cracking units. Most post-combustion control technologies involve converting the NO_X in the flue gas to N_2 and water using either a process that requires a catalyst (called selective catalytic reduction (SCR)) or a process that does not use a catalyst (called selective noncatalytic reduction (SNCR)). A recently developed post-combustion technology (LoTOx™) uses ozone to oxidize NO_X to nitric pentoxide, which is water soluble and easily removed in a water scrubber.

NO_X Combustion Controls. Flue gas recirculation (FGR) uses flue gas as an inert material to reduce flame temperatures. In a typical FGR system, flue gas is collected from the heater or stack and returned to the burner via a duct and blower. The addition of flue gas with the combustion air reduces the O_2 content of the inlet air stream to the burner. The lower O_2 level in the combustion zone reduces flame temperatures which in turn reduces NO_X emissions. The normal NO_X control efficiency range for FGR is 30 percent to 50 percent. When coupled with low-NO_X burners (LNB), the control efficiency increases to 50–72 percent.

LNB technology utilizes advanced burner design to reduce NO_X formation through the restriction of O_2, flame temperature, and/or residence time. The two general types of LNB are staged fuel and staged air burners. Staged fuel LNB are particularly well suited for boilers and process heaters burning process and natural gas which generate higher thermal NO_X. The estimated NO_X control efficiency for LNB when applied to petroleum refining fuel burning equipment is generally around 40 percent.

One NO_X combustion control technique that is applicable to complete combustion fluid catalytic cracking units is the use of catalyst additives and/or combustion promoters. The control efficiency of these additives varies from 10 to 50 percent.

Selective Catalytic Reduction (SCR) Technology. The SCR process uses a catalyst with ammonia (NH_3) to reduce the nitrogen oxide (NO) and nitrogen dioxide (NO_2) in the flue gas to N_2 and water. Ammonia is diluted with air or

steam, and this mixture is injected into the flue gas upstream of a metal catalyst bed that typically is composed of vanadium, titanium, platinum, or zeolite. The SCR catalyst bed reactor is usually located between the economizer outlet and air heater inlet where temperatures range from 230 °C to 400 °C (450 °F to 750 °F). The SCR technology is capable of NO_X reduction efficiencies of 90 percent or higher.

Selective Noncatalytic Reduction (SNCR) Technology. An SNCR process is based on the same basic chemistry of reducing the NO and NO_2 in the flue gas to N_2 and water, but it does not require the use of a catalyst to promote these reactions. Instead, the reducing agent is injected into the flue gas stream at a point where the flue gas temperature is within a specific temperature range of 870°C to 1,090°C (1,600°F to 2,000°F). The NO_X reduction levels for SNCR are in the range of approximately 30 to 50 percent.

LoTOx™ Technology. The LoTOx™ process (i.e., low-temperature oxidation) is a patented technology that uses ozone to oxidize NO_X to nitric pentoxide and other higher order NO_X, all of which are water soluble and easily removed from exhaust gas in a wet scrubber. The system operates optimally at temperatures below 300°F. Thus, ozone is injected after scrubber inlet quench nozzles and before the first level of scrubbing nozzles. Outlet NO_X emission levels have been reduced to less than 20 ppmv, and often as low as 10 ppmv, when inlet NO_X concentrations ranged from 50 to 200 ppmv.

B. What is the performance of control technologies for fuel gas combustion?

Refinery fuel gas is generally used in process heaters and boilers to meet the energy demands of the refinery. Excess refinery fuel gas is typically combusted using flares. Flares also serve an important safety function to destroy organics and convert H_2S to SO_2 during process upsets and malfunctions.

Over the past several years, many refineries have reduced flaring episodes by adding flare gas recovery systems and/or by changing their start-up and shutdown procedures to limit flaring. Installing a flare gas recovery system and implementing new start-up and shutdown procedures are expected to reduce VOC, sulfur oxides, and NO_X emissions from flares. Improved amine scrubbing systems are expected to reduce sulfur oxide emissions from all fuel gas combustion systems. In addition, excess capacity in the SRP will help to minimize sour gas flaring that might be caused by a malfunction in the SRP. Each of these ''control'' techniques are described in the following paragraphs.

Flare Gas Recovery Systems. Flare gas recovery systems recover fuel gas from the flare gas header prior to the flare's liquid seal. A flare gas recovery system consists of a compressor, separator, and process controls (to maintain slight positive pressure on the flare header). Flare gas recovery systems are typically designed to recover fuel gas from miscellaneous processes that might regularly be relieved to the flare header system and can effectively recover 100 percent of these fuel gases. However, flare gas recovery systems cannot recover large quantities of fuel gas that might be suddenly released to the flare header system as a result of a process upset or malfunction. These gases would still be flared as necessary to maintain the integrity of the process units and the safety of the plant personnel.

Modified Start-up and Shutdown Procedures. Although flaring is necessary to ensure safety during process upsets and malfunctions, start-up and shutdown procedures can be designed so as to minimize flaring. For example, depressurization of process vessels can be performed more slowly so as to not overwhelm the fuel gas needs of the refinery and/or the capacity of the flare gas recovery system. Depending on the number of units being shut down at a given time, nearly 100 percent of flaring can be eliminated during start-up and shutdown. There are cases, such as emergency shutdowns for safety reasons or approaching hurricanes, where the timing of the shutdown and the magnitude of the number of processes needing to be shut down would warrant the use of flaring. However, modified procedures should be able to eliminate flaring associated with process start-ups and shutdowns due to routine maintenance of select processes.

Amine Scrubbers. Amine scrubber systems remove H_2S and other impurities from sour gas. Lean amine solution absorbs the H_2S from the sour gas in an absorption tower. The acid gas is removed from the rich amine solution in a stripper, or still column. The resulting lean amine is recirculated to the absorption tower, and the stripped H_2S is generally sent to the SRP. Vendors generally provide redundant pumps to ensure continuous operation of the system. Some refineries choose to store a day's worth of lean amine solution in case the stripper fails; this allows the continuous operation of the absorption tower. This option also requires adequate empty storage space for the rich amine solution produced by the absorption tower while the stripper is out of service.

Redundant Sulfur Recovery Capacity. When a sulfur recovery unit (SRU) malfunctions, the sour gas is typically flared to convert the highly toxic H_2S to less toxic SO_2. As many SRU recover more than 20 long tons of elemental sulfur per day, even short sulfur recovery process upsets can result in several tons of SO_2 emissions. Furthermore, refineries often operate multiple Claus sulfur recovery processes in parallel. Having an extra Claus sulfur recovery train can dramatically reduce the likelihood of sour gas flaring. Depending on the severity of the process upset, having a redundant SRU can reduce these large SO_2 releases by as much as 100 percent.

C. What is the performance of control technologies for process heaters?

The mechanisms by which NO_X are formed in process heaters are the same as for their formation in catalyst regenerators. The possible control options are also the same. See section V.A.3 of this preamble for a discussion of these formation mechanisms and control technologies.

D. What is the performance of control technologies for sulfur recovery systems?

Sulfur recovery (the conversion of H_2S to elemental sulfur) is typically accomplished using the modified-Claus process. In the Claus unit, one-third of the H_2S is burned with air in a reaction furnace to yield SO_2. The SO_2 then reacts reversibly with H_2S in the presence of a catalyst to produce elemental sulfur, water, and heat. This is a multi-stage catalytic reaction in which elemental sulfur is removed between each stage, thereby driving the reversible reaction towards completion. The gas from the final condenser of the Claus unit (referred to as the ''tail gas'') consists primarily of inert gases with less than 2 percent sulfur compounds. Additionally, the sulfur recovery pits used to store the recovered elemental sulfur also have a potential for fugitive H_2S emissions. Typically a Claus unit recovers approximately 94 to 97 percent of the inlet sulfur load as elemental sulfur.

There are some methods that extend the Claus reaction to improve the overall sulfur collection efficiency of the SRP. For example, the Superclaus® SRU is similar to the Claus unit. It contains a thermal stage, followed by three to four catalytic reaction stages. The first two or three catalytic reactors use the Claus catalyst, while the last reactor uses a selective oxidation catalyst. The

catalyst in the last reactor oxidizes the H_2S to sulfur at a very high efficiency, recovering 99 percent of the incoming sulfur.

There are a few refineries that operate non-Claus type SRU. All of the refineries that use non-Claus SRU technologies have very low sulfur production rates (2 LTD or less). There are several different trade names for these ''other'' types of SRU, such as the LoCat®, Sulferox®, and NaSH processes. These processes can achieve sulfur recovery efficiencies of 99 percent or more, although they typically yield a sulfur product that has limited market value because the sulfur content is much lower than in the sulfur product from a Claus unit (50 to 70 percent sulfur compared to 99.9 percent sulfur from the Claus process).

The primary means of reducing sulfur oxide emissions from the SRU is to employ a tail gas treatment unit that recovers the sulfur compounds and recycles them back to the inlet of the Claus treatment train. There are three basic types of tail gas treatment units: (1) Direct amine adsorption of the Claus tail gas; (2) catalytic reduction of the tail gas to convert as much of the tail gas sulfur compounds to H_2S (coupled with amine adsorption or Stretford solution eduction); and (3) oxidative tail gas treatment systems to convert the Claus tail gas sulfur compounds to SO_2 (coupled with an SO_2 recovery system).

Direct Amine Adsorption. Direct amine adsorption of the Claus tail gas is the least efficient of the tail gas treatment methods because only about two-thirds of the sulfur in the direct Claus tail gas is amenable to scrubbing (i.e., in the form of H_2S). Direct amine adsorption is therefore expected to increase the overall sulfur recovery efficiency of the sulfur plant to approximately 99 percent. However, direct amine adsorption alone is generally not expected to reduce sulfur oxide concentrations to below 250 ppmv (i.e., enough to meet the existing NSPS emission limits for Claus units greater than 20 LTD).

Reductive Tail Gas Catalytic Systems. The most common reductive tail gas catalytic systems in use at refineries include: (1) The Shell® Claus Offgas Treatment (SCOT) unit; (2) the Beavon/amine system; and (3) the Beavon/Stretford system. Each of these systems consist of a catalytic reactor to convert the sulfur compounds remaining in the Claus tail gas to H_2S and an H_2S recovery system (an amine scrubber or a Stretford solution) to strip the H_2S from the tail gas. The recovered H_2S is then recycled to the front of the Claus unit. The overhead of the amine scrubber or Stretford unit (caustic scrubber) may be vented to the atmosphere or incinerated to convert any remaining H_2S or other reduced sulfur compounds to SO_2. The total sulfur recovery efficiency of a Claus/catalytic tail gas treatment train is expected to be 99.7 to 99.9 percent.

Oxidative Tail Gas Treatment Systems. The Wellman-Lord is the only oxidative tail gas treatment system used in the United States. The Wellman-Lord process uses thermal oxidation followed by scrubbing with a sodium sulfite and sodium bisulfite solution to remove SO_2. The rich bisulfite solution is sent to an evaporator-recrystallizer where the bisulfite decomposes to SO_2 and water and sodium sulfite is precipitated. The recovered SO_2 is then recycled back to the Claus plant for sulfur recovery. The total sulfur recovery efficiency of a Claus/oxidative tail gas treatment train is expected to be 99.7 to 99.9 percent.

E. How did EPA determine the proposed standards for new petroleum refining process units?

Four sources of information were considered in reviewing the appropriateness of the current NSPS requirements for new sources: (1) Source test data from recently installed control systems; (2) applicable State and local regulations; (3) control vendor emission control guarantees; and (4) consent decrees. (A significant number of refineries, representing about 77 percent of the national refining capacity, are subject to consent decrees that limit the emissions from subpart J process units.) Once we identified potential emission limits for various process units, we evaluated each limit in conjunction with control technology, costs, and emission reductions to determine BDT for each process unit.

The cost methodology incorporates the calculation of annualized costs and emission reductions associated with each of the options presented. Cost-effectiveness is the annualized cost of control divided by the annual emission reductions achieved. Incremental cost-effectiveness refers to the difference in annualized cost from one option to the next divided by the difference in emission reductions from one option to the next. For NSPS regulations, the standard metric for expressing costs and emission reductions is the impact on all affected facilities accumulated over the first 5 years of the regulation. Details of the calculations can be found in the public docket. Our BDT determinations took all relevant factors into account, including cost considerations which were generally consistent with other Agency decisions.

1. Fluid Catalytic Cracking Units

Particulate Matter (PM) and Sulfur Dioxide (SO_2). In order to determine the appropriate emission limits for PM and SO_2, we evaluated PM and SO_2 limits in conjunction with one another. One of the reasons for this is that wet scrubbers control both PM and SO_2 emissions, and refineries will decide whether to choose a wet scrubber as opposed to an ESP with catalyst additives based on both the PM and the SO_2 emission limit to be met.

Currently, 40 CFR part 60, subpart J limits PM emissions from the fluid catalytic cracking unit to 1.0 kg/Mg of coke burn-off. The limit applies to filterable PM as measured by Method 5B or 5F in 40 CFR part 60, Appendix A. It excludes condensable PM such as sulfuric acid (under Method 5B), sulfates that condense at temperatures greater than 320 °F (under Method 5F), and all other condensables (using either Method). The measurement of condensable PM is important to EPA's goal of reducing ambient air concentrations of fine PM. Since promulgation of Method 202 in 1991, EPA has been working to overcome problems associated with the accuracy of Method 202 and will promulgate improvements to the method in the future. The existing NSPS also requires opacity, as measured using a continuous opacity monitoring system, to be no more than 30 percent.

The current standards in 40 CFR part 60, subpart J for SO_2 include three alternative formats: (1) If using an add-on control device, reduce SO_2 emissions by at least 90 percent or to less than 50 ppmv, (2) if not using an add-on control device, limit sulfur oxides emissions (calculated as SO_2) to no more than 9.8 kg/Mg of coke burn-off, or (3) process in the fluid catalytic cracking unit fresh feed that has a total sulfur content no greater than 0.30 percent by weight. The 90 percent reduction, 9.8 kg/Mg, and 0.3 percent feed sulfur formats were determined to be equivalent for a unit operating with a feed that contains 3.5 percent sulfur by weight before implementing a control measure.

In reviewing the PM and SO_2 emission limits, we evaluated five combined options and a baseline. The baseline is considered to be the current requirements, as described in the two previous paragraphs. The first option is to maintain the existing subpart J standard for PM and provide only the 50 ppmv concentration limit for SO_2. The additional options are a range of emission limits coupled with a change in the compliance test method to Method 5 to measure a portion of the

condensable PM. The second option is to combine Method 5 with the existing 1.0 kg/Mg coke burn-off performance level, and a third option is to lower the PM emission limit to 0.5 kg/Mg. Both the second and third options include an SO_2 limit of 50 ppmv. A fourth option includes the PM limit of 0.5 kg/Mg presented in the third option and a lower SO_2 limit of 25 ppmv. The fifth option is to lower the PM emission limit to 0.15 kg/Mg with an SO_2 limit of 25 ppmv. Costs and emission reductions for each option were estimated as the increment between complying with subpart J and subpart Ja.

Option 1 includes the same emissions and requirements for PM as the current 40 CFR part 60, subpart J. For SO_2, this option excludes the alternative compliance options of meeting a higher emission limit without an SO_2 control device or meeting a limit on the sulfur content of the fresh feed. These two alternatives are less stringent than the outlet concentration limit, and available information indicates the concentration limits are achievable. An advantage of the proposed concentration limit is that ongoing compliance can be directly measured using a CEMS. The impacts of this option are limited to the impacts of removing those alternative compliance options for SO_2 and are presented in Table 2 to this preamble. To comply with Option 1 (i.e., meet the 50 ppmv limit for SO_2) we expect that the fraction of new sources choosing wet scrubbers instead of ESP would be greater than under the existing subpart J. Filterable PM emissions are assumed to be the same for both types of control devices because the PM performance levels are the same under both option 1 and the baseline subpart J requirements. However, because condensable PM emissions are lower from wet scrubbers than from ESP, this shift in the ratio of wet scrubbers to ESP would also result in an estimated reduction in total PM emissions of 17 tons per year, as shown in Table 2 to this preamble.

Option 2 includes the same emission limit as current subpart J for PM but requires compliance using Method 5 rather than Method 5B or Method 5F. As noted above, Methods 5B and 5F exclude all PM that condenses at temperatures below 320°F, and Method 5F also excludes sulfates that condense at temperatures greater than 320°F. The PM measured by Method 5 includes filterable PM that condenses above 250°F in the front half of the Method 5 sampling train. Thus, the estimated PM emission reductions achieved by this option equal the amount of sulfates and other condensable PM between 250°F and 320°F that would be measured by Method 5 but not Method 5B or 5F. The baseline emissions were estimated assuming Method 5B is used for wet scrubbers and Method 5F is used for ESP. For SO_2, Option 2 includes the same emission limit as described in Option 1, and the estimated SO_2 emission reductions are also the same. The impacts of this option are presented in Table 2 to this preamble.

Option 3 lowers the PM limit to 0.5 kg/Mg coke burn, again using Method 5, and includes the same emission limit as described in Option 1 for SO_2. The existing NSPS limit was based on control with ESP. Those ESP were rated at efficiencies of only 85 to 90 percent. More recently installed ESP have greater specific plate area, which should result in better control efficiencies. In addition, many refineries have installed wet scrubbers to control both PM and SO_2. At petroleum refineries, wet scrubbers typically perform as well as, if not better than, ESP. Available test data indicate that at least one ESP and one wet scrubber are reducing total filterable PM to 0.5 kg/Mg of coke burn or less, as measured by Method 5-equivalent test methods. Based on this information, both ESP and wet scrubbers can achieve PM emission levels below the level of the existing PM standard, and a lower standard for new units is technically feasible. The impacts of this option are presented in Table 2 to this preamble.

Option 4 includes the same PM limit as Option 3, and the discussion presented for Option 3 applies to Option 4 as well. It also includes a long-term limit for SO_2 of 25 ppmv, averaged over 365 days, in addition to the current subpart J limit of 50 ppmv, averaged over 7 days. These limits have been shown to be readily achievable by flue gas desulfurization systems. Many fluid catalytic cracking units are now subject to consent decrees that require control to these levels. Petroleum refiners typically use wet scrubbers to control SO_2 emissions, and test data indicate that outlet concentrations below 25 ppmv are common. At least one wet scrubber manufacturer also provides performance guarantees to meet a 25 ppmv emission limit. The incremental SO_2 reductions for this option relative to Option 3 are achieved by using catalyst additives in the fluid catalytic cracking units that are assumed to be controlled with ESP; fluid catalytic cracking units controlled with wet scrubbers have the same SO_2 emissions as under Option 3 because wet scrubbers under all options are assumed to achieve SO_2 emissions below 25 ppmv. The impacts of this option are presented in Table 2 to this preamble.

The final option, Option 5, includes a lower PM limit, 0.15 kg/Mg of coke burn, measured using Method 5, and the same SO_2 limits as Option 4. This PM limit is equivalent to the limit of 0.005 gr/dscf required by California's South Coast Air Quality Management District (SCAQMD). To meet this PM limit, we expect that a refinery would need an ESP rather than a wet scrubber because we are unaware of any wet scrubber that is meeting this PM limit (and as in Option 4, catalyst additives in the fluid catalytic cracking unit would be needed to meet the SO_2 limit). In addition, the refinery would likely need ammonia injection to improve the performance of the ESP. Based on test data from at least three fluid catalytic cracking units, ammonia injection improves the control of filterable PM in ESP, but it also produces a considerable amount of condensable PM. Therefore, the estimated total PM reduction for this option is much lower (worse) than the reduction that would be achieved under Option 4. The shift to ESP for all new fluid catalytic cracking units under this option also slightly degrades the estimated SO_2 emissions reduction relative to Option 4 because available data indicate that wet scrubbers achieve lower SO_2 emissions than ESP and catalyst additives. In addition to reduced performance relative to Option 4, the capital and annual costs of this option are considerably higher than for Option 4. The reduced performance of this option relative to Option 4 means that incremental cost-effectiveness is not meaningful for this option. The impacts of this option are presented in Table 2 to this preamble.

TABLE 2.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR PM AND SO_2 LIMITS CONSIDERED FOR FLUID CATALYTIC CRACKING UNITS SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost ($1,000)	Total annual cost ($1,000/yr)	Emission reduction (tons PM/yr) [a]	Emission reduction (tons SO_2/yr)	Cost-effectiveness ($/ton)	
					Overall	Incremental
1	500	3,100	17	6,800	460	
2	670	3,600	350	6,800	500	1,400
3	40,000	9,200	1,200	7,200	1,100	4,400
4	40,000	9,500	1,200	8,300	1,000	220
5	140,000	30,000	460	7,900	3,600	N/A

[a] Both filterable and condensable PM.

Based on our review of performance data and potential impacts, we have determined that control of PM emissions (as measured by Method 5) to 0.5 kg/Mg of coke burn or less and control of SO_2 emissions to 25 ppmv or less averaged over 365 days and 50 ppmv or less averaged over 7 days is BDT for new, reconstructed, or modified fluid catalytic cracking units. The more stringent filterable PM control level in Option 5 is technically achievable, but we rejected this option because it results in higher total PM and SO_2 emissions than Option 4. Option 4 was selected as BDT because it achieves the best performance of the remaining options, and both overall and incremental costs are reasonable.

Table 3 to this preamble shows the impacts of Option 4 for modified and reconstructed sources. Although the impacts of Option 4 are reasonable, we are aware that there is some concern about the ability to retrofit reconstructed and modified sources to meet these emission limits. Specifically, there may be issues with physical space availability, process unit or control device configurations, or other factors that are not adequately included in our impacts analyses. Therefore, we are co-proposing requiring reconstructed and modified units to meet the current standards in 40 CFR part 60, subpart J. We are requesting comment on specific examples, supported by data, of situations that would support this proposed option.

TABLE 3.—NATIONAL FIFTH YEAR IMPACTS OF PROPOSED OPTION FOR PM AND SO_2 LIMITS FOR RECONSTRUCTED AND MODIFIED SOURCES

Capital cost ($1,000)	Total annual cost ($1,000/yr)	Emission reduction (tons PM/yr)	Emission reduction (tons SO_2/yr)	Cost-effectiveness ($/ton)
31,000	6,200	700	3,700	1,400

Finally, available test data indicate that the two control devices (an ESP and a wet scrubber) that reduce filterable PM to less than 0.5 kg/Mg coke burn (as well as at least one other ESP) also can meet a total PM limit, including condensables, of 1.0 kg/Mg of coke burn (i.e., demonstrate compliance using Method 5 for filterable PM and Method 202 for condensable PM). Condensable sulfates and other condensable compounds measured by Method 5 and Method 202 vary widely, but the average is about 0.5 kg/Mg of coke burn-off. In an attempt to create some incentive to begin measuring condensables using improved Method 202, we are considering establishing an alternative PM limit of 1 kg/Mg coke burn, including condensables. Therefore, we are asking for comments with rationale to either support or reject an alternative PM limit that would be based on both filterable PM and condensable PM.

Carbon Monoxide. The current standards in 40 CFR part 60, subpart J limit CO emissions to 500 ppmv or less. This limit was established for fluid catalytic cracking units that operate in either ''partial combustion'' catalyst regeneration mode or ''complete combustion'' catalyst regeneration mode. In partial combustion mode, relatively large amounts of CO are generated in the regenerator. The resulting CO is then combusted in a CO or waste heat boiler. This operation results in nearly complete combustion of the CO, with outlet concentrations on the order of 25 to 50 ppmv being common. In complete combustion mode the CO emissions from the regenerator are much lower, and a downstream CO or waste heat boiler is impractical. However, complete combustion catalyst regeneration was a recent advance at the time the current NSPS was promulgated; test data were limited at that time, and a CO level of 500 ppmv was estimated to be a practical limit for the technology.

After consideration of available information, we are proposing to retain the current CO standard for new fluid catalytic cracking units. Although test data show CO emissions from complete combustion regenerators can be less than 500 ppmv, the lower levels generally are achieved by operating with higher levels of excess air. Unfortunately, this operation is likely to result in higher NO_X emissions. If a trade-off is necessary, limiting NO_X emissions is a higher priority than limiting CO emissions because NO_X is a precursor to fine PM and ground-level ozone, both of which have more significant health impacts than CO. Available data also indicate that formaldehyde emissions tend to increase with the higher oxidation/combustion conditions needed to reduce CO emissions. Therefore, we determined that control to 500 ppmv or less is still BDT for CO emissions, and the proposed standards are based on this emission limit. Accordingly, the proposed limit for 40 CFR part 60, subpart J poses no additional costs over those incurred to comply with the existing NSPS.

NO_X. NO_X emissions are not subject to control under the existing NSPS in 40 CFR part 60, subpart J. However, several petroleum refiners limit NO_X emissions based on State regulations and consent decrees. The emission limits to which refineries are subject vary from facility to facility. We evaluated three options

as part of the BDT determination: Outlet NO_X emission levels of 80 ppmv, 40 ppmv, and 20 ppmv, each averaged over 7 days or less. Each of these limits is technically feasible, but the technology needed to meet them depends on the current NO_X concentrations in the vented gas streams, which are either uncontrolled or controlled to levels required by existing State and local requirements.

The estimated fifth year emission reductions and costs for each of the options are summarized in Table 4. To estimate impacts for Option 1, we assumed that a few units have current NO_X emissions below 80 ppmv, and many other units can meet this level with combustion controls (e.g., limiting excess O_2 or using non-platinum catalyst combustion promoters in a complete combustion catalyst regenerator, or using flue gas recirculation or low-NO_X burners in a CO boiler after a partial combustion catalyst regenerator). Other units with higher uncontrolled NO_X emissions levels will need to install more costly control technology such as LoTOx™ or SCR in order to meet the 80 ppmv option. All units will also incur costs for a continuous NO_X monitor. The costs for Options 2 and 3 are higher than for Option 1 because the ratio of add-on controls to combustion controls would increase in order to meet the lower limits of 40 and 20 ppmv.

Based on the impacts shown in Table 4, we determined that BDT is option 1, a NO_X emission limit of 80 ppmv. The costs of option 1 are commensurate with the emission reductions while the more stringent options would impose compliance costs that are not warranted for the emissions reductions that would be achieved as shown by the incremental cost effectiveness impacts shown in table 4. In general, we expect that most sources will be able to meet the NO_X limit through combustion controls. In cases where add-on controls would be necessary, however, there may be retrofit concerns for modified and reconstructed sources. Therefore, we are co-proposing no new standards for NO_X emissions on modified or reconstructed sources and are requesting comments on the necessity, feasibility and costs of retrofits to meet the 80 ppmv limit for modified and reconstructed sources.

TABLE 4.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR NO_X LIMITS CONSIDERED FOR FLUID CATALYTIC CRACKING UNITS SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Total capital cost, $ (millions)	Total annual cost, $/yr (millions)	Emission reduction, tons NO_X/yr	Cost effectiveness ($/ton)	
				Overall	Incremental
1	28	7.3	3,500	2,100	.....
2	80	20	5,200	4,200	7,600
3	120	30	5,800	5,500	16,000

Available test data for units controlled with SCR indicate that emissions less than 20 ppmv are continuously achievable when averaged over long periods of time such as 365 days. Although we determined that the average costs to meet such a limit are unreasonable, we are requesting comment on whether there may be a subset of units for which costs would be reasonable to meet lower limits such as 20 or 40 ppmv, averaged over 365 days.

Opacity. The current standards require fluid catalytic cracking units to meet an opacity limit of 30 percent. This limit was included as a means of identifying failure of the PM control device. This objective is achieved much more effectively by monitoring control device operating parameters or by using a PM CEMS. These monitoring options are included in the proposed standards for PM. Therefore, the proposed standards do not include an opacity emissions limit.

2. Fluid Coking Units

The current NSPS includes no requirements for fluid coking units. There are few fluid coking units at refineries in the U.S., but data in the National Emission Inventory database shows the few existing units are significant sources of PM, SO_2, and NO_X emissions. Therefore, we evaluated several options as part of a BDT determination for fluid coking units. All of the options we considered are comparable to options that we considered for fluid catalytic cracking units because of similarities in the function, operation, and emissions of the two types of units.

Particulate Matter and Sulfur Dioxide. To determine BDT for PM and SO_2 emissions we evaluated two options. Because control technology can reduce both pollutants simultaneously, the options also consider both pollutants. Option 1 is a PM limit of 1.0 kg/Mg coke burn and a short-term SO_2 limit of 50 ppmv, averaged over 7 days; and Option 2 is a PM limit of 0.5 kg/Mg coke burn, a short-term SO_2 limit of 50 ppmv, averaged over 7 days, and a long-term SO_2 limit of 25 ppmv, averaged over 365 days. (Because catalyst additives are not a feasible option for reducing SO_2 from a fluid coking unit, we did not consider the fifth option evaluated for fluid catalytic cracking units.)

The Energy Information Administration (EIA) Refinery Capacity Report 2006 lists six fluid coking units; at least two of these coking units are flexi-coking units that use the coking exhaust as a synthetic fuel gas. Therefore, there are at most four fluid coking units in the United States that could potentially become subject to the standard. Although coking capacity is expected to increase, most new units are expected to be delayed coking units. For this analysis, we assumed that one existing fluid coking unit becomes a modified or reconstructed source in the next 5 years. A wet scrubber is the most likely technology that would be used to meet either Option 1 or Option 2. To estimate the impacts, we estimated costs for a basic wet scrubber to meet Option 1 and an enhanced wet scrubber to meet Option 2. The resulting emission reductions and costs for both of the options are shown in Table 5 to this preamble. The costs for both options are reasonable. Therefore, we determined that BDT is Option 2 which requires technology that reduces PM emissions to 0.5 kg/Mg of coke burn and reduces SO_2 emissions to 50 ppmv, averaged over 7 days, and 25 ppmv, averaged over 365 days. We are proposing standards consistent with these levels.

TABLE 5.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR PM AND SO_2 LIMITS CONSIDERED FOR FLUID COKING UNITS SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost ($1,000)	Total annual cost ($1,000/yr)	Emission reduction (tons PM/yr)	Emission reduction (tons SO_2/yr)	Cost-effectiveness ($/ton)	
					Overall	Incremental
1	14,000	4,700	1,700	21,000	210	.....
2	14,000	4,800	2,000	21,000	210	120

Nitrogen Oxides (NO_X). To determine BDT for NO_X emissions, we evaluated three options: Outlet NO_X emission levels of 80 ppmv, 40 ppmv, and 20 ppmv, each averaged over 7 days or less. The specific technology that will be needed to meet these levels will depend on the NO_X concentration in the exhaust gas stream from uncontrolled fluid coking units. As noted in the discussion above for PM and SO_2 options, we estimated that only one fluid coking unit will be modified or reconstructed in the next 5 years, and there will be no new units constructed. Because each unit is likely to have a different uncontrolled NO_X concentration in its exhaust stream, we developed impacts for a composite model unit based on a weighted distribution of all the various types of controls (low-efficiency combustion controls, higher efficiency combustion controls, and add-on controls such as LoTox™ or SCR). As in the analysis for fluid catalytic cracking units, the ratio of add-on controls to combustions controls increases from Option 1 through Option 3. The results of this analysis are shown in Table 6 to this preamble.

TABLE 6.—NATIONAL FIFTH YEAR IMPACTS OPTIONS FOR NO_X LIMITS CONSIDERED FOR FLUID COKING UNITS SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Total capital cost, $ (millions)	Total annual cost, $/yr (millions)	Emission reduction, (tons NO_X/yr)	Cost-effectiveness ($/ton)	
				Overall	Incremental
1	4.5	0.97	760	1,300	
2	9.5	2.1	980	2,200	5,300
3	13	2.9	1,000	2,800	12,000

The costs for option 1 are commensurate with the emission reductions, but the incremental impacts for options 2 and 3 are not reasonable, as shown in Table 6. Based on these potential impacts and available performance data, we have determined that BDT is technology needed to meet an outlet NO_X concentration of 80 ppmv or less, and we are proposing this emission limit as the performance standard for NO_X emissions from fluid coking units. However, there are uncertainties in this analysis. For example, if the few existing units are not readily amenable to retrofitting NO_X controls, the cost and emission reduction impacts might no longer be favorable, and we would conclude that no control is BDT. Therefore, we are co-proposing no new standard for NO_X emissions from fluid coking units.

3. Sulfur Recovery Plants

Emission limits in the existing NSPS (40 CFR part 60, subpart J) apply to Claus SRP with a capacity greater than 20 LTD. The emission limits are consistent with an overall sulfur recovery efficiency of 99.9 percent (*i.e.*, 250 ppmv SO_2 for the Claus unit followed by oxidative tail gas treatment, and 10 ppmv H_2S and 300 ppmv total reduced sulfur compounds for a Claus unit followed by reductive tail gas treatment). Although small SRP and non-Claus SRP are not subject to the existing NSPS, they are often subject to control. For example, Texas requires sulfur removal efficiencies of 99.8 percent for SRP with capacities greater than 10 LTD and 96 percent to 98.5 percent for SRP with capacities less than or equal to 10 LTD. In addition, a few consent decrees require 95 percent sulfur recovery for Claus SRP with capacities less than 20 LTD.

To determine BDT we evaluated 4 options. The options are based on various sulfur recovery efficiencies for SRP with capacities less than 20 LTD, and all of the options include the same 99.9 percent efficiency as in the current standards for SRP with capacities greater than 20 LTD. Option 1 is based on 99 percent recovery for SRP with capacities between 10 LTD and 20 LTD, and 95 percent recovery for SRP with capacities less than 10 LTD. Option 2 is based on 99 percent recovery for all SRP with capacities less than 20 LTD. Option 3 is based on 99.9 percent recovery for SRP with capacities between 10 LTD and 20 LTD, and 99 percent recovery for SRP with capacities less than 10 LTD. Option 4 is based on 99.9 percent recovery for all SRP, regardless of size or design. All of the options include 99.9 percent recovery for SRP larger than 20 LTD (both Claus and non-Claus units) because we are not aware of a more effective SO_2 control technology. The 95 percent option is equivalent to the efficiency of a two-stage Claus unit without controls. The 99 percent and 99.9 percent recovery levels are achievable for SRP of all sizes by various types of tail gas treatments, as discussed in section V.D of this preamble.

The estimated fifth year emission reductions and costs for each of the options are summarized in Table 7. These values reflect the impacts only for SRP smaller than 20 LTD because we expect that all non-Claus units will be smaller than 20 LTD and because the impacts for larger Claus units would be the same as to comply with the existing standards in subpart J. The costs for Options 1, 2, and 3 are reasonable. We then evaluated the incremental costs and emission reductions between the options. We found that Option 2 is the most stringent option for which incremental costs are reasonable compared to the incremental emission reduction between the options.

Based on the available performance data and cost considerations, we have concluded that tail gas treatments that achieve 99.9 percent control are still

BDT for SRP with capacities greater than 20 LTD, and tail gas treatments that achieve 99 percent recovery are BDT for SRP with capacities less than 20 LTD. Therefore, we are proposing standards for SO_2 and H_2S emissions from SRP with capacities larger than 20 LTD that are equivalent to the existing standards, and we are proposing standards for SRP with capacities smaller than 20 LTD that would limit emissions of sulfur to less than 1 percent by weight of the sulfur recovered.

TABLE 7.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR SO_2 LIMITS CONSIDERED FOR SULFUR RECOVERY PLANTS SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Total capital cost, $ (millions)	Total annual cost, $/yr (millions)	Emission reduction, (tons SO_2/yr)	Cost-effectiveness ($/ton)	
				Overall	Incremental
1	0.27	0.14	180	780	
2	1.1	0.68	550	1,200	1,500
3	1.9	1.0	590	1,700	8,200
4	4.5	2.3	670	3,400	15,000

4. Process Heaters and Other Fuel Gas Combustion Devices Sulfur Dioxide

The current NSPS in 40 CFR part 60, subpart J limits SO_2 emissions from fuel gas combustion devices by specifying that the H_2S content of fuel gas must be less than or equal to 230 mg/dscm, averaged over 3 hours (equivalent to 160 ppmv averaged over 3 hours). Alternatively, any fuel gas may be combusted, provided the outlet SO_2 emissions are controlled to no more than 20 ppmv (dry basis, 0 percent excess air). When the current NSPS was promulgated, we concluded that amine scrubbing as well as new processes that use other scrubbing media represented BDT for continuous reduction of H_2S from fuel gas. The 160 ppmv concentration limit was consistent with good operation of such scrubbing processes. In addition, burning such fuel gas will result in an SO_2 concentration in the exhaust gas of about 20 ppmv.

After consideration of current operating practices, we concluded that amine scrubbing units are still the predominant technology for reduction of H_2S in fuel gas (and SO_2 emissions from subsequent fuel gas combustion). Considering the variability of the fuel gas streams from various refinery processing units, 160 ppmv also is still a realistic short term H_2S concentration limit. However, one California Air Quality Management District rule sets a 40 ppmv H_2S limit in fuel gas (averaged over 4 hours), and several refiners have reported that the typical fuel gas H_2S concentrations (after scrubbing) are in the same range. Additionally, amine scrubbing technology can be designed and is, in fact, being used to achieve much lower (1 to 5 ppmv) H_2S concentrations in product gas applications. Based on this information, we concluded that additional SO_2 control could be achieved by requiring SO_2 emission limits with both long-term and short-term averaging periods.

We considered three options for increasing SO_2 control of fuel gas combustion units: Outlet SO_2 emission levels of 10 ppmv, 8 ppmv, and 5 ppmv SO_2, each averaged over 365 days. Each of the options also includes the same 20 ppmv 3-hour SO_2 concentration limit as in the current NSPS. To achieve each of these options, we expect that petroleum refiners will increase their amine recirculation rates to reduce the H_2S concentration in the fuel gas. We estimate that meeting the options will increase steam consumption for a typical scrubbing unit by about 5, 7, and 10 percent, respectively. No new equipment or other capital expenditures would be necessary. The estimated fifth-year impacts of each of these options are presented in Table 8 to this preamble. Overall costs for all the options are reasonable compared to the emission reduction achieved. We further evaluated the incremental costs and reductions between the 3 options and found that they were reasonable for Options 1 and 2, while the incremental cost for Option 3 is not.

TABLE 8.—NATIONAL FIFTH YEAR IMPACTS OF OPTIONS FOR SO_2 LIMITS CONSIDERED FOR PROCESS HEATERS AND OTHER FUEL GAS COMBUSTION DEVICES SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Capital cost ($1,000)	Total annual cost ($1,000/yr)	Emission reduction (tons SO_2/yr)	Cost-effectiveness ($/ton)	
				Overall	Incremental
1	0	2,000	1,000	1,900	
2	0	2,900	1,300	2,200	3,500
3	0	4,100	1,600	2,600	4,700

Based on these impacts and consideration of current operating practices, we concluded that BDT is use of technology that reduces the SO_2 emissions from fuel gas combustion units to 8 ppmv or less averaged over 365 days and 20 ppmv or less averaged over 3 hours. Therefore, we are proposing SO_2 standards consistent with this determination. We are also requesting comment on the proposed long-term concentration limit and the length of the averaging period.

Although the proposed emission limits are based primarily on the fuel gas desulfurization technologies (e.g., amine scrubbing), new process heaters, regardless of fuel type, also would be subject to these emission limits. New process heaters can elect to meet these emission limits by using treated fuel gas, low sulfur distillate fuel oils, or flue gas desulfurization or other SO_2 add-on controls. Considering the low sulfur fuel standards and available control technologies, we believe the 20 ppmv 3-hour average SO_2 emission limit and an

8 ppmv 365-day average emission limit represent the performance of BDT regardless of whether the new process heaters use gaseous or liquid fuels.

The current NSPS allows refineries to demonstrate compliance with fuel gas concentration limits for H_2S as a surrogate for SO_2 emission limits. This approach is reasonable when H_2S is the only sulfur-containing compound in the fuel gas because the H_2S concentration in the fuel gas that is equivalent to the SO_2 concentration in the exhaust from the fuel gas combustion unit can be easily estimated. However, based on available data, we understand that a significant portion of the sulfur in fuel gas from coking units is in the form of methyl mercaptan and other reduced sulfur compounds. These compounds will also be converted to SO_2 in the fuel gas combustion unit, which means the SO_2 emissions will be higher than the amount predicted when H_2S is the only sulfur-containing compound in the fuel gas. Therefore, for process heaters and other fuel gas combustion devices that burn only fuel gas, we are proposing two alternatives to the SO_2 emission limit. The first option would require measurement of H_2S if none of the fuel gas is from a coking unit. The H_2S concentration limits that would be equivalent to the SO_2 emission limits are 160 ppmv, averaged over 3 hours, and 60 ppmv averaged over 365-days. The second option would require measurement of TRS instead of H_2S when any of the fuel gas burned in the process heater or other fuel gas combustion unit is from a coking unit. The TRS concentration limits would be the same as the H_2S concentration limits. We are requesting comment on the proposed requirement to measure the TRS concentration. We are interested in any technological limitations of this option and whether there are other fuel gas streams that contain reduced sulfur compounds that should not be subject to the same requirement.

In addition to the proposed SO_2 emission limits and H_2S and TRS concentration limits, we are also proposing to include the same exemptions from fuel gas continuous monitoring requirements that we are proposing for subpart J. See section IV.A of this preamble for a discussion of our rationale for these proposed exemptions.

NO_X. NO_X emissions from process heaters are not subject to control under the existing NSPS in 40 CFR part 60, subpart J. However, several petroleum refiners are subject to NO_X control requirements for process heaters in their consent decrees and State regulations. The emission limits to which refineries are subject vary from facility to facility. We evaluated four options as part of the BDT determination. Each option consists of a potential NO_X emission limit and applicability based on process heater size. Option 1 would limit NO_X emissions to 80 ppmv or less for all process heaters with a capacity greater than 20 million British thermal units per hour (MMBtu/hr). Option 2 would limit NO_X emissions to 40 ppmv or less for all process heaters with a capacity greater than 20 MMBtu/hr. Option 3 would limit NO_X emissions to 30 ppmv or less for all process heaters with a capacity greater than 40 MMBtu/hr. Option 4 would limit NO_X emissions to 40 ppmv or less for process heaters with a capacity greater than 20 MMBtu/hr or less than or equal to 100 MMBtu/hr, and to 20 ppmv or less for process heaters with a capacity greater than 100 MMBtu/hr. In each option, the NO_X concentration is based on a 24-hour rolling average.

The estimated fifth year emission reductions and costs for each option are summarized in Table 9. We believe that nearly all process heaters at refineries that will become subject to subpart Ja can meet Option 1 using combustion controls (low NO_X burners or ultra low NO_X burners). Stepping from Option 1 through Option 4 increases the fraction of process heaters that would need to use more efficient control technologies, such as LoTOx™ or SCR, to meet the NO_X concentration limit. The options include a minimum 20 MMBtu/hr size threshold because none of the control technologies are cost effective for units with smaller capacities.

TABLE 9.—NATIONAL FIFTH YEAR IMPACTS OPTIONS FOR NO_X LIMITS CONSIDERED FOR PROCESS HEATERS SUBJECT TO 40 CFR PART 60, SUBPART JA

Option	Total capital cost, $ (millions)	Total annual cost, $/yr (millions)	Emission reduction, (tons NO_X/yr)	Cost effectiveness ($/ton)	
				Overall	Incremental
1	140	28	17,000	1,600	.....
2	200	38	20,000	1,900	3,100
3	280	52	21,000	2,600	85,000
4	470	88	22,000	4,000	27,000

Based on the impacts in Table 9, the overall costs of option 1 and option 2 are reasonable compared to the emission reductions. The incremental cost, however, between options 1 and 2 is not commensurate with the additional emission reduction achieved. Therefore, BDT for process heaters greater than 20 MMBtu/hr was determined to be technology that achieves an outlet NO_X concentration of 80 ppmv or less, and we are proposing standards for NO_X emissions from process heaters consistent with this determination.

5. Work Practice Standards for Fuel Gas Production Units

We reviewed applicable state and local regulations and consent decree requirements and met with individual refinery representatives regarding their pollution prevention practices. The pollution prevention practices identified included flare minimization plans, fuel gas recovery requirements, start-up and shutdown requirements, and sulfur shedding plans (including redundant sulfur recovery capacity). Based on our review, all of these approaches could be expected to reduce emissions of VOC and SO_2 to the atmosphere. As described in the following subsections, we reviewed these pollution prevention practices and are proposing three different work practice standards. Work practice standards are being proposed because it is not feasible to prescribe or enforce a standard of performance for these emission sources. As provided in section 111(h) of the Clean Air Act, we may promulgate design, equipment, work practice, or operational standards when it is not feasible to prescribe or enforce a standard of performance. It is not feasible to prescribe or enforce a standard of performance for these

sources because either the pollution prevention measures eliminates the emission source, so that there are no emissions to capture and convey, or the emissions are so transient, and in some cases, occur so randomly, that the application of a measurement methodology to these sources is not technically and economically practical.

Elimination of Routine Flaring. Flares are first and foremost a safety device used to reduce emissions from emergency pressure relief of gases from refinery process units. We in no way want to limit the use of flares for emergency releases. However, many refineries also routinely use flares as an emission control device under normal operating conditions.

Fuel gases produced within the refinery can be roughly divided into two categories based on the fuel gas stream pressure. Fuel gases produced in processes operated at higher pressures are easily routed to the fuel gas system; however, fuel gases that are produced from units operated near atmospheric pressures are not as easily routed to the fuel gas system. These ''low pressure'' fuel gases are often routed to flares because the flare gas system operates at a much lower pressure than the fuel gas system. Flare gas recovery systems are designed to compress the low pressure fuel gases, creating a high pressure fuel gas stream that can readily be added to the fuel gas system.

In 1998, the South Coast Air Quality Management District developed a rule requiring refineries to measure the flow rate and hydrocarbon content of the gases sent to a flare. This South Coast rule, although it did not set prescriptive emission limits, led to reduced flaring as refinery operators, armed with the monitoring results, identified cost-effective flare gas minimization or recovery projects. In 2005, South Coast amended this rule and established a no routine flaring goal based on the cost and anticipated emission reductions of flare gas recovery systems. The Bay Area Air Quality Management District also adopted a rule requiring flare monitoring in 2003 and adopted a rule to minimize flaring in 2006.

We considered adopting the South Coast and Bay Area rules for this NSPS for new flare systems. However, many refinery flares operate for 50 years, so very few flares or flare systems are expected to become subject to NSPS requirements, even after several decades. Instead, we are proposing to add ''fuel gas producing units'' as a new affected source under subpart Ja and focus the requirement on eliminating routine flaring of fuel gas at the process units producing the fuel gas. A refinery owner or operator installing a new process unit that produces low pressure fuel gas has options for eliminating routine flaring, including, but not limited to, diverting the fuel gas to a nearby low-pressure heater or boiler, pressurizing the fuel gas so that it can be diverted to the fuel gas system, or installing a flare gas recovery system. The proposed work practice standard is designed to allow flexibility in compliance approaches without imposing undue restrictions on the use of flares during malfunctions or other conditions wherein flaring is the best environmental management practice considering the safety of the plant personnel and surrounding people. Additionally, several new fuel gas producing units are expected to be installed every year, so by regulating the fuel gas producing units we not only provide flexibility, but we also increase the rate at which the no routine flaring requirement is implemented within the industry.

The impacts for this work practice are highly dependent on the amount of fuel gas generated by different fuel gas combustion units. Recovered fuel gas reduces the amount of natural gas a refinery must purchase to operate their process heaters. For example, fuel gases generated by fluid catalytic cracking units and coking units are routinely recovered into the fuel gas system due to the quantity of fuel gas generated in the process. For these systems, the savings associated with the recovered fuel gas provides a return on the capital investment associated with the compressor and ancillary equipment needed to recover the fuel gas. For other fuel gas producing units, such as reforming units, it is possible to route the fuel gas directly to the unit's process heater without additional gas compression. For a few refineries, a flare gas recovery system may be used.

We estimated planning and design costs for assessing methods to recover or otherwise avoid the release of fuel gas from new fuel gas producing units. As described previously, for many fuel gas producing units, the cost savings associated with the recovered fuel recovers the costs of the recovery equipment within the life-span on the equipment so that the annualized cost of controls is zero or slightly negative (indicating a cost savings). As a worst-case scenario, we used the impacts developed by the Bay Area for a system-wide flare gas recovery system. The total annualized cost of the system was estimated to be approximately $2 million; no credit was provided for the heating value of the flare gas recovered. VOC emission reductions were estimated to be approximately 1,000 tons per year and SO_2 emissions were estimated to be 3,500 tons per year. The cost-effectiveness on the flare gas recovery system was estimated to be approximately $2,000/ton of VOC removed and approximately $570/ton of SO_2 removed, assuming total costs are assigned to each pollutant. Therefore, even when fuel credits are not considered, flare gas recovery is cost-effective as an emissions control device. When properly sized, these flare gas recovery systems can eliminate all routine flaring. Therefore, eliminating routine flaring by use of fuel gas recovery, in-process fuel use, or system wide flare gas recovery is determined to be BDT.

We request comment on alternative means of eliminating routine flaring. As noted previously, a simple requirement to monitor gas flow and composition of gases sent to the flares resulted in reduced use of flares. An exemption from this monitoring requirement for flare systems that install flare gas recovery could provide refineries an incentive to install flare gas recovery systems. We request comment on this alternative and on the need to monitor flares that have flare gas recovery systems to ensure that the flare gas recovery system is properly sized and that no routine flaring is occurring.

Additionally, we understand that there are a limited number of refineries that produce more fuel gas than they can use in the refinery process heaters or steam boilers. These ''fuel gas rich'' refineries contend that flaring is BDT for these refineries. Although we believe that other options exist, such as building an electric co-generating unit, the cost-effectiveness of such an endeavor is very site-specific. We cannot conclude at this time that co-generation or other projects that use fuel gas are BDT. Therefore, we are co-proposing no requirement for fuel gas producing units. We request comment on the actual number and location of ''fuel gas rich'' refineries. We also request comment and data regarding the technical and economical feasibility of alternatives for ''fuel gas rich'' refineries to avoid routine flaring.

Emission Prevention During Start-up, Shutdown, and Malfunctions. The current NSPS includes no requirements for a start-up, shutdown, and malfunction plan. We identified three emission prevention methods that can be addressed within the context of a start-up, shutdown, and malfunction plan. These are: Flare minimization during planned start-ups and shutdowns; flare minimization during malfunctions of the sour gas amine

treatment units and sulfur recovery plants; and performing root-cause analyses of malfunctions that release in excess of 500 lb per day of SO_2. Our rationale for including each of these three emission prevention methods are described in the following paragraphs.

Flaring and direct venting of certain gas streams have been routinely used during planned start-up and shutdown of process units to quickly bring a process unit online or offline. These flaring and venting episodes have traditionally been exempt from any emission limitations. Nonetheless, some refineries have chosen to evaluate their start-up and shutdown emissions and alter their procedures so as to reduce or eliminate direct venting or flaring during planned start-up and shutdown events.

Typically, alternative start-up and shutdown procedures that reduce atmospheric emissions or flaring require more time to complete than conventional procedures. Therefore, there is a cost associated with the alternative procedures in terms of potential product/productivity loss. For refineries that have system-wide flare gas recovery systems, it may be a simple matter of scheduling the start-up or shutdown during a time when limited other flare gas is being generated so as to not overwhelm the flare gas recovery system. The cost-effectiveness of the alternative procedures would depend on the amount of gas flared or vented using the traditional procedures, the amount of these emissions that can be avoided using alternative procedures, the amount of product lost due to the increased start-up/shutdown time period, and the value of that product. As such, it is difficult to conclude that significant or complete emission reductions during planned start-up or shutdown events will be cost-effective under all conditions; therefore, we chose not to set a specific venting or flaring limit (or prohibition).

We estimate that the engineering review revision of a unit's start-up and shutdown plan would require approximately 20 engineering hours per process unit, at total cost of $1,300 to $1,500 per process unit (one-time costs). Assuming the unit requires maintenance shut-down only once every 5 years and the revised procedures only reduce VOC and SO_2 emissions by 1 ton each per event, the cost-effectiveness of the engineering review is $1,300 to $1,500 per ton of VOC and the same for SO_2.

Based on this simplistic analysis, we are proposing that implementing a start-up and shutdown plan focused on reducing emissions during planned start-up and shutdown events would be BDT.

We evaluated several different requirements to promote continuous compliance with the SO_2 emission limits associated with fuel gas combustion devices and sulfur recovery plants even during times of process upsets or malfunctions associated with the amine system or sulfur recovery plant. ''Process upset gas'' is ''gas *generated* by a petroleum refinery process unit as a result of upset or malfunction.'' Process upset gas is exempt from the SO_2 emission limits. However, when there is a malfunction of the amine treatment system or the sulfur recovery plant, there has been some uncertainty as to whether combustion or flaring of the sour gas is considered to be exempt from the SO_2 emission limit. This is because the amine treatment system or sulfur recovery plant is not ''generating'' the gas stream, it is merely treating it. As such, the amine treatment system and sulfur recovery plant are essentially control devices, and refinery owners and operators are required to minimize emissions during these control system malfunctions, up to and including the shutdown of the emissions generating units.

A variety of prescriptive requirements were reviewed, such as requiring 24-hour storage capacity of lean amine solution and empty tank storage capacity to receive 24 hours worth of rich amine solution, requiring inventory of critical spare parts, and requiring redundant amine scrubbing and sulfur recovery capacity. While these are all viable options that a plant can employ to minimize malfunction emissions associated with the amine treatment system or sulfur recovery plant, the most cost-effective means to minimize these emissions are highly site-specific, being dependent on the number and location of the amine units or sulfur recovery trains within the sulfur recovery plant.

We evaluated two alternatives, which are not mutually exclusive, for minimizing flaring of H_2S-rich fuel gas in the event of a malfunction in the amine stripper or sulfur recovery plant. Option 1 is to store 24 hours worth of lean amine solution in case of a malfunction in the amine stripper. We estimate that this alternative would require a capital cost of approximately $10 million (for 2 storage tanks and excess amine) for a 50 long LTD SRU system, resulting in an annualized cost of $1 million/year. If the 24 hours of excess amine was used one time per year for an entire day, 50 LTD of sulfur would have resulted in 110 tons of SO_2 emissions avoided. If there are three occurrences per year where the excess amine solution is used, 330 tons of emissions would be reduced. This scenario results in a cost-effectiveness ranging from $3,000 to 9,000 per ton of SO_2 reduced.

Option 2 is to have a redundant Claus unit. The capital cost of a 50 LTD Claus unit is also approximately $10 million, resulting in an annualized cost of $1 million/year. Again, if there are one to three days of emissions avoided, this option results in a cost-effectiveness ranging from $3,000 to $9,000 per ton of SO_2 reduced. For sulfur recovery plants consisting of multiple Claus units, the likelihood of needing the additional Claus train more than three times per year increases significantly, making the redundant Claus unit a cost-effective option.

It is difficult to predict the quantity of emissions avoided as they are dependent on random malfunction events of variable durations. While the cost-effectiveness values of these options are not necessarily compelling given the uncertainty in the emissions avoided, the options evaluated are expected to be extreme measures. It is likely, for example, that maintaining appropriate spare parts for the system would provide a cost-effective means of reducing emissions. This, along with short-term reductions in high-sulfur fuel gas production could be used to eliminate the need to flare or otherwise combust these high sulfur-containing fuel gases.

Based on this analysis, we are proposing that a start-up, shutdown, and malfunction plan that specifically addresses the minimization of fuel gas combustion of high sulfur-containing fuel gases during malfunctions of an amine treatment system or sulfur recovery plant is BDT. The start-up, shutdown, and malfunction plan will address specific process upset and malfunction events associated with the amine treatment system and sulfur recovery plant and the standard operating procedures to follow to minimize emissions during these events. Compliance is demonstrated by following the procedures in the plan. As previously mentioned, we are proposing a work practice standard rather than an equipment standard to provide flexibility to the refinery owner or operator regarding the best way to minimize malfunction emissions given the refinery's specific configuration and sulfur loads.

Finally, we evaluated a requirement for performing root-cause analyses as a means to minimize the frequency of process malfunctions and thereby

reduce malfunction emissions. Even though process upset gas is exempt from the SO_2 emission limits associated with fuel gas combustion units, we believe it is good air pollution practice to investigate the causes of significant atmospheric releases caused by process upsets or malfunctions to determine if similar upsets or malfunctions can be reasonably prevented from recurring. Similarly, we believe it is good pollution control practice to investigate significant emission exceedances to determine the cause of the exceedance and to implement procedures to prevent its recurrence. The cost-effectiveness of these investigations is dependent on the frequency and magnitude of the emission episodes; for very small emission episodes, the manpower required to perform the investigations do not justify the potential emission reductions that might be realized from the root-cause analysis. We estimate that a root-cause analysis would cost approximately $2,500 to perform. For emissions of less than 500 pounds per day, the cost-effectiveness of the root-cause analysis, even assuming it would completely eliminate a future recurrence, would be approximately $10,000 per ton of SO_2 reduced. Similarly, for emissions of 1,000 pounds per day, the cost-effectiveness would be on the order of $5,000 per ton of SO_2 reduced. As the probability of successfully identifying a means to avoid future emissions from each root-cause analysis performed is certainly less than 100 percent, we determined that it was not cost effective to perform root-cause analyses for SO_2 emissions exceedances of 500 pounds per day or less and request comment on alternative thresholds in the range of 500 to 1,000 lbs per day.

For SO_2 releases of greater than 500 pounds per day, the emissions reductions potential of the root-cause analyses increases and the cost-effectiveness improves, so we are proposing that performing root-cause analyses for SO_2 releases of greater than 500 pounds per day would be BDT. Any emission limit exceedance or any process start-up, shutdown, upset or malfunction that causes a discharge into the atmosphere in excess of 500 pounds per day of SO_2 would require a root cause analysis to be performed. We also considered a similar requirement for hydrocarbon flaring events with the purpose of reducing VOC emissions. However, we expect refinery owners and operators to investigate large hydrocarbon releases as these releases represent lost revenues. Furthermore, as flares are efficient in destroying VOC, the potential to significantly reduce VOC emissions by performing root-cause analysis is much less than the potential for reducing SO_2 emissions. We request comment on the need to include root cause analyses for hydrocarbon releases. If root-cause analyses are recommended, please provide in your comments the recommended release quantities that would trigger the root-cause analysis and justification for the recommendation. If root cause analyses are not recommended, please provide in your comments the rationale for not requiring root-cause analysis for any VOC (hydrocarbon) releases.

The proposed rule is intended to provide flexibility for each refinery owner and operator to develop procedures that are efficient and effective for their process configuration. The scope of these requirements is limited to affected facilities under this rule. We request comment on the need to implement this requirement to all new process units at the refinery, not just fuel gas producing units such as fluid catalytic cracking units, fluid coking units, fuel gas combustion devices, and sulfur recovery plants.

On the other hand, based on site-specific conditions and given the nature of the types of emissions events that are being addressed by the start-up, shutdown, and malfunction plan, it is impossible to conclusively determine that one or all of the emission reduction methods addressed in the start-up, shutdown, and malfunction plan will achieve any set level of emissions reduction or that those reductions, if any, will be cost-effective. Therefore, we are co-proposing no requirement for a start-up, shutdown, and malfunction plan. We request comments and supporting data that indicate the emission reductions that could be reasonably expected from a flare minimization plan for planned start-up and shutdown events, the number of planned events that occur per year (or over a 5 year period), and any other information that can be used to justify either the inclusion or exclusion of this provision in the final rule. We also request comments and supporting data that indicate the number and duration of malfunctions in the amine stripper and sulfur recovery plants, the costs associated with alternative sulfur shedding practices, and other information that can be used to justify either the inclusion or exclusion of this provision in the final rule.

Finally, we request comment, along with supporting data, that indicate the frequency of emission events exceeding 500 pounds per day, the percentage of times the root-cause analysis results in positive steps that may avoid future recurrence of the event, and other information that can be used to justify either the inclusion or exclusion of this provision in the final rule.

Delayed Coking Unit Depressurization. The primary emission releases from delayed coking units occur as the coking vessels are depressurized and petroleum coke is removed from the unit. When the delayed coking cycle is completed, the coke-filled vessel is steam stripped. Most of the gases from this process continue to be sent to the coking unit distillation column. At some point in time, the steam gas discharge is diverted to the blow-down system. The delayed coking unit typically has a fuel gas recovery system (compressor) due to the quantity of fuel gas produced by the unit. Therefore, it is cost-effective to require the blow-down system gases to be recovered in the unit's fuel gas recovery system, in keeping with the proposed work practice standard that fuel gas from fuel gas producing units will not be routinely flared.

As the process unit continues to depressurize, there is a point where the gases can no longer be discharged to the blow-down system or fuel gas recovery line, at which point the remaining steam and gases are vented to the atmosphere. To achieve maximum reduction of uncontrolled releases, the unit should be depressurized to as low a pressure as possible before venting to the atmosphere. Below a pressure of 5 pounds per square inch gauge (psig) in the delayed coking unit drum, it is not technically feasible to divert the emissions for recovery. Above a vessel pressure of 5 psig, it is technically feasible to divert the emissions for recovery. Furthermore, as the unit already has a gas compressor, the costs associated with recovering these gases is minimal.

We estimate that this practice can reduce VOC emissions by 120 tons per year and SO_2 emissions by at 200 tons per year. The total annualized costs are expected to be minimal for new units, but installing the appropriate piping for a modified or reconstructed unit may result in annualized costs of up to $100,000 per year. Even under this extreme condition, the cost effectiveness of the requirement is about $800 per ton of VOC reduced and $500 per ton of SO_2 reduced. Therefore, we conclude that a work practice standard that requires a delayed coking unit to depressure to 5 psig during reactor vessel depressuring and vent the exhaust gases to the fuel gas system for recovery is BDT. Note this determination is independent of the

work practice to eliminate routine flaring from fuel gas producing units and requires flare gas recovery of depressurization gases even under the option of no work practice requirement to minimize flaring.

In addition to the depressurization emissions, we also identified at least one refinery that has designed an enclosed system for their coke-cutting operations. Coke cutting operations were identified as a significant VOC emission source at refineries during an Alberta Research Council study, with an estimated VOC emissions rate of 1,300 tons per year. We do not have any data regarding the effectiveness of the coke-cutting enclosure system, whether the enclosure seals are air tight or if they allow some percentage of the emissions escape. The enclosure may simply suppress the emissions until the coke is removed from the unit, at which time the emissions are released. Additionally, we do not have any data on the costs of these systems and whether or not existing units can be retrofitted if the delayed coking unit is modified or reconstructed. Therefore, we cannot conclude that an enclosed coke cutting system is BDT, but we request comment and additional information on coke-cutting system controls, their cost, their effectiveness, and their limitations.

VI. Modification and Reconstruction Provisions

Existing affected sources that are modified or reconstructed would be subject to the proposed standards in 40 CFR part 60, subpart Ja. A modification is any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies (see 40 CFR 60.14). Changes to an existing facility that do not result in an increase in the emission rate, as well as certain changes that have been exempted under the General Provisions (see 40 CFR 60.14(e)) are not considered modifications.

Rebuilt petroleum refinery process units would become subject to the proposed standards in 40 CFR part 60, subpart Ja under the reconstruction provisions, regardless of changes in emission rate. Reconstruction means the replacement of components of an existing facility such that (1) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and (2) it is technologically and economically feasible to meet the applicable standards (40 CFR 60.15).

With the exception of the standards for fluid catalytic cracking units, we are proposing that modified or reconstructed sources be subject to the same proposed standards in 40 CFR part 60, subpart Ja, as new sources. The decision to maintain consistent standards for both new and modified or reconstructed sources was based on an evaluation of the cost-effectiveness and incremental cost-effectiveness of the proposed standards on both types of sources and on the feasibility of retrofitting existing units. We have included in the docket a table (Impacts Summary) which summarizes our estimates costs for different control options for both new and reconstructed or modified process units. We request comment on these cost estimates and on specific issues related to the feasibility of retrofitting existing units, as well as our assessment that cost-effectiveness numbers are similar enough such that it is appropriate to have identical standards for both new and modified or reconstructed sources.

VII. Request for Comments

Table 10 summarizes the topics on which we have specifically requested comment throughout this preamble. We note, however, that comments on all aspects of this proposal are welcome.

TABLE 10.—SUMMARY OF TOPICS ON WHICH COMMENT IS REQUESTED

Topic	Section in this preamble where topic is discussed
Effects of proposed PM, SO_2 and NO_X standard on modified or reconstructed fluid catalytic cracking units. Also co-proposed 40 CFR part 60, Subpart J standards for SO_2 and PM and no NO_X limits for modified and reconstructed sources.	III.B. and V.E.1.
Exemption for emergency flares	IV.A.
Exemption from monitoring for fuel gas streams related to commercial liquid products	IV.A.
Exemption from monitoring for fuel gas streams generated by process units that are intolerant of sulfur	IV.A.
Alternative PM limit for fluid catalytic cracking units based on condensable PM as well as filterable PM	V.E.1.
Alternative lower (20 ppmv, 40 ppmv) NO_X limit, averaged over 365 days, for fluid catalytic cracking units	V.E.1.
Co-propose no new NO_X standard for fluid coking units	V.E.2.
Appropriate long-term average H_2S concentration limit for fuel gas combustion units, and requirement to monitor TRS instead of H_2S for fuel gas from coker units.	V.E.4.
Various aspects of work practice standards to minimize routine flaring and enhance SO_2 control versus no standards: alternative means of eliminating flaring, number of "fuel gas rich" refineries, need for a startup, shutdown, and malfunction plan (SSMP), including rationale for or against requiring a root cause analysis for hydrocarbon releases and sulfur shedding practices, and information about emission control systems for coke cutting operations. Also co-propose no requirements for routine flaring and no SSMP.	V.D.5.

VIII. Summary of Cost, Environmental, Energy, and Economic Impacts

In setting standards, the CAA requires us to consider alternative emission control approaches, taking into account the estimated costs as well as impacts on energy, solid waste, and other effects. We request comment on whether we have identified the appropriate alternatives and whether the proposed standards adequately take into consideration the incremental effects in terms of emission reductions, energy, and other effects of these alternatives. We will consider the available information in developing the final rule.

A. What are the impacts for petroleum refining process units?

We are presenting estimates of the impacts for the proposed requirements of subpart Ja that change the performance standards: the emission limits for fluid catalytic cracking units, sulfur recovery plants, fluid coking units, fuel gas combustion devices, and process heaters, as well as the work practice standards. The proposed amendments to 40 CFR part 60, subpart J are clarifications to the existing rule, and they have no emission reduction impacts. The cost, environmental, and economic impacts presented in this section are expressed as incremental

differences between the impacts of petroleum refining process units complying with the proposed subpart Ja and the current NSPS requirements of subpart J (i.e., baseline). The impacts are presented for petroleum refining process units that commence construction, reconstruction, or modification over the next 5 years. The analyses and the documents referenced below can be found in Docket ID No. EPA–HQ–OAR–2007–0011.

In order to determine the incremental costs and emission reductions of this proposed rule, we first estimated baseline impacts. For new sources, baseline costs and emission reductions were estimated for complying with subpart J; incremental impacts for subpart Ja were estimated as the costs to comply with subpart J subtracted from the costs to comply with proposed subpart Ja. Sources that are modified or reconstructed over the next 5 years would comply with subpart J in the absence of proposed subpart Ja. We assumed that prior to reconstruction or modification, these sources would either be subject to a consent decree (equivalent to about 77 percent of the industry by capacity), complying with subpart J or equivalent limits, or complying with 40 CFR part 63, subpart UUU (MACT II). Baseline costs and emission reductions were estimated as the effort needed to comply with subpart J from one of those three starting points. The costs and emission reductions to comply with proposed subpart Ja were estimated from those starting points as well. The estimated costs presented for work practice standards include only the labor cost to prepare the required plan or analysis; we did not attempt to quantify costs and emission reductions for the variety of ways a facility may choose to implement those plans. We assumed that each facility would evaluate their options and choose the most cost-effective option for the facility's unique position. For further detail on the methodology of these calculations, see Docket ID No. EPA–HQ–OAR–2007–0011.

When considering and selecting emission limits for the proposed rule, we evaluated the cost-effectiveness of each option for new sources separately from reconstructed and modified sources. However, since our selections for each process unit and pollutant were consistent for all units, we are presenting our costs and emission reductions for the overall rule. We estimate that the proposed amendments will reduce combined emissions of PM, SO_2, and NO_X about 55,800 tons/yr from the baseline. The estimated increase in annual cost, including annualized capital costs, is about $54,100,000. The overall cost-effectiveness is about $970 per ton of pollutants removed. The estimated nationwide 5-year incremental emissions reductions and cost impacts for the proposed amendments are summarized in Table 11 of this preamble.

TABLE 11.—NATIONAL INCREMENTAL EMISSION REDUCTIONS AND COST IMPACTS FOR PETROLEUM REFINERY UNITS SUBJECT TO PROPOSED STANDARDS UNDER 40 CFR PART 60, SUBPART JA (FIFTH YEAR AFTER PROPOSAL)

Process unit	Pollutant	Total capital cost ($1,000)	Total annual cost ($1,000/yr)	Annual emission reductions (tons/yr)	Cost-effectiveness ($/ton)
FCCU	PM and SO_2	40,000	9,500	9,500	1,000
FCCU	NO_X	28,000	7,300	3,500	2,100
Fluid Coker	PM and SO_2	14,000	4,800	23,000	210
Fluid Coker	NO_X	4,500	970	760	1,300
SRP	SO_2	1,100	680	550	1,200
Process Heaters and Fuel Gas Combustion.	SO_2	0	2,880	1,300	2,200
Process Heaters	NO_X	140,000	28,000	17,000	1,600
Work Practices			250		
Total		230,000	54,000	56,000	970

B. What are the secondary impacts?

Indirect or secondary air quality impacts of this proposed rule would result from the increased electricity usage associated with the operation of control devices. Assuming that plants would purchase electricity from a power plant, we estimate that the standards as proposed would increase secondary emissions of criteria pollutants, including PM, SO_2, NO_X, and CO from power plants. For new, modified or reconstructed sources, this proposed rule would increase secondary PM emissions by 24 Mg/yr (27 tpy); secondary SO_2 emissions by about 970 Mg/yr (1,100 tpy); secondary NO_X emissions by about 480 Mg/yr (530 tpy); and secondary CO emissions by about 16 Mg/yr (17 tpy) for the 5 years following proposal.

As explained earlier, we expect that affected facilities will control emissions from fluid catalytic cracking units by installing and operating ESP or wet gas scrubbers. We also expect that the emissions from the affected fluid coker will be controlled with a wet scrubber. For these process units, we estimated solid waste impacts for both types of control devices and water impacts for wet gas scrubbers. In addition, the controls needed by small sulfur recovery plants will generate condensate. We project that this proposed rule will generate 4.5 billion gallons of water per year for the 5 years following proposal. We also estimate that this proposed rule will generate 8,600 Mg/yr (7,800 tpy) of solid waste over those 5 years.

Energy impacts consist of the electricity and steam needed to operate control devices and other equipment that would be required under the proposed rule. Our estimate of the increased energy demand includes the electricity needed to produce the required amounts of steam as well as direct electricity demand. We project that this proposed rule would increase overall energy demand by about 170 gigawatt-hours per year (590 billion British thermal units per year).

C. What are the economic impacts?

This proposal affects certain new and reconstructed/modified sources found at petroleum refineries as defined earlier in this preamble. We performed an economic impact analysis that estimates changes in prices and output for gasoline nationally using the annual compliance costs estimated for this proposal. The methodology for this

analysis incorporates changes in producer and consumer behavior by considering passthrough of increased production costs from producers to consumers. All estimates are for the fifth year after proposal since this is the year for which the compliance cost impacts are estimated.

The analysis estimates a price increase in gasoline of less than 0.02 percent nationally will take place along with a corresponding reduction in gasoline output of less than 0.004 percent (or less than 6 million gallons a year). The overall total annual social costs, which reflect changes in consumer and producer behavior in response to the compliance costs, are $53.0 million (2005 dollars) or almost identical to the compliance costs.

For more information, please refer to the economic impact analysis report that is in the public docket for this proposed rule.

D. What are the benefits?

We estimate the monetized benefits of this proposed rule to be $957 million (2005$) in the fifth year after proposal. We base the portion of the benefits estimate derived from the $PM_{2.5}$ and SO_2 emission reductions on the approach and methodology laid out in EPA's 2004 benefits analysis supporting the regulation of emissions from the Industrial Boilers MACT (included in the Regulatory Impact Analysis (RIA) for the Industrial Boilers and Process Heaters NESHAP, February 2004). We chose the benefit analysis contained in this RIA as the basis for estimating the benefits from emission reductions of these two pollutants since most of the elements in that rule are similar to those covered here. These elements, which are the stack height, a number of the controls applied, and the pollutants affected—$PM_{2.5}$ and SO_2, but not NO_X—are similar to those covered by the Industrial Boiler MACT standard.

We base the portion of the benefits estimate derived from the NO_X emission reductions on the approach and methodology laid out in EPA's 2005 benefits analysis supporting the regulation of emissions from the Clean Air Interstate Rule (CAIR) (included in the Regulatory Impact Analysis for the Clean Air Interstate Rule, March 2005). We chose the CAIR analysis as the basis for estimating the benefits from emission reductions of this pollutant since most of the elements in CAIR are similar to those covered here. These elements, which are the stack height, a number of the controls applied, and the pollutant affected—in this case, NO_X only—are similar to those covered by CAIR. These three factors lead us to believe that we might reasonably estimate benefits for this proposed rule using a benefits transfer approach and values from the Industrial Boilers MACT analysis for estimating the SO_2 and $PM_{2.5}$ benefits of this rule, and the CAIR analysis for the NO_X benefits of the rule. Specifically, these estimates are based on application of the benefits scaling approach derived from the benefits analyses completed for these rulemakings. As mentioned above, the methodologies are laid out in the Industrial Boilers MACT and CAIR RIA. A summary of the benefits estimates is in Table 12 below.[1]

TABLE 12.—SUMMARY OF BENEFITS ESTIMATES FOR PROPOSED NSPS

Pollutant	Monetized benefits per ton emission reduction	Emission reductions (tons)	Total monetized benefits* (millions of 2005 dollars)
$PM_{2.5}$	$88,000	3,221	$283.4
SO_2	20,000	31,358	627.2
NO_X	2,200	21,266	46.8
Grand Total:	.....	.....	$957.4

* All estimates are for the analysis year (fifth year after proposal). Emission reductions reflect the combination of proposed options for both new and reconstructed/modified sources.

The specific estimates of benefits per ton of pollutant reductions included in this analysis are largely driven by the concentration response function for premature mortality, which is based on the American Cancer Society cohort (ACS) (Pope, C.A. III, et al., ''Lung Cancer, Cardiopulmonary Mortality, and Long-Term Exposure to Fine Particulate Air Pollution,'' JAMA, 2002). Since the publication of CAIR, the EPA's Office of Air and Radiation has adopted a different format for its benefits analysis in which characterization of the uncertainty in the concentration response function is integrated into the main benefits analysis. The PM NAAQS analysis provides an indication of the sensitivity of our results to the use of alternative concentration response functions, including those derived from the recently completed expert elicitation study. Specifically, compared to the final PM NAAQS estimate of the mean mortality from the ACS cohort, the expert-based premature mortality incidence ranged from 50 percent of the mean ACS estimate to more than five times the size of the ACS mean estimate. The Agency is currently updating the estimates used here to calculate the benefits of the proposed NSPS and intends to consider using these updated benefits estimates as part of an approach similar to that used in the PM NAAQS RIA in the benefits analyses for the final NSPS.

With the annualized costs of this rulemaking estimated at $54 million (2005$) in the fifth year after proposal and with estimated benefits of $957 million (2005$) for that same year, EPA believes that the benefits are likely to exceed the costs by a significant margin even when taking into account the uncertainties in the cost and benefit estimates. For more information, please refer to the RIA for this proposed rule that is available in the docket.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an ''economically significant regulatory action'' because it is likely to have an annual effect on the

[1] We use the SO_2 benefits/ton estimate derived from the Industrial Boilers MACT benefit analysis based on the factors listed above. We also note that the SO_2 benefits/ton estimate derived from the CAIR benefits analysis is $18,000 in 2010 and $22,000 in 2015, both of which are quite close to the estimate we use in this analysis. We use the NO_X benefits/ton estimate from the CAIR Boilers MACT benefits analysis (no NO_X reductions take place as a result of the Industrial Boilers MACT).

economy of $100 million or more. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the Regulatory Impact Analysis (RIA) for the Proposed Petroleum Refinery NSPS, EPA–452/R–07–006. A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here. The monetized benefits of this action are estimated at $957 million (2005 dollars), and the annualized costs of this action are estimated at $54 million (2005 dollars). We also estimated the economic impacts, small business impacts, and energy impacts associated with this action. These analyses are included in the RIA and are summarized elsewhere in this preamble.

B. Paperwork Reduction Act

The proposed amendments to the existing standards of performance for petroleum refineries would add a monitoring exemption for fuel gas streams combusted in a fuel gas combustion device that are inherently low in sulfur content. The exemption would apply to fuel gas streams that meet specified criteria or that the owner or operator demonstrates are low sulfur according to the rule requirements. The owner or operator would submit a written application for the exemption containing information needed to document the low sulfur content. The application is not a mandatory requirement and the incremental reduction in monitoring burden that would occur as a result of the exemption would not be significant compared to the baseline burden estimates for the existing rule. Therefore, we have not revised the information collection request (ICR) for the existing rule. The OMB has previously approved the information collection requirements in the existing rule (40 CFR part 60, subpart J) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* and has assigned OMB control number 2060–0022, EPA ICR number 1054.07.

A copy of the OMB-approved ICR for the Standards of Performance for Petroleum Refineries may be obtained from Susan Auby, Collection Strategies Division, Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (292) 566–1672.

The information collection requirements in the proposed standards of performance for petroleum refineries (40 CFR part 60, subpart Ja) have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The ICR document prepared by EPA has been assigned EPA ICR number 2263.01.

The proposed standards of performance for petroleum refineries include work practice requirements for delayed coking reactor vessel depressuring and written plans to minimize emissions during startups, shutdowns, and malfunctions. Plants also would be required to analyze the cause of any exceedance that releases more than 500 pounds per day of SO_2 above an allowable limit. EPA is co-proposing work practice standards that would include the requirement for delayed coking reactor vessel depressuring but exclude the requirements for written plans and root-cause analyses for SO_2 emissions discharges exceeding allowable limits by at least 500 pounds per day. The proposed standards also include testing, monitoring, recordkeeping, and reporting provisions. Monitoring requirements may include control device operating parameters, bag leak detection systems, or CEMS, depending on the type of process, pollutant, and control device. Exemptions are also proposed for small emitters. These requirements are based on recordkeeping and reporting requirements in the NSPS General Provisions in 40 CFR part 60, subpart A, and on specific requirements in subpart J or subpart Ja which are mandatory for all operators subject to new source performance standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 6,084 labor-hours per year at a cost of $526,241 per year. The annualized capital costs are estimated at $2,736,000 per year and operation and maintenance costs are estimated at $1,627,200 per year. We note that the capital costs as well as the operation and maintenance costs are for the continuous monitors; these costs are also included in the cost impacts presented in section VIII.A of this preamble. Therefore, the burden costs associated with the continuous monitors presented in the ICR are not additional costs incurred by affected sources subject to proposed subpart Ja.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2007–0011. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this document for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 14, 2007, a comment to OMB is best assured of having its full effect if OMB receives it by June 13, 2007. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any

other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's proposed action on small entities, small entity is defined as: (1) A small business whose parent company has no more than 1,500 employees and no more than 125,000 barrels per day total operable atmospheric crude oil distillation capacity, depending on the size definition for the affected NAICS code (as defined by Small Business Administration (SBA) size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's proposed action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Of the 58 entities that we expect could be affected by today's proposed action, 24 of these (or 41 percent) are classified as small according to the SBA small business size standard listed previously. Of these 24 affected entities, one small entity is expected to incur an annualized compliance cost of more than 1.0 percent to comply with today's proposed action. In addition, the impact on gasoline prices nationwide is expected to be less than 0.02 percent of the baseline gasoline price, and this represents less than a 1 cent increase in the price per gallon of gasoline. Also, the output of gasoline in the U.S. is expected to fall by less than 0.004 percent, or less than 6 million gallons per year in the U.S. For more information, please refer to the economic impact analysis that is in the public docket for this rulemaking.

Although this proposed action would not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed action on small entities by incorporating specific standards for small sulfur recovery plants and streamlining procedures for exempting inherently low-sulfur fuel gases from continuous monitoring. We continue to be interested in the potential impacts of this proposed action on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. As discussed earlier in this preamble, the estimated expenditures for the private sector in the fifth year after proposal are $54 million. Thus, this proposed action is not subject to the requirements of section 202 and 205 of the UMRA. In addition, EPA has determined that this proposed action contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed action contains no requirements that apply to such governments, imposes no obligations upon them, and would not result in expenditures by them of $100 million or more in any 1 year or any disproportionate impacts on them. Therefore, this proposed action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to this proposed action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled (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 action 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. The proposed rules impose requirements on owners and operators of specified

industrial facilities and not tribal governments. Thus, Executive Order 13175 does not apply to this proposed action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 ''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.

EPA interprets Executive Order 13045 as applying to those regulatory actions that concern 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 action is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We prepared an analysis of the impacts on energy markets as part of our economic impact analysis for today's proposed action. Our analysis shows that there is a reduction in gasoline output of less than 6 million gallons per year, or less than 400 barrels of gasoline production per day, in the fifth year after proposal of this proposed action. In addition, our analysis shows that there is an increase in gasoline prices of less than 0.02 percent in the fifth year after proposal of this proposed action. Given this degree of increase in domestic gasoline prices, no significant increase in our dependence on foreign energy supplies should take place. Finally, today's proposed action will have no adverse effect on crude oil supply, coal production, electricity production, and energy distribution. Based on the findings from the analysis of impacts on energy markets, we conclude that today's proposed action is not a ''significant energy action'' as defined in Executive Order 13211. For more information on this analysis, please refer to the economic impact analysis for this rulemaking. This analysis is found in the public docket.

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, Section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS.

Today's proposed rule (subpart Ja) involves technical standards. The EPA cites the following standards: EPA Methods 1, 2, 3, 3A, 3B, 5, 6, 6A, 6B, 6C, 7, 7A, 7C, 7D, 7E, 10, 10A, 11, 15, 15A, and 16 of 40 CFR part 60, appendix A; Performance Specifications 2, 3, 4, 5, 7, and 11 in 40 CFR part 60, appendix B; and Appendix F to 40 CFR Part 60. This rule also cites ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' for its manual methods of measuring the content of the exhaust gas. This part of ASME PTC 19.10–1981 is an acceptable alternative to EPA Methods 3B, 6, 6A, 6B, 7, 7C, and 15A.

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these methods. No applicable VCS were identified for EPA Methods 7D and 11; EPA Performance Specifications 3, 4, 5, and 7; and Appendix F to 40 CFR part 60. The search and review results are in the docket for this rule.

The search for emissions measurement procedures identified 22 other VCS. The EPA determined that these 22 standards identified for measuring emissions of the targeted pollutants or surrogates subject to emission standards in this rule were impractical alternatives to EPA test methods for the purposes of this rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for the determinations for the 22 standards are discussed in the memorandum submitted to the docket to this rule.

Both the proposed amendments for subpart J and the proposed rule (subpart Ja) cite the Gas Processor's Association Method 2377–86, ''Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes'' (incorporated by reference-see 40 CFR 60.17) as an acceptable method for determining the H2S content of low sulfur streams. The amendments to subpart J do not include any other technical standards.

Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to Gas Processor's Association Method 2377–86. No applicable voluntary consensus standards were identified for Gas Processor's Association Method 2377–86. The search and review results are in the docket for this rule.

Under 40 CFR 60.13(i) of the NSPS General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the proposed rule and amendments.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that the proposed amendments would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they do not affect the level of protection provided to human health or the environment. The proposed amendments are clarifications which do not relax the control measures on sources regulated by the rule and therefore will not cause emissions increases from these sources. EPA has determined that the proposed standards would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they would increase the level of

environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. These proposed standards would reduce emissions of criteria pollutants from all new, reconstructed, or modified sources at petroleum refineries, decreasing the amount of such emissions to which all affected populations are exposed.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 30, 2007.

Stephen L. Johnson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart A—[Amended]

2. Section 60.17 is amended by:

a. Revising paragraph (h)(4),

b. Revising the last sentence of paragraph (m) introductory text, and

c. Revising paragraph (m)(1) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(h) * * *

(4) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], IBR approved for Tables 1 and 3 of subpart EEEE, Tables 2 and 4 of subpart FFFF, § 60.106(e)(2) of subpart J, §§ 60.104a(d)(3), (d)(6), (g)(3), (g)(4), (g)(6), (i)(3), (i)(4), (j)(3), (j)(4), (j)(4)(iii), and 60.105a(d)(4), (e)(4), (f)(2), and (f)(4), and 60.106a(a)(1)(ii), (a)(1)(iv), (a)(2)(ii), (a)(2)(iv), (a)(3)(ii), (a)(3)(iv), and (a)(4)(iii), and 60.107a(a)(1)(ii), (a)(1)(iv), (a)(2)(ii), (c)(2), and (c)(4) of subpart Ja, and §§ 60.4415(a)(2) and 60.4415(a)(3) of subpart KKKK of this part.

* * * * *

(m) * * * You may inspect a copy at EPA's Air and Radiation Docket and Information Center, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460.

(1) Gas Processors Association Method 2377–86, Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes, IBR approved for §§ 60.105(b)(1)(iv), 60.107a(b)(1)(iv), 60.334(h)(1), 60.4360, and 60.4415(a)(1)(ii).

* * * * *

Subpart J—[Amended]

3. Section 60.100 is amended by revising the first sentence in paragraph (a) and revising paragraphs (b) through (d) to read as follows:

§ 60.100 Applicability, designation of affected facility, and reconstruction.

(a) The provisions of this subpart are applicable to the following affected facilities in petroleum refineries: fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices, and all Claus sulfur recovery plants except Claus plants with a design capacity of 20 long tons per day (LTD) or less. * * *

(b) Any fluid catalytic cracking unit catalyst regenerator or fuel gas combustion device under paragraph (a) of this section which commences construction, reconstruction, or modification after June 11, 1973, and on or before May 14, 2007, or any Claus sulfur recovery plant under paragraph (a) of this section which commences construction, reconstruction, or modification after October 4, 1976, and on or before May 14, 2007, is subject to the requirements of this subpart except as provided under paragraphs (c) and (d) of this section.

(c) Any fluid catalytic cracking unit catalyst regenerator under paragraph (b) of this section which commences construction, reconstruction, or modification on or before January 17, 1984, is exempted from § 60.104(b).

(d) Any fluid catalytic cracking unit in which a contact material reacts with petroleum derivatives to improve feedstock quality and in which the contact material is regenerated by burning off coke and/or other deposits and that commences construction, reconstruction, or modification on or before January 17, 1984, is exempt from this subpart

* * * * *

4. Section 60.101 is amended by revising paragraphs (d), (i), (j), and (k) to read as follows:

§ 60.101 Definitions.

* * * * *

(d) *Fuel gas* means any gas which is generated at a petroleum refinery and which is combusted. Fuel gas also includes natural gas when the natural gas is combined and combusted in any proportion with a gas generated at a refinery. Fuel gas does not include gases generated by catalytic cracking unit catalyst regenerators and fluid coking burners. Fuel gas does not include vapors that are collected and combusted to comply with the wastewater provisions in § 60.692, 40 CFR 61.343 through 61.348, or 40 CFR 63.647, or the marine tank vessel loading provisions in 40 CFR 63.562 or 40 CFR 63.651.

* * * * *

(i) *Claus sulfur recovery plant* means a series of process units which recover sulfur from hydrogen sulfide (H_2S) by a vapor-phase catalytic reaction of sulfur dioxide and H_2S. The *Claus sulfur recovery plant* includes the reactor furnace and waste heat boiler, catalytic reactors, sulfur pits, and, if present, oxidation or reduction control systems. One *Claus sulfur recovery plant* may consist of multiple trains.

(j) *Oxidation control system* means an emission control system which reduces emissions from sulfur recovery plants by converting these emissions to sulfur dioxide and recycling the sulfur dioxide to the reactor furnace or the first-stage catalytic reactor of the Claus sulfur recovery plant.

(k) *Reduction control system* means an emission control system which reduces emissions from sulfur recovery plants by converting these emissions to H_2S and recycling the H_2S to the reactor furnace or the first-stage catalytic reactor of the Claus sulfur recovery plant.

* * * * *

5. Section 60.102 is amended by revising paragraph (b) to read as follows:

§ 60.102 Standard for particulate matter.

* * * * *

(b) Where the gases discharged by the fluid catalytic cracking unit catalyst regenerator pass through an incinerator or waste heat boiler in which auxiliary or supplemental liquid or solid fossil fuel is burned, particulate matter in excess of that permitted by paragraph (a)(1) of this section may be emitted to the atmosphere, except that the incremental rate of particulate matter emissions shall not exceed 43 grams per Gigajoule (g/GJ) (0.10 lb/million British thermal units (Btu)) of heat input attributable to such liquid or solid fossil fuel.

6. Section 60.104 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 60.104 Standards for sulfur oxides.

* * * * *

(b) * * *

(1) With an add-on control device, reduce SO_2 emissions to the atmosphere by 90 percent or maintain SO_2

emissions to the atmosphere less than or equal to 50 ppm by volume (ppmv), whichever is less stringent; or

(2) Without the use of an add-on control device to reduce SO_2 emissions, maintain sulfur oxides emissions calculated as SO_2 to the atmosphere less than or equal to 9.8 kg/Mg (20 lb/ton) coke burn-off; or

* * * * *

7. Section 60.105 is amended by:

a. Revising the first sentence of paragraph (a)(3) introductory text;

b. Revising paragraph (a)(3)(iv);

c. Revising paragraph (a)(4) introductory text;

d. Adding paragraph (a)(4)(iv);

e. Revising paragraph (a)(8) introductory text;

f. Revising paragraph (a)(8)(i); and

g. Adding paragraph (b) to read as follows:

§ 60.105 Monitoring of emissions and operations.

(a) * * *

(3) For fuel gas combustion devices subject to § 60.104(a)(1), either an instrument for continuously monitoring and recording the concentration by volume (dry basis, 0 percent excess air) of SO_2 emissions into the atmosphere or monitoring as provided in paragraph (a)(4) of this section). * * *

* * * * *

(iv) Fuel gas combustion devices having a common source of fuel gas may be monitored at only one location (i.e., after one of the combustion devices), if monitoring at this location accurately represents the SO_2 emissions into the atmosphere from each of the combustion devices.

(4) Instead of the SO_2 monitor in paragraph (a)(3) of this section for fuel gas combustion devices subject to § 60.104(a)(1), an instrument for continuously monitoring and recording the concentration (dry basis) of H_2S in fuel gases before being burned in any fuel gas combustion device.

* * * * *

(iv) The owner or operator of a fuel gas combustion device is not required to comply with paragraph (a)(3) or (4) of this section for streams that are exempt under § 60.104(a)(1) and fuel gas streams combusted in a fuel gas combustion device that are inherently low in sulfur content. Fuel gas streams meeting one of the requirements in paragraphs (a)(4)(iv)(A) through (D) of this section will be considered inherently low in sulfur content. If the composition of a fuel gas stream changes such that it is no longer exempt under § 60.104(a)(1) or it no longer meets one of the requirements in paragraphs (a)(4)(iv)(A) through (D) of this section, the owner or operator must begin continuous monitoring under paragraph (a)(3) or (4) of this section within 15 days of the change.

(A) Pilot gas for heaters and flares.

(B) Gas streams that meet commercial-grade product specifications and have a sulfur content of 30 ppmv or less.

(C) Fuel gas streams produced in process units that are intolerant to sulfur contamination, such as fuel gas streams produced in the hydrogen plant, the catalytic reforming unit, and the isomerization unit.

(D) Other streams that an owner or operator demonstrates are low-sulfur according to the procedures in paragraph (b) of this section.

* * * * *

(8) An instrument for continuously monitoring and recording concentrations of SO_2 in the gases at both the inlet and outlet of the SO_2 control device from any fluid catalytic cracking unit catalyst regenerator for which the owner or operator seeks to comply specifically with the 90 percent reduction option under § 60.104(b)(1).

(i) The span value of the inlet monitor shall be set at 125 percent of the maximum estimated hourly potential SO_2 emission concentration entering the control device, and the span value of the outlet monitor shall be set at 50 percent of the maximum estimated hourly potential SO_2 emission concentration entering the control device.

* * * * *

(b) An owner or operator may demonstrate that a gas stream combusted in a fuel gas combustion device subject to § 60.104(a)(1) that is not specifically exempted in § 60.105(a)(4)(iv) is inherently low in sulfur. A gas stream that is determined to be low-sulfur is exempt from the monitoring requirements in paragraphs (a)(3) and (4) of this section until there are changes in operating conditions or stream composition.

(1) The owner or operator shall submit to the Administrator a written application for an exemption from monitoring. The application must contain the following information:

(i) A description of the gas stream/system to be considered, including submission of a portion of the appropriate piping diagrams indicating the boundaries of the gas stream/system, and the affected fuel gas combustion device(s) to be considered;

(ii) A statement that there are no crossover or entry points for sour gas (high H_2S content) to be introduced into the gas stream/system (this should be shown in the piping diagrams);

(iii) An explanation of the conditions that ensure low amounts of sulfur in the gas stream (i.e., control equipment or product specifications) at all times;

(iv) The supporting test results from sampling the requested gas stream/system demonstrating that the sulfur content is less than 5 ppmv. Minimum sampling data must consist of 2 weeks of daily monitoring (14 grab samples) for frequently operated gas streams/systems; for infrequently operated gas streams/systems, seven grab samples must be collected unless other additional information would support reduced sampling. The owner or operator shall use detector tubes (''length-of-stain tube'' type measurement) following the Gas Processor Association's Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes, 1986 revision with ranges 0–10/0–100 ppm (N = 10/1) to test the applicant stream (incorporated by reference—see § 60.17).

(v) A description of how the 2 weeks (or seven samples for infrequently operated gas streams/systems) of monitoring results compares to the typical range of H_2S concentration (fuel quality) expected for the gas stream/system going to the affected fuel gas combustion device (e.g., the 2 weeks of daily detector tube results for a frequently operated loading rack included the entire range of products loaded out, and, therefore, should be representative of typical operating conditions affecting H_2S content in the gas stream going to the loading rack flare).

(2) Once EPA receives a complete application, the Administrator will determine whether an exemption is granted. The owner or operator shall continue to comply with the monitoring requirements in paragraph (a)(3) or paragraph (a)(4) of this section until an exemption is granted.

(3) Once an exemption from continuous monitoring is granted, no further action is required unless refinery operating conditions change in such a way that affects the exempt gas stream/system (e.g., the stream composition changes). If such a change occurs, the owner or operator will follow the procedures in paragraph (b)(2)(i), (b)(2)(ii), or (b)(2)(iii) of this section.

(i) If the operation change results in a sulfur content that is still within the range of concentrations included in the original application, the owner or operator shall conduct an H_2S test on a grab sample and record the results as proof that the concentration is still within the range.

(ii) If the operation change results in a sulfur content that is outside the range of concentrations included in the original application, the owner or operator may submit a new application following the procedures of paragraph (b)(1) of this section within 60 days (or within 30 days after the seventh grab sample is tested for infrequently operated process units).

(iii) If the operation change results in a sulfur content that is outside the range of concentrations included in the original application and the owner or operator chooses not to submit a new application, the owner or operator must begin continuous monitoring as specified in paragraphs (a)(3) or (a)(4) of this section within 60 days of the operation change.

* * * * *

8. Section 60.106 is amended by revising paragraph (b)(3) introductory text and revising the first sentence of paragraph (e)(2) to read as follows:

§ 60.106 Test methods and procedures.

* * * * *

(b) * * *

(3) The coke burn-off rate (R_c) shall be computed for each run using the following equation:

$$R_c = K_1Q_r\,(\%CO_2 + \%CO) + K_2Q_a - K_3Q_r(\%CO/2 + \%CO_2 + \%O_2) + K_3Q_{oxy}\,(\%O_{oxy})$$

Where:

R_c = Coke burn-off rate, kilograms per hour (kg/hr) (lb/hr).

Q_r = Volumetric flow rate of exhaust gas from fluid catalytic cracking unit regenerator before entering the emission control system, dscm/min (dscf/min).

Q_a = Volumetric flow rate of air to fluid catalytic cracking unit regenerator, as determined from the fluid catalytic cracking unit control room instrumentation, dscm/min (dscf/min).

Q_{oxy} = Volumetric flow rate of O_2 enriched air to fluid Catalytic cracking unit regenerator, as determined from the fluid catalytic cracking unit control room instrumentation, dscm/min (dscf/min).

$\%CO_2$ = Carbon dioxide concentration in fluid catalytic cracking unit regenerator exhaust, percent by volume (dry basis).

%CO = CO concentration in FCCU regenerator exhaust, percent by volume (dry basis).

$\%O_2$ = O_2 concentration in fluid catalytic cracking unit regenerator exhaust, percent by volume (dry basis).

$\%O_{oxy}$ = O_2 concentration in O_2 enriched air stream inlet to the fluid catalytic cracking unit regenerator, percent by volume (dry basis).

K_1 = Material balance and conversion factor, 0.2982 (kg-min)/(hr-dscm-%) [0.0186 (lb-min)/(hr-dscf-%)].

K_2 = Material balance and conversion factor, 2.088 (kg-min)/(hr-dscm-%) [0.1303 (lb-min)/(hr-dscf-%)].

K_3 = Material balance and conversion factor, 0.0994 (kg-min)/(hr-dscm-%) [0.00624 (lb-min)/(hr-dscf-%)].

* * * * *

(e) * * *

(2) Where emissions are monitored by § 60.105(a)(3), compliance with § 60.104(a)(1) shall be determined using Method 6 or 6C and Method 3 or 3A. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6. * * *

* * * * *

9. Section 60.107 is amended by:

a. Revising the first sentence of paragraph (c)(1)(i);

b. Redesignating paragraphs (e) and (f) as (f) and (g); and

c. Adding paragraph (e) to read as follows:

§ 60.107 Reporting and recordkeeping requirements.

* * * * *

(c) * * *

(1) * * *

(i) The average percent reduction and average concentration of sulfur dioxide on a dry, O_2-free basis in the gases discharged to the atmosphere from any fluid cracking unit catalyst regenerator for which the owner or operator seeks to comply with § 60.104(b)(1) is below 90 percent and above 50 ppmv, as measured by the continuous monitoring system prescribed under § 60.105(a)(8), or above 50 ppmv, as measured by the outlet continuous monitoring system prescribed under § 60.105(a)(9). * * *

* * * * *

(e) For each stream combusted in a fuel gas combustion device subject to § 60.104(a)(1), if an owner or operator determines that one of the exemptions listed in § 60.105(a)(4)(iv) applies to that stream, the owner or operator shall maintain records of the specific exemption chosen for each stream. If the owner or operator applies for the exemption described in § 60.105(a)(4)(iv)(D), the owner or operator must keep a copy of the application as well as the letter from the Administrator granting approval of the application.

* * * * *

10. Section 60.108 is amended by revising the last sentence of paragraph (e) to read as follows:

§ 60.108 Performance test and compliance provisions.

* * * * *

(e) * * * The owner or operator shall furnish the Administrator with a written notification of the change in the semiannual report required by § 60.107(f).

11. Section 60.109 is amended by redesignating paragraph (b)(2) as (b)(3) and adding paragraph (b)(2) to read as follows:

§ 60.109 Delegation of authority.

* * * * *

(b) * * *

(1) * * *

(2) Section 60.105(b), and

* * * * *

12. Part 60 is amended by adding subpart Ja to read as follows:

Subpart Ja—Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007

Sec.

60.100a Applicability, designation of affected facility, and reconstruction.
60.101a Definitions.
60.102a Emissions limitations.
60.103a Work practice standards.
60.104a Performance tests.
60.105a Monitoring of emissions and operations for fluid catalytic cracking units (FCCU) and fluid coking units.
60.106a Monitoring of emissions and operations for sulfur recovery plants.
60.107a Monitoring of emissions and operations for process heaters and other fuel gas combustion devices.
60.108a Recordkeeping and reporting requirements.
60.109a Delegation of authority.

Subpart Ja—Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007

§ 60.100a Applicability, designation of affected facility, and reconstruction.

(a) The provisions of this subpart apply to the following affected facilities in petroleum refineries: Fluid catalytic cracking units (FCCU), fluid coking units, delayed coking units, process heaters, other fuel gas combustion devices, fuel gas producing units, and sulfur recovery plants. The sulfur recovery plant need not be physically located within the boundaries of a petroleum refinery to be an affected facility, provided it processes gases produced within a petroleum refinery.

(b) The provisions of this subpart apply only to affected facilities under paragraph (a) of this section which commence construction, modification, or reconstruction after May 14, 2007.

(c) For purposes of this subpart, under § 60.15, the ''fixed capital cost of the new components'' includes the fixed capital cost of all depreciable components which are or will be replaced pursuant to all continuous

programs of component replacement which are commenced within any 2-year period following May 14, 2007. For purposes of this paragraph, ''commenced'' means that an owner or operator has undertaken a continuous program of component replacement or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of component replacement.

§ 60.101a Definitions.

Terms used in this subpart are defined in the Clean Air Act, in § 60.2, and in this section.

Coke burn-off means the coke removed from the surface of the FCCU catalyst by combustion in the catalyst regenerator. The rate of coke burn-off is calculated by the formula specified in § 60.104a.

Contact material means any substance formulated to remove metals, sulfur, nitrogen, or any other contaminant from petroleum derivatives.

Delayed coking unit means one or more coking units in which high molecular weight petroleum derivatives are thermally cracked and petroleum coke is produced in a series of closed, batch system reactors.

Flexicoking unit means one or more coking units in which high molecular weight petroleum derivatives are thermally cracked and petroleum coke is produced then gasified to produce a synthetic fuel gas.

Fluid catalytic cracking unit means one or more units in which petroleum derivatives are continuously charged and hydrocarbon molecules in the presence of a catalyst suspended in a fluidized bed are fractured into smaller molecules, or react with a contact material suspended in a fluidized bed to improve feedstock quality for additional processing and the catalyst or contact material is continuously regenerated by burning off coke and other deposits. The unit includes the riser, reactor, regenerator, air blowers, spent catalyst or contact material stripper, catalyst or contact material recovery equipment, and regenerator equipment for controlling air pollutant emissions and for heat recovery.

Fluid coking unit means one or more coking units in which high molecular weight petroleum derivatives are thermally cracked and petroleum coke is continuously produced in a fluidized bed system and in which the fluid coking burner exhaust gas is continuously released to the atmosphere. The *fluid coking unit* includes equipment for controlling air pollutant emissions and for heat recovery on the fluid coking burner exhaust vent. Flexicoking units that use gasifiers to generate a synthetic fuel gas for use in other processes and that do not exhaust to the atmosphere are not considered *fluid coking units* under this subpart.

Fresh feed means any petroleum derivative feedstock stream charged directly into the riser or reactor of a FCCU except for petroleum derivatives recycled within the FCCU, fractionator, or gas recovery unit.

Fuel gas means any gas which is generated at a petroleum refinery and which is combusted. *Fuel gas* includes natural gas when the natural gas is combined and combusted in any proportion with a gas generated at a refinery. *Fuel gas* does not include gases generated by catalytic cracking unit catalyst regenerators and fluid coking burners, but does include gases from flexicoking unit gasifiers. *Fuel gas* does not include vapors that are collected and combusted to comply with the wastewater provisions in § 60.692, 40 CFR 61.343 through 61.348, 40 CFR 63.647, or the marine tank vessel loading provisions in 40 CFR 63.562 or 40 CFR 63.651.

Fuel gas producing unit means any refinery process unit that produces fuel gas as a routine part of normal operations. A *fuel gas producing unit* includes, but is not limited to, the atmospheric distillation unit, the FCCU, the catalytic hydrocracking unit, all types of coking units, and the catalytic reforming unit.

Other fuel gas combustion device means any equipment, such as boilers and flares, used to combust fuel gas, except process heaters and facilities in which gases are combusted to produce sulfur or sulfuric acid.

Oxidation control system means an emission control system which reduces emissions from sulfur recovery plants by converting these emissions to sulfur dioxide (SO_2) and recycling the SO_2 to the reactor furnace or the first-stage catalytic reactor of the Claus sulfur recovery plant.

Petroleum means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

Petroleum refinery means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt (bitumen) or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

Process gas means any gas generated by a petroleum refinery process unit, except fuel gas and process upset gas as defined in this section.

Process heater means an enclosed combustion device used to transfer heat indirectly to process stream materials (liquids, gases, or solids) or to a heat transfer material for use in a process unit instead of steam.

Process upset gas means any gas generated by a petroleum refinery process unit as a result of upset or malfunction.

Reduced sulfur compounds means hydrogen sulfide (H_2S), carbonyl sulfide, and carbon disulfide.

Reduction control system means an emission control system which reduces emissions from sulfur recovery plants by converting these emissions to H_2S and recycling the H_2S to the reactor furnace or the first-stage catalytic reactor of the Claus sulfur recovery plant.

Refinery process unit means any segment of the petroleum refinery in which a specific processing operation is conducted.

Sulfur recovery plant means all process units which recover sulfur from H_2S and/or SO_2 at a petroleum refinery. The *sulfur recovery plant* also includes vessels, tanks, or pits used to store the recovered sulfur product. For example, a Claus sulfur recovery plant includes: reactor furnace and waste heat boiler, catalytic reactors, sulfur pits, and, if present, oxidation or reduction control systems, or incinerator, thermal oxidizer, or similar combustion device.

§ 60.102a Emissions limitations.

(a) Each owner or operator that is subject to the requirements of this subpart shall comply with the emissions limitations in paragraphs (b) through (h) of this section on and after the date on which the initial performance test, required by § 60.8, is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after initial startup, whichever comes first.

Option 1 for Paragraph (b):

(b) An owner or operator subject to the provisions of this subpart shall not discharge or cause the discharge into the atmosphere from any FCCU or fluid coking unit:

(1) Particulate matter (PM) in excess of 0.5 gram per kilogram (g/kg) coke burn-off (0.5 pound (lb) PM/1,000 lbs coke burn-off) or 0.020 grains per dry standard cubic feet (gr/dscf) corrected to 0 percent excess air; and

(2) NO_X in excess of 80 parts per million by volume (ppmv), dry basis corrected to 0 percent excess air, on a 7-day rolling average basis; and

(3) SO_2 in excess of 50 ppmv dry basis corrected to 0 percent excess air, on a 7-day rolling average basis and 25 ppmv, dry basis corrected to 0 percent excess air, on a 365-day rolling average basis; and

(4) Carbon monoxide (CO) in excess of 500 ppmv, dry basis corrected to 0 percent excess air, on an hourly average basis.

Option 2 for Paragraph (b)

(b) Except as provided in paragraph (b)(2) of this section, an owner or operator subject to the provisions of this subpart shall not discharge or cause the discharge into the atmosphere from any FCCU or fluid coking unit:

(1) Particulate Matter (PM) in excess of 0.5 gram per kilogram (g/kg) coke burn-off (0.5 lb PM/1,000 lbs coke burn-off) or 0.020 grains per dry standard cubic feet (gr/dscf) corrected to 0 percent excess air; and

(2) NO_X in excess of 80 parts per million by volume (ppmv), dry basis corrected to 0 percent excess air, on a 7-day rolling average basis. This emissions limit does not apply to a fluid coking unit subject to this subpart;

(3) SO_2 in excess of 50 ppmv dry basis corrected to 0 percent excess air, on a 7-day rolling average basis and 25 ppmv, dry basis corrected to 0 percent excess air, on a 365-day rolling average basis; and

(4) Carbon monoxide (CO) in excess of 500 ppmv, dry basis corrected to 0 percent excess air, on an hourly average basis.

(c) The owner or operator of a FCCU or fluid coking unit that uses continuous parameter monitoring systems (CPMS) according to § 60.105a(b)(1) shall comply with the applicable control device parameter operating limit in paragraph (c)(1) or (c)(2) of this section.

(1) If the FCCU or fluid coking unit is controlled using an electrostatic precipitator:

(i) The hourly average total power and secondary current to the control device must not fall below the level established during the most recent performance test; and

(ii) The exhaust coke burn-off rate must not exceed the level established during the most recent performance test.

(2) If the FCCU or fluid coking unit is controlled using a wet scrubber:

(i) The hourly average pressure drop must not fall below the level established during the most recent performance test; and

(ii) The hourly average liquid-to-gas ratio must not fall below the level established during the most recent performance test.

(d) The owner or operator of a FCCU or fluid coking unit that is exempted from the requirement for a CO continuous emissions monitoring system (CEMS) under § 60.105a(g)(3) shall comply with the parameter operating limits in paragraph (d)(1) or (d)(2) of this section.

(1) For a FCCU or fluid coking unit with no post-combustion control device:

(i) The hourly average temperature of the exhaust gases exiting the FCCU or fluid coking unit must not fall below the level established during the most recent performance test.

(ii) The hourly average oxygen (O_2) concentration of the exhaust gases exiting the FCCU or fluid coking unit must not fall below the level established during the most recent performance test.

(2) For a FCCU or fluid coking unit with a post-combustion control device:

(i) The hourly average temperature of the exhaust gas vent stream exiting the control device must not fall below the level established during the most recent performance test.

(ii) The hourly average O_2 concentration of the exhaust gas vent stream exiting the control device must not fall below the level established during the most recent performance test.

(e) Each owner or operator that is subject to the provisions of this subpart shall comply with the following emissions limits for each sulfur recovery plant:

(1) For a sulfur recovery plant with a capacity greater than 20 long tons per day (LTD), the owner or operator shall not discharge or cause the discharge of any gases into the atmosphere containing a combined SO_2 and reduced sulfur compounds concentration in excess of 250 ppmv as SO_2 (dry basis) at 0 percent excess air determined hourly on a 12-hour rolling average basis. If the sulfur recovery plant consists of multiple process trains or release points the owner or operator shall comply with the 250 ppmv limit for each process train or release point or comply with a flow rate weighted average of 250 ppmv for all release points from the sulfur recovery plant.

(2) For a sulfur recovery plant with a capacity of 20 LTD or less, the owner or operator shall not discharge or cause the discharge of any gases into the atmosphere containing combined SO_2 and reduced sulfur compounds mass emissions in excess of 1 percent by weight of sulfur recovered, measured as the mass ratio of sulfur emitted (from all release points combined) to sulfur recovered determined hourly on a 12-hour rolling average basis.

(3) For all sulfur recovery plants, regardless of size, the owner or operator shall not discharge or cause the discharge of any gases into the atmosphere containing H_2S in excess of 10 ppmv (dry basis) at 0 percent excess air determined hourly on a 12-hour rolling average basis.

(f) The owner or operator of a sulfur recovery plant subject to the H_2S emissions limit in paragraph (e)(3) of this section and that uses CPMS pursuant to § 60.106a(a)(4) shall comply with the following operating limits:

(1) The hourly average temperature of the exhaust gases exiting the sulfur recovery plant must not fall below the level established during the most recent performance test.

(2) The hourly average O_2 concentration of the exhaust gases exiting the sulfur recovery plant must not fall below the level established during the most recent performance test.

(g) Each owner or operator subject to the provisions of this subpart shall comply with the emission limitations in paragraphs (g)(1) through (3) for each process heater and other fuel gas combustion device, except as provided in paragraph (h) and (i) of this section.

(1) SO_2 in excess of 20 ppmv (dry basis, corrected to 0 percent excess air) on a 3-hour rolling average basis; and

(2) SO_2 in excess of 8 ppmv (dry basis, corrected to 0 percent excess air), determined daily on a 365 successive day rolling average basis; and

(3) For process heaters with a rated capacity of greater than 20 million British thermal units per hour, NO_X in excess of 80 ppmv (dry basis, corrected to 0 percent excess air) on a 24-hour rolling average basis.

(h) For process heaters that combust only fuel gas and for other fuel gas combustion devices, the following emission limitations may be used instead of the SO_2 emission limits in paragraph (g)(1) and (2) of this section:

(1) For process heaters and other fuel gas combustion devices that do not combust fuel gas generated from a coking unit:

(i) H_2S in excess of 160 ppmv determined hourly on a 3-hour rolling average basis; and

(ii) H_2S in excess of 60 ppmv determined daily on a 365 successive calendar day rolling average basis.

(2) For process heaters and other fuel gas combustion devices that combust fuel gas generated from a coking unit or fuel gas that is mixed with fuel gas generated from a coking unit:

(i) Total reduced sulfur (TRS) in excess of 160 ppmv determined hourly on a 3-hour rolling average basis; and

(ii) TRS in excess of 60 ppmv determined daily on a 365 successive calendar day rolling average basis.

(i) The combustion in a flare of process upset gases or fuel gas that is released to the flare as a result of relief valve leakage or other emergency malfunctions is exempt from paragraphs (g) and (h) of this section.

Option 1 for § 60.103a:

§ 60.103a Work practice standards.

(a) Each owner or operator subject to the provisions of this subpart shall not routinely release fuel gas to a flare from any fuel gas producing unit. The combustion in a flare of process upset gases or fuel that that is released to the flare as a result of relief valve leakage or other emergency malfunctions is exempt from this paragraph.

(b) The owner or operator shall develop a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining each affected facility during periods of startup, shutdown, and malfunction; and a program of corrective action for malfunctioning process, air pollution control, and monitoring equipment used to comply with the requirements of this subpart. The owner or operator may use the affected source's standard operating procedures (SOP) manual, or an Occupational Safety and Health Administration (OSHA) or other plan, provided the alternative plans meet all the requirements of this section and are made available for inspection or submitted when requested by the Administrator.

(1) The written plan must cover fluid catalytic cracking units, fluid coking units, sulfur recovery plants (including tail gas treatment system), amine treatment system, and fuel process heaters and other gas combustion devices. The written plan must include procedures to minimize discharges either directly to the atmosphere or to the flare gas system during the planned startup or shutdown of these units, procedures to minimize emissions during malfunctions of the amine treatment system or sulfur recovery plant, and procedures for conducting a root-cause analysis of any emissions limit exceedance or process start-up, shutdown, upset, or malfunction that causes a discharge into the atmosphere, either directly or indirectly, from any refinery process unit subject to the provisions of this subpart in excess of 500 lb per day (lb/d) of SO_2.

(2) When actions taken by the owner or operator during a startup or shutdown (and the startup or shutdown causes the source to exceed any applicable emission limitation in the relevant emission standards), or malfunction (including actions taken to correct a malfunction) are consistent with the procedures specified in the startup, shutdown, and malfunction plan, the owner or operator must keep records for that event which demonstrate that the procedures specified in the plan were followed. These records may take the form of a ''checklist,'' or other effective form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan and describes the actions taken for that event. The owner or operator must identify the exceedance in the semiannual excess emissions report and certify that the actions taken during the startup, shutdown, or malfunction were consistent with the procedures in the startup, shutdown, and malfunction plan.

(3) If an action taken by the owner or operator during a startup, shutdown, or malfunction (including an action taken to correct a malfunction) is not consistent with the procedures specified in the startup, shutdown, and malfunction plan, and the source exceeds any applicable emission limitation, then the owner or operator must record the actions taken for that event and identify the exceedance in the semiannual excess emissions report.

(4) The owner or operator must maintain at the affected facility a current startup, shutdown, and malfunction plan and must make the plan available to the Administrator upon request.

(5) The Administrator may require the owner or operator to make changes to the startup, shutdown, and malfunction plan if the Administrator finds:

(i) The plan does not address a startup, shutdown, or malfunction event that has occurred;

(ii) The plan fails to provide for the minimization of emissions during operation of the source (including associated air pollution control and monitoring equipment) during a startup, shutdown, or malfunction event;

(iii) The plan does not provide adequate procedures for correcting malfunctioning process and/or air pollution control and monitoring equipment as quickly as practicable; or

(6) The owner or operator may periodically revise the startup, shutdown, and malfunction plan as necessary to satisfy the requirements of this subpart or to reflect changes in equipment or procedures at the affected facility. However, each such revision to a startup, shutdown, and malfunction plan must be reported in the semiannual report.

(c) Each owner or operator of a delayed coking unit shall depressure to 5 lb per square inch gauge (psig) during reactor vessel depressuring and vent the exhaust gases to the fuel gas system for recovery.

Option 2 for § 60.103a:

§ 60.103a Work practice standards.

Each owner or operator of a delayed coking unit shall depressure to 5 lb per square inch gauge (psig) during reactor vessel depressuring and vent the exhaust gases to the fuel gas system for recovery.

§ 60.104a Performance tests.

(a) The owner or operator shall conduct a performance test for a FCCU, fluid coking unit, sulfur recovery plant, process heater and other fuel gas combustion device to demonstrate initial compliance with each applicable emissions limit in § 60.102a according to the requirements of § 60.8. The notification requirements of § 60.8(d) apply to the initial performance test and to subsequent performance tests required by paragraph (b) of this section (or as required by the Administrator), but does not apply to performance tests conducted for the purpose of obtaining supplemental data because of continuous monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments as provided in § 60.105a(l).

(b) The owner or operator of a FCCU or fluid coking unit that elects to monitor control device operating parameters according to the requirements in § 60.105a(b) shall conduct a PM performance test at least once every 24 months and furnish the Administrator a written report of the results of each test.

(c) In conducting the performance tests required by this subpart (or as requested by the Administrator), the owner or operator shall use the test methods in 40 CFR part 60, appendix A or other methods as specified in this section, except as provided in § 60.8(b).

(d) The owner or operator shall determine compliance with the PM, NO_X, SO_2, and CO emissions limits in § 60.102a(b) for FCCU and fluid coking units using the following methods and procedures:

(1) Method 1 for sample and velocity traverses.

(2) Method 2 for velocity and volumetric flow rate.

(3) Method 3, 3A, or 3B for gas analysis. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B.

(4) Method 5 for determining PM emissions and associated moisture content from affected facilities.

(i) The PM performance test consists of 3 valid test runs; the duration of each test run must be no less than 60 minutes.

(ii) The emissions rate of PM (E_{PM}) is computed for each run using Equation 1 of this section:

$$E_{PM} = \frac{C_{PM}\ Q_{sd}}{K\ R_c} \qquad \text{(Eq. 1)}$$

Where:

E = Emission rate of PM (EPM), g/kg, lbs per 1,000 lbs (lb/1,000 lbs) of coke burn-off;

C_s = Concentration of total PM, grams per dry standard cubic meter (g/dscm), gr/dscf;

Q_{sd} = Volumetric flow rate of effluent gas, dry standard cubic meters per hour, dry standard cubic feet per hour;

R_c = Coke burn-off rate, kilograms per hour (kg/hr), lbs per hour (lbs/hr) coke; and

K = Conversion factor, 1.0 grams per gram (7,000 grains per lb).

(iii) The coke burn-off rate (R_c) is computed for each run using Equation 2 of this section:

$$R_c = K_1 Q_r \left(\%CO_2 + \%CO\right) + K_2 Q_a - K_3 Q_r \left(\%CO/2 + \%CO_2 + \%O_2\right) + K_3 Q_{oxy}\left(\%O_{oxy}\right) \qquad \text{(Eq. 2)}$$

Where:

R_c = Coke burn-off rate, kg/hr (lb/hr);

Q_r = Volumetric flow rate of exhaust gas from FCCU regenerator or fluid coking burner before any emissions control or energy recovery system that burns auxiliary fuel, dry standard cubic meters per minute (dscm/min), dry standard cubic feet per minute (dscf/min);

Q_a = Volumetric flow rate of air to FCCU regenerator or fluid coking burner, as determined from the unit's control room instrumentation, dscm/min (dscf/min);

Q_{oxy} = Volumetric flow rate of O_2 enriched air to FCCU regenerator or fluid coking unit, as determined from the unit's control room instrumentation, dscm/min (dscf/min);

$\%CO_2$ = Carbon dioxide concentration in FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis);

%CO = CO concentration in FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis);

$\%O_2$ = O_2 concentration in FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis);

$\%O_{oxy}$ = O_2 concentration in O_2 enriched air stream inlet to the FCCU regenerator or fluid coking burner, percent by volume (dry basis);

K_1 = Material balance and conversion factor, 0.2982 (kg-min)/(hr-dscm-%) [0.0186 (lb-min)/(hr-dscf-%)];

K_2 = Material balance and conversion factor, 2.088 (kg-min)/(hr-dscm-%) [0.1303 (lb-min)/(hr-dscf-%)]; and

K_3 = Material balance and conversion factor, 0.0994 (kg-min)/(hr-dscm-%) [0.00624 (lb-min)/(hr-dscf-%)].

(iv) During the performance test, the volumetric flow rate of exhaust gas from catalyst regenerator (Q_r) before any emission control or energy recovery system that burns auxiliary fuel is measured using Method 2.

(v) For subsequent calculations of coke burn-off rates or exhaust gas flow rates, the volumetric flow rate of Q_r is calculated using average exhaust gas concentrations as measured by the monitors in § 60.105a(b)(2), if applicable, using Equation 3 of this section:

$$Q_r = \frac{79 \times Q_a + \left(100 - \%Oxy\right) \times Q_{oxy}}{100 - \%CO_2 - \%CO - \%O_2} \qquad \text{(Eq. 3)}$$

Where:

Q_r = Volumetric flow rate of exhaust gas from FCCU regenerator or fluid coking burner before any emission control or energy recovery system that burns auxiliary fuel, dscm/min (dscf/min);

Q_a = Volumetric flow rate of air to FCCU regenerator or fluid coking burner, as determined from the unit's control room instrumentation, dscm/min (dscf/min);

Q_{oxy} = Volumetric flow rate of O_2 enriched air to FCCU regenerator or fluid coking unit, as determined from the unit's control room instrumentation, dscm/min (dscf/min);

$\%CO_2$ = Carbon dioxide concentration in FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis);

%CO = CO concentration FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis). When no auxiliary fuel is burned and a continuous CO monitor is not required in accordance with § 60.105a(g)(3), assume %CO to be zero;

$\%O_2$ = O_2 concentration in FCCU regenerator or fluid coking burner exhaust, percent by volume (dry basis); and

$\%O_{oxy}$ = O_2 concentration in O_2 enriched air stream inlet to the FCCU regenerator or fluid coking burner, percent by volume (dry basis).

(5) Method 7, 7A, 7C, 7D, or 7E for moisture content and for the concentration of NO_X calculated as nitrogen dioxide (NO_2); the duration of each test run must be no less than 4 hours.

(6) Method 6, 6A, or 6C for moisture content and for the concentration of SO_2; the duration of each test run must be no less than 4 hours. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6 or 6A.

(7) Method 10, 10a, or 10B for moisture content and for the concentration of CO. The sampling time for each run must be 60 minutes.

(8) The owner or operator shall adjust PM, NO_X, SO_2, and CO pollutant concentrations to 0 percent excess air or 0 percent O_2 using Equation 4 of this section:

$$C_{adj} = C_{meas}\left[20.9_c / \left(20.9 - \%O_2\right)\right] \qquad \text{(Eq. 4)}$$

Where:

C_{adj} = pollutant concentration adjusted to 0 percent excess air or O_2, parts per million (ppm) or g/dscm;

C_{meas} = pollutant concentration measured on a dry basis, ppm or g/dscm;

20.9_c = 20.9 percent O_2–0.0 percent O_2 (defined O_2 correction basis), percent;

20.9 = O_2 concentration in air, percent; and

$\%O_2$ = O_2 concentration measured on a dry basis, percent.

(e) The owner or operator of a FCCU or fluid coking unit that is controlled by an electrostatic precipitator or wet scrubber and that is subject to control device operating parameter limits § 60.102a(c) shall establish the limits based on the performance test results according to the following procedures:

(1) Reduce the parameter monitoring data to hourly averages for each test run;

(2) Determine the operating limit for each required parameter as the lowest hourly average voltage and secondary current and the highest coke burn-off rate (if you use an electrostatic precipitator) or the lowest average pressure drop and liquid-to-gas ratio (if you use a wet scrubber) measured during a test run that achieves the applicable PM emission limit.

(f) The owner or operator of a FCCU or fluid coking unit that is exempt from the requirement to install and operate a CO CEMS pursuant to § 60.105a(g)(3) and that is subject to control device operating parameter limits in § 60.102a(d) shall establish the limits based on the performance test results using the following procedures:

(1) Reduce the temperature and O_2 concentrations from the parameter monitoring systems to hourly averages for each test run.

(2) Determine the operating limit for temperature and O_2 concentrations as the lowest hourly average temperature and O_2 concentration measured during a test run achieving the emission limitation.

(g) The owner or operator shall determine compliance with the SO_2 and H_2S emissions limits for sulfur recovery plants in § 60.102a(e) using the following methods and procedures:

(1) Method 1 for sample and velocity traverses.

(2) Method 2 for velocity and volumetric flow rate.

(3) Method 3, 3A, or 3B for gas analysis. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B.

(4) Method 6, 6A, or 6C to determine the SO_2 concentration. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6 or 6A.

(5) Method 15 or 15A to determine the reduced sulfur compounds and H_2S concentrations.

(i) Each run consists of 16 samples taken over a minimum of 3 hours.

(ii) The owner or operator shall calculate the average H_2S concentration after correcting for moisture and O_2 as the arithmetic average of the H_2S concentration for each sample during the run (ppmv, dry basis, corrected to 0 percent excess air).

(iii) The owner or operator shall calculate the SO_2 equivalent for each run after correcting for moisture and O_2 as the arithmetic average of the SO_2 equivalent of reduced sulfur compounds for each sample during the run (ppmv, dry basis, corrected to 0 percent excess air).

(iv) The owner or operator shall use Equation 4 of this section to adjust pollutant concentrations to 0 percent O_2 or 0 percent excess air.

(6) The owner or operator shall calculate the combined SO_2 and reduced sulfur compound concentrations for a sulfur recovery plant with a capacity greater than 20 LTD that is subject to the emissions limit in § 60.102a(e)(1) using Equation 5 of this section:

$$C_{combined} = C_{SO2,M6} + C_{SO2_eq,M15} \qquad \text{(Eq. 5)}$$

Where:

$C_{combined}$ = Cmbined SO_2 and reduced sulfur compounds concentration, ppmv, dry basis, at 0 percent excess air;

$C_{SO2,M6}$ = SO_2 concentration in the exhaust stream measured using Method 6, 6A, or 6C as required in paragraph (c)(4) of this section, ppmv, dry basis at 0 percent excess air; The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6 or 6A.

$C_{SO2_eq,M15}$ = SO_2 equivalent concentration of reduced sulfur compounds in the exhaust stream measured using Method 15 or 15A as required in paragraph (c)(5) of this section, ppmv, dry basis at 0 percent excess air. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A.

(7) The owner or operator shall calculate the mass sulfur emission percentage for a sulfur recovery plant with a capacity of 10 LTD or less that is subject to the emissions limit in § 60.102a(e)(2) using the following procedures:

(i) Calculate the combined SO_2 and reduced sulfur compound concentration using Equation 5 of this section.

(ii) Calculate the mass sulfur emissions percentage using Equation 6 of this section:

$$F_{S,emit} = \frac{K_4 \; C_{combined} \; Q_{sd}}{M_{sulfur}} \times 100\% \qquad \text{(Eq. 6)}$$

Where:

$F_{S,emit}$ = Mass fraction of sulfur emitted, weight percent;

K_4 = Conversion factor, 0.5 [lbs S/lb SO_2] × 60 [min/hr] × 1.66E–7 [lbs/dscf per ppmv]/2,240 [lbs/long ton] = 2.22E–9 (lbs S·min·long ton·lbs/dscf)/(lbs SO_2·hr·lb·ppmv);

$C_{combined}$ = Combined SO_2 and reduced sulfur compounds concentration, ppmv, dry basis at 0 percent excess air;

Q_{sd} = Volumetric flow rate of effluent gas dscf/min; and

M_{sulfur} = Mass rate of sulfur recovery, long tons/hr.

(h) The owner or operator of a sulfur recovery plant that is subject to the operating limits in § 60.102a(f) shall establish the limits based on the results of the performance test according to the following procedures:

(1) Reduce the temperature and O_2 concentrations from the CPMS to hourly averages for each test run;

(2) Determine the operating limit for temperature and O_2 concentrations as the lowest hourly average temperature and O_2 concentration measured during a test run achieving the H_2S emissions limit.

(i) The owner or operator shall determine compliance with the SO_2 and NO_X emissions limits in § 60.102a(g) for a process heater or other fuel gas combustion device according to the following test methods and procedures:

(1) Method 1 for sample and velocity traverses;

(2) Method 2 for velocity and volumetric flow rate;

(3) Method 3, 3A, or 3B for gas analysis. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B.;

(4) Method 6, 6A, or 6C to determine the SO_2 concentration. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6 or 6A.

(i) The performance test consists of 3 valid test runs; the duration of each test run must be no less than 1 hour.

(ii) If a single fuel gas combustion device having a common source of fuel gas is monitored as allowed under § 60.107a(a)(2)(v), only one performance test is required. That is, performance tests are not required when a new affected fuel gas combustion device is added to a common source of fuel gas that previously demonstrated compliance.

(5) Method 7, 7A, 7C, 7D, or 7E for moisture content and for the concentration of NO_X calculated as NO_2; the duration of each test run must be no less than 4 hours.

(j) The owner or operator shall determine compliance with the H_2S or TRS emissions limit in § 60.102a(h) for a process heater or other fuel gas combustion device according to the following test methods and procedures:

(1) Method 1 for sample and velocity traverses;

(2) Method 2 for velocity and volumetric flow rate;

(3) Method 3, 3A, or 3B for gas analysis. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B.;

(4) Method 11, 15, 15A, or 16 for determining the H_2S concentration for affected plants using an H_2S monitor as specified in § 60.107a(a)(1) or Method 16 for determining the TRS concentration. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A.

(i) For Method 11, the sampling time and sample volume must be at least 10 minutes and 0.010 dscm (0.35 dscf). Two samples of equal sampling times must be taken at about 1-hour intervals. The arithmetic average of these two samples constitute a run. For most fuel gases, sampling times exceeding 20 minutes may result in depletion of the collection solution, although fuel gases containing low concentrations of H_2S may necessitate sampling for longer periods of time.

(ii) For Method 15 or 16, at least three injects over a 1-hour period constitutes a run.

(iii) For Method 15A, a 1-hour sample constitutes a run. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A.

(iv) If monitoring is conducted at a single point in a common source of fuel gas as allowed under § 60.107a(a)(1)(iv), only one performance test is required. That is, performance tests are not required when a new affected fuel gas combustion device is added to a common source of fuel gas that previously demonstrated compliance.

§ 60.105a Monitoring of emissions and operations for fluid catalytic cracking units (FCCU) and fluid coking units.

(a) *FCCU and fluid coking units subject to PM emissions limit.* Each owner or operator subject to the provisions of this subpart shall monitor each FCCU and fluid coking unit subject to the PM emissions limit in § 60.102a(b)(1) according to the requirements in paragraph (b), (c), or (d) of this section.

(b) *Control device operating parameters.* Each owner or operator of a FCCU or fluid coking unit subject to the PM emissions limit in § 60.102a(b)(1) shall comply with the requirements in paragraphs (b)(1) through (3) of this section.

(1) The owner or operator shall install, operate, and maintain continuous parameter monitor systems (CPMS) to measure and record operating parameters for each control device according to the requirements in paragraph (b)(1)(i) through (iii) of this section.

(i) For units controlled using an electrostatic precipitator, the owner or operator shall use CPMS to measure and record the hourly average total power input and secondary voltage to the control device.

(ii) For units controlled using a wet scrubber, the owner or operator shall use CPMS to measure and record the hourly average pressure drop, liquid feed rate, and exhaust gas flow rate.

(iii) The owner or operator shall install, operate, and maintain each CPMS according to the manufacturer's specifications and requirements.

(2) The owner or operator shall install, operate, calibrate, and maintain an instrument for continuously monitoring the concentrations of CO_2, O_2 (dry basis), and if needed, CO in the exhaust gases prior to any control or energy recovery system that burns auxiliary fuels.

(i) The owner or operator shall install, operate, and maintain each monitor according to Performance Specification 3 (40 CFR part 60, appendix B).

(ii) The owner or operator shall conduct performance evaluations of each CO_2, O_2, and CO monitor according to the requirements in § 60.13(c) and Performance Specification 3. The owner or operator shall use Method 3 for conducting the relative accuracy evaluations.

(iii) The owner or operator shall comply with the quality assurance requirements of procedure 1 in 40 CFR part 60, appendix F, including quarterly accuracy determinations for CO_2 and CO monitors, annual accuracy determinations for O_2 monitors, and daily calibration drift tests.

(3) The owner or operator shall determine and record the average coke burn-off rate and hours of operation for each FCCU or fluid coking unit using the procedures in § 60.104a(d)(4)(vii).

(c) *Bag leak detection systems.* Each owner or operator of a FCCU or fluid coking unit shall install, operate, and maintain a bag leak detection system for each baghouse that is used to comply with the PM emissions limit in § 60.102a(b)(1) according to paragraph (c)(1) of this section; prepare and operate by a site-specific monitoring plan according to paragraph (c)(2) of this section; take corrective action according to paragraph (c)(3) of this section; and record information according to paragraph (c)(4) of this section.

(1) Each bag leak detection system must meet the specifications and requirements in paragraphs (c)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 0.00044 grains per actual cubic foot or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (e.g., using a strip chart recorder or a data logger).

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (c)(1)(iv) of this section, and the alarm must be located such that it can be

heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, the owner or operator must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, the owner or operator shall not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or delegated authority except as provided in paragraph (c)(1)(vi) of this section.

(vi) Once per quarter, the owner or operator may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (c)(2) of this section.

(vii) The owner or operator shall install the bag leak detection sensor downstream of the baghouse and upstream of any wet scrubber.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) The owner or operator shall develop and submit to the Administrator for approval a site-specific monitoring plan for each baghouse and bag leak detection system. The owner or operator shall operate and maintain each baghouse and bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (c)(2)(i) through (vii) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored;

(vi) Corrective action procedures as specified in paragraph (c)(3) of this section. In approving the site-specific monitoring plan, the Administrator or delegated authority may allow owners and operators more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable; and

(vii) How the baghouse system will be operated and maintained, including monitoring of pressure drop across baghouse cells and frequency of visual inspections of the baghouse interior and baghouse components such as fans and dust removal and bag cleaning mechanisms.

(3) For each bag leak detection system, the owner or operator shall initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (c)(2)(vi) of this section, the owner or operator shall alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in particulate emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media or otherwise repairing the control device;

(iv) Sealing off a defective baghouse compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the particulate emissions.

(4) The owner or operator shall maintain records of the information specified in paragraphs (c)(4)(i) through (iii) of this section for each bag leak detection system.

(i) Records of the bag leak detection system output;

(ii) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection system settings; and

(iii) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and whether the alarm was alleviated within 3 hours of the alarm.

(d) *Continuous emissions monitoring systems (CEMS).* The owner or operator of a FCCU or fluid coking unit subject to the PM emissions limit (gr/dscf) in § 60.102a(b)(1) shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration (0 percent excess air) of PM in the exhaust gases prior to release to the atmosphere. The monitor must include an O_2 monitor for correcting the data for excess air.

(1) The owner or operator shall install, operate, and maintain each PM monitor according to Performance Specification 11 of 40 CFR part 60, appendix B. The span value of this PM monitor is 0.08 gr/dscf PM.

(2) The owner or operator shall conduct performance evaluations of each PM monitor according to the requirements in § 60.13(c) and Performance Specification 11. The owner or operator shall use Method 5 for conducting the relative accuracy evaluations.

(3) The owner or operator shall install, operate, and maintain each O_2 monitor according to Performance Specification 3 of 40 CFR part 60, appendix B. The span value of this O_2 monitor is 25 percent.

(4) The owner or operator shall conduct performance evaluations of each O_2 monitor according to the requirements in § 60.13(c) and Performance Specification 3. Method 3, 3A, or 3B shall be used for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B.

(5) The owner or operator shall comply with the quality assurance requirements of procedure 2 in 40 CFR part 60, appendix F for each PM CEMS and procedure 1 in 40 CFR part 60, appendix F for each O_2 monitor, including quarterly accuracy determinations for each PM monitor, annual accuracy determinations for each O_2 monitor, and daily calibration drift tests.

(e) *FCCU and fluid coking units subject to NO_X limit.* Each owner or operator of a FCCU or fluid coking unit subject to the NO_X emissions limit in § 60.102a(b)(2) shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration by volume (dry basis, 0 percent excess air) of NO_X emissions into the atmosphere. The monitor must include an O_2 monitor for correcting the data for excess air.

(1) The owner or operator shall install, operate, and maintain each NO_X monitor according to Performance Specification 2 (40 CFR part 60,

appendix B). The span value of this NO_X monitor is 200 ppmv NO_X.

(2) The owner or operator shall conduct performance evaluations of each NO_X monitor according to the requirements in § 60.13(c) and Performance Specification 2. The owner or operator shall use Methods 7, 7A, 7C, 7D, or 7E (40 CFR part 60, appendix A) for conducting the relative accuracy evaluations.

(3) The owner or operator shall install, operate, and maintain each O_2 monitor according to Performance Specification 3 of 40 CFR part 60, appendix B. The span value of this O_2 monitor is 25 percent.

(4) The owner or operator shall conduct performance evaluations of each O_2 monitor according to the requirements in § 60.13(c) and Performance Specification 3. Method 3, 3A, or 3B shall be used for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B.

(5) The owner or operator shall comply with the quality assurance requirements of procedure 1 in 40 CFR part 60, appendix F for each SO_2 and O_2 monitor, including quarterly accuracy determinations for SO_2 monitors, annual accuracy determinations for O_2 monitors, and daily calibration drift tests.

(f) *FCCU and fluid coking units subject to SO_2 limit.* The owner or operator a FCCU and fluid coking unit subject to the SO_2 emissions limit in § 60.102a(b)(3) shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration by volume (dry basis, corrected to 0 percent excess air) of SO_2 emissions into the atmosphere. The monitor shall include an O_2 monitor for correcting the data for excess air.

(1) The owner or operator shall install, operate, and maintain each SO_2 monitor according to Performance Specification 2 (40 CFR part 60, appendix B). The span value of this SO_2 monitor is 200 ppmv SO_2.

(2) The owner or operator shall conduct performance evaluations of each SO_2 monitor according to the requirements in § 60.13(c) and Performance Specification 2. The owner or operator shall use Methods 6, 6A, or 6C (40 CFR part 60, appendix A) for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6 or 6A.

(3) The owner or operator shall install, operate, and maintain each O_2 monitor according to Performance Specification 3 of 40 CFR part 60, appendix B. The span value of this O_2 monitor is 10 percent.

(4) The owner or operator shall conduct performance evaluations of each O_2 monitor according to the requirements in § 60.13(c) and Performance Specification 3. Method 3, 3A, or 3B shall be used for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B.

(5) The owner or operator shall comply with the quality assurance requirements of procedure 1 in 40 CFR part 60, appendix F for each SO_2 and O_2 monitor, including quarterly accuracy determinations for SO_2 monitors, annual accuracy determinations for O_2 monitors, and daily calibration drift tests.

(g) *FCCU and fluid coking units subject to CO emissions limit.* Except as specified in paragraph (g)(3) of this section, the owner or operator shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration by volume (dry basis) of CO emissions into the atmosphere from each FCCU and fluid coking unit subject to the CO emissions limit in § 60.102a(b)(4).

(1) The owner or operator shall install, operate, and maintain each CO monitor according to Performance Specification 4 (40 CFR part 60, appendix B). The span value for this instrument is 1,000 ppm CO.

(2) The owner or operator shall conduct performance evaluations of each CO monitor according to the requirements in § 60.13(c) and Performance Specification 4 (40 CFR part 60, appendix A). The owner or operator shall use Methods 10, 10A, or 10B for conducting the relative accuracy evaluations using the procedures specified in § 60.106a(b).

(3) A CO CEMS need not be installed if the owner or operator demonstrates that the average CO emissions are less than 50 ppm (dry basis) and also submits a written request for exemption to the Administrator and receives such an exemption.

(i) The demonstration shall consist of continuously monitoring CO emissions for 30 days using an instrument that meets the requirements of Performance Specification 4 (40 CFR part 60, appendix B). The span value shall be 100 ppm CO instead of 1,000 ppm, and the relative accuracy limit shall be 10 percent of the average CO emissions or 5 ppm CO, whichever is greater. For instruments that are identical to Method 10 and employ the sample conditioning system of Method 10A, the alternative relative accuracy test procedure in section 10.1 of Performance Specification 2 may be used in place of the relative accuracy test.

(ii) The written request for exemption must include descriptions of the CPMS for exhaust gas temperature and O_2 monitor required in paragraph (g)(4) of this section and operating limits for those parameters to ensure combustion conditions remain similar to those that exist during the demonstration period.

(4) The owner or operator of a FCCU or fluid coking unit that is exempted from the requirement to install and operate a CO CEMS in paragraph (g)(3) of this section shall install, operate, calibrate, and maintain CPMS to measure and record the operating parameters in paragraph (g)(4)(i) or (ii) of this section. The owner or operator shall install, operate, and maintain each CPMS according to the manufacturer's specifications.

(i) For a FCCU or fluid coking unit with no post-combustion control device, the temperature and O_2 concentration of the exhaust gas stream exiting the unit.

(ii) For a FCCU or fluid coking unit with a post-combustion control device, the temperature and O_2 concentration of the exhaust gas stream exiting the control device.

(h) *Excess emissions.* For the purpose of reports required by § 60.7(c), periods of excess emissions for a FCCU or fluid coking unit subject to the emissions limitations in § 60.102a(b) are defined as specified in paragraphs (h)(1) through (4) of this section. Note: Determine all averages as the arithmetic average of the applicable 1-hour averages, e.g., determine the rolling 3-hour average as the arithmetic average of three contiguous 1-hour averages.

(1) All 24-hour periods during which the average PM control device operating characteristics, as measured by the continuous monitoring systems under § 60.105a(b)(1), fall below the levels established during the performance test. Alternatively, if a PM CEMS is used according to § 60.105a(d), all 7-day periods during which the average PM emission rate, as measured by the continuous PM monitoring system under § 60.105a(a)(2) exceeds 0.020 gr/dscf.

(2) All rolling 7-day periods during which the average concentration of NO_X

as measured by the NO_X CEMS under § 60.105a(e) exceeds 80 ppmv.

(3) All rolling 7-day periods during which the average concentration of SO_2 as measured by the SO_2 CEMS under § 60.105a(f) exceeds 50 ppmv, and all rolling 365-day periods during which the average concentration of SO_2 as measured by the SO_2 CEMS exceeds 25 ppmv.

(4) All 1-hour periods during which the average CO concentration as measured by the CO continuous monitoring system under § 60.105a(g) exceeds 500 ppmv or, if applicable, all 1-hour periods during which the average temperature and O_2 concentration as measured by the continuous monitoring systems under § 60.105a(g)(4) fall below the operating limits established during the performance test.

§ 60.106a Monitoring of emissions and operations for sulfur recovery plants.

(a) *Sulfur recovery plants*. The owner or operator of a sulfur recovery plant shall comply with the applicable requirements in paragraphs (a)(1) through (5) of this section.

(1) The owner or operator of a sulfur recovery plant with a capacity greater than 20 LTD that is subject to an SO_2 emissions limit in § 60.102a(e)(1) shall install, operate, calibrate, and maintain an instrument using an air or O_2 dilution and oxidation system to convert any reduced sulfur to SO_2 for continuously monitoring and recording the concentration (dry basis, 0 percent excess air) of the total resultant SO_2. The monitor must include an O_2 monitor for correcting the data for excess O_2.

(i) The owner or operator shall install, operate, and maintain each SO_2 CEMS according to Performance Specification 2 (40 CFR part 60, appendix B). The span value for this monitor is 500 ppm SO_2.

(ii) The owner or operator shall conduct performance evaluations of each SO_2 monitor according to the requirements in § 60.13(c) and Performance Specification 2 (40 CFR part 60, appendix B). The owner or operator shall use Methods 6 or 6C and 15 or 15A (40 CFR part 60, appendix A) for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference-see § 60.17) is an acceptable alternative to EPA Method 6 or 15A.

(iii) The owner or operator shall install, operate, and maintain each O_2 monitor according to Performance Specification 3 (40 CFR part 60, appendix B). The span value for the O_2 monitor is 25 percent O_2.

(iv) The owner or operator shall conduct performance evaluations for the O_2 monitor according to the requirements of § 60.13(c) and Performance Specification 3. The owner or operator shall use Methods 3, 3A, or 3B for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference-see § 60.17) is an acceptable alternative to EPA Method 3B.

(v) The owner or operator shall comply with the applicable quality assurance procedures of 40 CFR part 60, appendix F for each monitor, including quarterly accuracy determinations for each SO_2 monitor, annual accuracy determinations for each O_2 monitor, and daily calibration drift determinations.

(2) The owner or operator of a sulfur recovery plant with a capacity of less than 20 LTD that is subject to an SO_2 emissions limit in § 60.102a(e)(2) shall install, operate, calibrate, and maintain an instrument using an air or O_2 dilution and oxidation system to convert any reduced sulfur to SO_2 for continuously monitoring and recording the concentration of the total resultant SO_2 and an instrument for continuously monitoring the volumetric flow rate of gases released to the atmosphere. The SO_2 monitor must include an O_2 monitor for correcting the data for excess O_2.

(i) The owner or operator shall install, operate, and maintain each SO_2 monitor according to Performance Specification 2 (40 CFR part 60, appendix B). The span value for the SO_2 monitor shall be set at 125 percent of the maximum estimated hourly potential SO_2 emission concentration that translates to the applicable emission limit at full sulfur production capacity.

(ii) The owner or operator shall conduct performance evaluations for the SO_2 monitor according to the requirements of § 60.13(c) and Performance Specification 2 (40 CFR part 60, appendix B). Methods 6, 6A, 6C, 15, or 15A (40 CFR part 60, appendix A) shall be used for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference-see § 60.17) is an acceptable alternative to EPA Method 6, 6A, or 15A.

(iii) The owner or operator shall install, operate, and maintain each O_2 monitor and flow monitor according to Performance Specification 3 (40 CFR part 60, appendix B). The span value for the O_2 monitor is 25 percent O_2. The span value for the volumetric flow monitor shall be set at 125 percent of the maximum estimated volumetric flow rate when the unit is operating at full process capacity.

(iv) The owner or operator shall conduct performance evaluations for the O_2 monitor and flow monitor according to the requirements of § 60.13(c) and Performance Specification 3. The owner or operator shall use Methods 3, 3A, or 3B for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference-see § 60.17) is an acceptable alternative to EPA Method 3B.

(v) The owner or operator shall comply with the applicable quality assurance requirements in 40 CFR part 60, appendix F for each monitor, including quarterly accuracy determinations for SO_2 and flow monitors, annual accuracy determinations for O_2 monitors, and daily calibration drift tests.

(3) Except as provided under paragraph (a)(4) of this section, the owner or operator of a sulfur recovery plant that is subject to the H_2S emissions limit in § 60.102a(e)(3) shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration of H_2S (dry basis, 0 percent excess air) emissions into the atmosphere. The H_2S monitor must include an O_2 monitor for correcting the data for excess O_2.

(i) The owner or operator shall install, operate, and maintain each H_2S monitor according to Performance Specification 7 (40 CFR part 60, appendix B). The span value for this instrument is 20 ppmv H_2S.

(ii) The owner or operator shall conduct performance evaluations for each H_2S monitor according to the requirements of § 60.13(c) and Performance Specification 7 (40 CFR part 60, appendix B). The owner or operator shall use Method 11, 15, 15A, or 16 (40 CFR part 60, appendix A) for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 15A.

(iii) The owner or operator shall install, operate, and maintain each O_2 monitor according to Performance Specification 3 of 40 CFR part 60, appendix B. The span value of this O_2 monitor is 25 percent.

(iv) The owner or operator shall conduct performance evaluations of each O_2 monitor according to the requirements in § 60.13(c) and Performance Specification 3. Method 3,

3A, or 3B shall be used for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B.

(v) The owner or operator shall comply with the quality assurance requirements of procedure 1 in 40 CFR part 60, appendix F for each monitor, including quarterly accuracy determinations and daily calibration drift tests.

(4) In place of the H_2S monitor required in paragraph (a)(3) of this section, the owner or operator of a sulfur recovery plant that is subject to the H_2S emissions limit in § 60.102a(e)(3) and that is equipped with an oxidation control system, incinerator, thermal oxidizer, or similar combustion device can use a CPMS for continuously monitoring and recording the temperature of the exhaust gases and an O_2 monitor for continuously monitoring and recording the O_2 concentration of the exhaust gases.

(i) The span values for the temperature monitor is 1,500 °F.

(ii) The owner or operator shall install, operate, and maintain each O_2 monitor according to Performance Specification 3 (40 CFR part 60, appendix B). The span value for the O_2 monitor is 25 percent O_2.

(iii) The owner or operator shall conduct performance evaluations for the O_2 monitor according to the requirements of § 60.13(c) and Performance Specification 3. The owner or operator shall use Methods 3, 3A, or 3B for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B.

(iv) The owner or operator shall comply with the applicable quality assurance procedures in 40 CFR part 60, appendix F for each O_2 monitor, including annual accuracy determinations.

(5) The owner or operator of a sulfur recovery plant subject to an emissions limit in § 60.102a(b) shall determine and record the hourly sulfur production rate and hours of operation for each sulfur recovery plant.

(b) *Excess emissions.* For the purpose of reports required by § 60.7(c), periods of excess emissions for sulfur recovery plants subject to the emissions limitations in § 60.102a(b) are defined as specified in paragraphs (b)(1) through (3) of this section.

Note: Determine all averages as the arithmetic average of the applicable 1-hour averages, e.g., determine the rolling 3-hour average as the arithmetic average of three contiguous 1-hour averages.

(1) For sulfur recovery plants with a capacity greater than 20 LTD, all 12-hour periods during which the average concentration of SO_2 and reduced sulfur compounds as measured by the SO_2 continuous monitoring system under paragraph (a)(1) of this section exceeds 250 ppmv (dry basis, 0 percent excess air).

(2) For sulfur recovery plants with a capacity of 20 LTD or less, all 12-hour periods during which the mass rate of SO_2 and reduced sulfur compounds as measured by the continuous monitoring systems under paragraph (a)(2) of this section exceeds 1 percent of sulfur recovered.

(3) All 1-hour periods during which the average concentration of H_2S as measured by the H_2S continuous monitoring system under paragraph (a)(3) of this section exceeds 10 ppm (dry basis, 0 percent excess air) or, if applicable, all 1-hour periods during which the average temperature and O_2 concentration as measured by the continuous monitoring systems under paragraph (a)(4) of this section fall below the operating limits established during the performance test.

§ 60.107a Monitoring of emissions and operations for process heaters and other fuel gas combustion devices.

(a) *Process heaters and other fuel gas combustion devices subject to SO_2, H_2S, or TRS limit.* The owner or operator of a process heater or other fuel gas combustion device that is subject to the requirements in § 60.102(a)(g) shall comply with the requirements in paragraph (a)(1) of this section for SO_2 emissions. Alternatively, the owner or operator of a process heater or other fuel gas combustion device who elects to satisfy the requirements of § 60.102(a)(h) shall comply with the requirements in paragraph (a)(2) of this section for H_2S concentration limits or paragraph (a)(3) of this section for TRS concentration limits. Certain exceptions to all of these requirements are provided in paragraph (a)(4) of this section.

(1) The owner or operator of a process heater or other fuel gas combustion device subject to the SO_2 emissions limits in § 60.102a(g)(i) and (ii) shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration (dry basis, 0 percent excess air) of SO_2 emissions into the atmosphere. The monitor must include an O_2 monitor for correcting the data for excess air.

(i) The owner or operator shall install, operate, and maintain each SO_2 monitor according to Performance Specification 2 (40 CFR part 60, appendix B). The span values for the SO_2 monitor is 50 ppm SO_2.

(ii) The owner or operator shall conduct performance evaluations for the SO_2 monitor according to the requirements of § 60.13(c) and Performance Specification 2 (40 CFR part 60, appendix B). The owner or operator shall use Methods 6, 6A, or 6C (40 CFR part 60, appendix A) for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference-see § 60.17) is an acceptable alternative to EPA Method 6 or 6A. Method 6 samples shall be taken at a flow rate of approximately 2 liters/min for at least 30 minutes. The relative accuracy limit shall be 20 percent or 4 ppm, whichever is greater, and the calibration drift limit shall be 5 percent of the established span value.

(iii) The owner or operator shall install, operate, and maintain each O_2 monitor according to Performance Specification 3 (40 CFR part 60, appendix B). The span value for the O_2 monitor is 25 percent O_2.

(iv) The owner or operator shall conduct performance evaluations for the O_2 monitor according to the requirements of § 60.13(c) and Performance Specification 3. The owner or operator shall use Methods 3, 3A, or 3B for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference-see § 60.17) is an acceptable alternative to EPA Method 3B.

(v) The owner or operator shall comply with the applicable quality assurance procedures in 40 CFR part 60, appendix F, including quarterly accuracy determinations for SO_2 monitors, annual accuracy determinations for O_2 monitors, and daily calibration drift tests.

(vi) Process heaters or other fuel gas combustion devices having a common source of fuel gas may be monitored at only one location (i.e., after one of the combustion devices), if monitoring at this location accurately represents the SO_2 emissions into the atmosphere from each of the combustion devices.

(2) The owner or operator of a fuel gas combustion device subject to the H_2S concentration limits in § 60.102a(h)(1) shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration by volume (dry basis) of H_2S in the fuel gases before being

burned in any fuel gas combustion device.

(i) The owner or operator shall install, operate, and maintain each H_2S monitor according to Performance Specification 7 (40 CFR part 60, appendix B). The span value for this instrument is 425 ppmv H_2S.

(ii) The owner or operator shall conduct performance evaluations for each H_2S monitor according to the requirements of § 60.13(c) and Performance Specification 7 (40 CFR part 60, appendix B). The owner or operator shall use Method 11, 15, 15A, or 16 (40 CFR part 60, appendix A) for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference-see § 60.17) is an acceptable alternative to EPA Method 15A.

(iii) The owner or operator shall comply with the applicable quality assurance procedures in 40 CFR part 60, appendix F for each H_2S monitor.

(iv) Fuel gas combustion devices having a common source of fuel gas may be monitored at only one location, if monitoring at this location accurately represents the concentration of H_2S in the fuel gas being burned.

(3) The owner or operator of a fuel gas combustion device subject to the TRS concentration limits in § 60.102a(h)(2) shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration by volume (dry basis) of TRS in the fuel gases before being burned in any fuel gas combustion device.

(i) The owner or operator shall install, operate, and maintain each TRS monitor according to Performance Specification 5 (40 CFR part 60, appendix B). The span value for this instrument is 425 ppmv TRS.

(ii) The owner or operator shall conduct performance evaluations for each TRS monitor according to the requirements of § 60.13(c) and Performance Specification 5 (40 CFR part 60, appendix B). The owner or operator shall use Method 16 (40 CFR part 60, appendix A) for conducting the relative accuracy evaluations.

(iii) The owner or operator shall comply with the applicable quality assurance procedures in 40 CFR part 60, appendix F for each TRS monitor.

(iv) Fuel gas combustion devices having a common source of fuel gas may be monitored at only one location, if monitoring at this location accurately represents the concentration of TRS in the fuel gas being burned.

(4) The owner or operator of a process heater or other fuel gas combustion device is not required to comply with paragraph (a)(1), paragraph (a)(2), or paragraph (a)(3) of this section for streams that are exempt under § 60.102(a)(i) and fuel gas streams combusted in a process heater or other fuel gas combustion device that are inherently low in sulfur content. Fuel gas streams meeting one of the requirements in paragraphs (a)(4)(i) through (iv) of this section will be considered inherently low in sulfur content.

(i) Pilot gas for heaters and flares.

(ii) Gas streams that meet commercial-grade product specifications and have a sulfur content of 30 ppmv or less.

(iii) Fuel gas streams produced in process units that are intolerant to sulfur contamination, such as fuel gas streams produced in the hydrogen plant, catalytic reforming unit, and isomerization unit.

(iv) Other streams that an owner or operator demonstrates are low-sulfur according to the procedures in paragraph (b) of this section.

(5) If the composition of an exempt stream changes such that it is no longer exempt under § 60.102(a)(i) or it no longer meets one of the criteria in paragraph (a)(4)(i) through (iv) of this section, the owner or operator must begin continuously monitoring the stream within 15 days of the change.

(b) *Exemption from H_2S monitoring requirements for low-sulfur gas streams.* The owner or operator of a fuel gas combustion device may apply for an exemption from the H_2S monitoring requirements in paragraph (a)(2) of this section or the TRS monitoring requirements in paragraph (a)(3) of this section for a gas stream that is inherently low in sulfur content. A gas stream that is demonstrated to be low-sulfur is exempt from the monitoring requirements of paragraph (a)(2) or (a)(3) of this section until there are changes in operating conditions or stream composition.

(1) The owner or operator shall submit to the Administrator a written application for an exemption from the H_2S or TRS monitoring requirements. The owner or operator shall include the following information in the application:

(i) A description of the gas stream/system to be considered, including submission of a portion of the appropriate piping diagrams indicating the boundaries of the gas stream/system, and the affected fuel gas combustion device(s) to be considered;

(ii) A statement that there are no crossover or entry points for sour gas (high H_2S content) to be introduced into the gas stream/system (this should be shown in the piping diagrams);

(iii) An explanation of the conditions that ensure low amounts of sulfur in the gas stream (i.e., control equipment or product specifications) at all times;

(iv) The supporting test results from sampling the requested gas stream/system demonstrating that the sulfur content is less than 5 ppm H_2S or TRS. Sampling data must include, at minimum, 2 weeks of daily monitoring (14 grab samples) for frequently operated gas streams/systems; for infrequently operated gas streams/systems, seven grab samples must be collected unless other additional information would support reduced sampling. The owner or operator shall use detector tubes (''length-of-stain tube'' type measurement) following the ''Gas Processor Association's Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes,'' 1986 Revision (incorporated by reference—see § 60.17) with ranges 0–10/0–100 ppm (N =10/1) to test the applicant stream for H_2S or Method 16 (40 CFR part 60, appendix A) for TRS.

(v) A description of how the 2 weeks (or seven samples for infrequently operated gas streams/systems) of monitoring results compares to the typical range of H_2S concentration (fuel quality) expected for the gas stream/system going to the affected fuel gas combustion device (e.g., the 2 weeks of daily detector tube results for a frequently operated loading rack included the entire range of products loaded out, and, therefore, should be representative of typical operating conditions affecting H_2S or TRS content in the gas stream going to the loading rack flare).

(2) Once EPA receives a complete application, the Administrator will determine whether an exemption is granted. The owner or operator shall continue to comply with the monitoring requirements in paragraph (a)(2) or paragraph (a)(3) of this section until an exemption is granted.

(3) Once an exemption from H_2S or TRS monitoring is granted, no further action is required unless refinery operating conditions change in such a way that affects the exempt gas stream/system (e.g., the stream composition changes). If such a change occurs, the owner or operator shall follow the procedures in paragraph (b)(3)(i), (b)(3) (ii), or (b)(3)(iii) of this section.

(i) If the operation change results in a sulfur content that is still within the range of concentrations included in the original application, the owner or operator shall conduct an H_2S test on a grab sample (or TRS test, if applicable)

and record the results as proof that the concentration is still within the range.

(ii) If the operation change results in a sulfur content that is outside the range of concentrations included in the original application, the owner or operator may submit a new application following the procedures of paragraph (b)(1) of this section within 60 days (or within 30 days after the seventh grab sample is tested for infrequently operated process units).

(iii) If the operation change results in a sulfur content that is outside the range of concentrations included in the original application, and the owner or operator chooses not to submit a new application, the owner or operator must begin continuous H_2S or TRS monitoring as required in paragraph (a)(2) or paragraph (a)(3) of this section within 15 days of the operation change.

(c) *Process heaters subject to NO_X limit.* The owner or operator of a process heater subject to the NO_X emissions limits in § 60.102a(g)(iii) shall install, operate, calibrate, and maintain an instrument for continuously monitoring and recording the concentration (dry basis, 0 percent excess air) of NO_X emissions into the atmosphere. The monitor must include an O_2 monitor for correcting the data for excess air.

(1) The owner or operator shall install, operate, and maintain each NO_X monitor according to Performance Specification 2 (40 CFR part 60, appendix B). The span value of this NO_X monitor is 200 ppmv NO_X.

(2) The owner or operator shall conduct performance evaluations of each NO_X monitor according to the requirements in § 60.13(c) and Performance Specification 2. The owner or operator shall use Methods 7, 7A, 7C, 7D, or 7E (40 CFR part 60, appendix A) for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference-see § 60.17) is an acceptable alternative to EPA Method 7 or 7C.

(3) The owner or operator shall install, operate, and maintain each O_2 monitor according to Performance Specification 3 of 40 CFR part 60, appendix B. The span value of this O_2 monitor is 25 percent.

(4) The owner or operator shall conduct performance evaluations of each O_2 monitor according to the requirements in § 60.13(c) and Performance Specification 3. Method 3, 3A, or 3B shall be used for conducting the relative accuracy evaluations. The method ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference-see § 60.17) is an acceptable alternative to EPA Method 3B.

(5) The owner or operator shall comply with the quality assurance requirements of procedure 1 in 40 CFR part 60, appendix F for each SO_2 and O_2 monitor, including quarterly accuracy determinations for SO_2 monitors, annual accuracy determinations for O_2 monitors, and daily calibration drift tests.

(d) *Excess emissions.* For the purpose of reports required by § 60.7(c), periods of excess emissions for process heaters and other fuel gas combustion devices subject to the emissions limitations in § 60.102a(g) or § 60.102a(h) are defined as specified in paragraphs (d)(1) and (3) of this section. Note: Determine all averages as the arithmetic average of the applicable 1-hour averages, *e.g.*, determine the rolling 3-hour average as the arithmetic average of three contiguous 1-hour averages.

(1) All rolling 3-hour periods during which the average concentration of SO_2 as measured by the SO_2 continuous monitoring system under paragraph (a)(1) of this section exceeds 20 ppmv, and all rolling 365-day periods during which the average concentration as measured by the SO_2 continuous monitoring system under paragraph (a)(1) of this section exceeds 8 ppmv.

(2) All rolling 3-hour periods during which the average concentration of H_2S as measured by the H_2S continuous monitoring system under paragraph (a)(2) of this section or the average concentration of TRS as measured by the TRS continuous monitoring system under paragraph (a)(3) of this section exceeds 160 ppmv, and all rolling 365-day periods during which the average concentration as measured by the H_2S continuous monitoring system under paragraph (a)(2) or the average concentration as measured by the TRS continuous monitoring system under paragraph (a)(3) of this section exceeds 60 ppmv.

(3) All rolling 24-hour periods during which the average concentration of NO_X as measured by the NO_X continuous monitoring system under paragraph (c) of this section exceeds 80 ppmv (dry basis, 0 percent excess air).

§ 60.108a Recordkeeping and reporting requirements.

(a) Each owner or operator subject to the emissions limitations in § 60.102a shall comply with the notification, recordkeeping, and reporting requirements in § 60.7 and other requirements as specified in this section.

(b) Each owner or operator subject to an emissions limitation in § 60.102a shall notify the Administrator of the specific monitoring provisions of §§ 60.105a, 60.106a, and 60.107a with which the owner or operator seeks to comply. Notification shall be submitted with the notification of initial startup required by § 60.7(a)(3).

Option 1 for paragraph (c):

(c) The owner or operator shall maintain the following records:

(1) A copy of the startup and shutdown plan required in § 60.103a(b).

(2) Records of information to document conformance with operation and maintenance requirements in § 60.105a(c).

(3) Records of bag leak detection system alarms and corrective actions according to § 63.105a(c).

(4) For each catalytic cracking unit or fluid coking unit subject to the monitoring requirements in § 60.105a(b)(3), records of the average coke burn-off rate and hours of operation.

(5) For each sulfur recovery plant subject to monitoring requirements in § 60.106a(a)(5), records of the hourly sulfur production rate and hours of operation for each sulfur recovery plant.

(6) For each fuel gas stream to which one of the exemptions listed in § 60.107a(a)(4) applies, records of the specific exemption determined to apply for each stream. If the owner or operator applies for the exemption described in § 60.107a(a)(4)(iv), the owner or operator must keep a copy of the application as well as the letter from the Administrator granting approval of the application.

Option 2 for paragraph (c):

(c) The owner or operator shall maintain the following records:

(1) Records of information to document conformance with operation and maintenance requirements in § 60.105a(c).

(2) Records of bag leak detection system alarms and corrective actions according to § 63.105a(c).

(3) For each catalytic cracking unit or fluid coking unit subject to the monitoring requirements in § 60.105a(b)(3), records of the average coke burn-off rate and hours of operation.

(4) For each sulfur recovery plant subject to monitoring requirements in § 0.106a(a)(5), records of the hourly sulfur production rate and hours of operation for each sulfur recovery plant.

(5) For each fuel gas stream to which one of the exemptions listed in § 60.107a(a)(4) applies, records of the specific exemption determined to apply for each stream. If the owner or operator applies for the exemption described in § 60.107a(a)(4)(iv), the owner or

operator must keep a copy of the application as well as the letter from the Administrator granting approval of the application.

Option 1 for paragraph (d):

(d) The owner or operator shall record and maintain records of discharges from any affected unit to the flare gas system. These records shall include:

(1) A description of the discharge;

(2) The date and time the discharge was first identified and the duration of the discharge;

(3) The measured or calculated cumulative quantity of gas discharged over the discharge duration. If the discharge duration exceeds 24 hours, record the discharge quantity for each 24 hour period. Engineering calculations are allowed.

(4) The measured or estimated concentration of H_2S and SO_2 of the stream discharged. Process knowledge can be used to make these estimates;

(5) The cumulative quantity of H_2S and SO_2 released into the atmosphere. For releases controlled by flares or other fuel gas combustion units, assume 99 percent conversion of H_2S to SO_2 and no reduction of SO_2.

(6) Results of any root-cause analysis conducted as required in § 60.103a(b).

Option 2 for paragraph (d):

(d) The owner or operator shall record and maintain records of discharges from any affected unit to the flare gas system. These records shall include:

(1) A description of the discharge;

(2) The date and time the discharge was first identified and the duration of the discharge;

(3) The measured or calculated cumulative quantity of gas discharged over the discharge duration. If the discharge duration exceeds 24 hours, record the discharge quantity for each 24 hour period. Engineering calculations are allowed.

(4) The measured or estimated concentration of H_2S and SO_2 of the stream discharged. Process knowledge can be used to make these estimates;

(5) The cumulative quantity of H_2S and SO_2 released into the atmosphere. For releases controlled by flares or other fuel gas combustion units, assume 99 percent conversion of H_2S to SO_2 and no reduction of SO_2.

Option 1 for paragraph (e):

(e) Each owner or operator subject to this subpart shall submit an excess emissions report for all periods of excess emissions according to the requirements of § 60.7(c) except that the report shall contain the information specified in paragraphs (e)(1) through (7) of this section.

(1) The date that the exceedance occurred;

(2) An explanation of the exceedance;

(3) Whether the exceedance was concurrent with a startup, shutdown, or malfunction of a process unit or control system; and

(4) A description of the corrective action taken, if any.

(5) A root-cause summary report that provides the information described in paragraphs (d)(1) through (4) of this section for all discharges for which a root-cause analysis was required by § 60.103a(b).

(6) For any periods for which monitoring data are not available, any changes made in operation of the emission control system during the period of data unavailability which could affect the ability of the system to meet the applicable emission limit. Operations of the control system and affected facility during periods of data unavailability are to be compared with operation of the control system and affected facility before and following the period of data unavailability; and

(7) A written statement, signed by a responsible official, certifying the accuracy and completeness of the information contained in the report.

Option 2 for paragraph (e):

(e) Each owner or operator subject to this subpart shall submit an excess emissions report for all periods of excess emissions according to the requirements of § 60.7(c) except that the report shall contain the information specified in paragraphs (e)(1) through (6) of this section.

(1) The date that the exceedance occurred;

(2) An explanation of the exceedance;

(3) Whether the exceedance was concurrent with a startup, shutdown, or malfunction of a process unit or control system;

(4) A description of the corrective action taken, if any.

(5) For any periods for which monitoring data are not available, any changes were made in operation of the emission control system during the period of data unavailability which could affect the ability of the system to meet the applicable emission limit. Operations of the control system and affected facility during periods of data unavailability are to be compared with operation of the control system and affected facility before and following the period of data unavailability;

(6) A written statement, signed by a responsible official, certifying the accuracy and completeness of the information contained in the report.

(f) The owner or operator of an affected facility shall submit the reports required under this subpart to the Administrator semiannually for each 6-month period. All semiannual reports shall be postmarked by the 30th day following the end of each 6-month period.

§ 60.109a Delegation of authority.

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as a State, local, or tribal agency. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to a State, local, or tribal agency within your State.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency, the approval authorities contained in paragraphs (b)(1) through (4) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of an alternative non-opacity emissions standard.

(2) Approval of a major change to test methods under 40 CFR 60.8(b). A ''major change to test method'' is defined in § 63.90.

(3) Approval of a major change to monitoring under 40 CFR 60.13(i). A ''major change to monitoring'' is defined in § 63.90.

(4) Approval of a major change to recordkeeping/reporting under 40 CFR 60.7(b) through (f). A ''major change to recordkeeping/reporting'' is defined in § 63.90.

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Part III

Department of Housing and Urban Development

24 CFR Parts 3280, 3282, and 3288
Manufactured Home Dispute Resolution Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3280, 3282, and 3288

[Docket No. FR–4813–F–03]

RIN 2502–AH98

Manufactured Home Dispute Resolution Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule establishes a federal manufactured home dispute resolution program and guidelines for the creation of state-administered dispute resolution programs. Under the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, HUD is required to establish a program for the timely resolution of disputes among manufacturers, retailers, and installers of manufactured homes regarding responsibility, and the issuance of appropriate orders, for the correction or repair of defects in manufactured homes that are reported during the 1-year period beginning on the date of installation.

DATES: *Effective Date:* February 8, 2008.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Associate Deputy Assistant Secretary for Regulatory Affairs and Manufactured Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9164, Washington, DC 20410, telephone (202) 708–6401 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8389.

SUPPLEMENTARY INFORMATION:

I. Background

Requirement for a Dispute Resolution Program

The National Manufactured Housing Construction and Safety Standards Act of 1974 (the Act) (42 U.S.C. 5401–5426) is intended, in part, to protect the quality, safety, durability, and affordability of manufactured homes. The Act was amended on December 27, 2000, by the Manufactured Housing Improvement Act of 2000, Public Law 106–569, to require HUD, among other things, to establish and implement a new manufactured home dispute resolution program for states that choose not to operate their own dispute resolution programs and to establish guidelines for the creation of state-administered dispute resolution programs.

Specifically, section 623(c)(12) of the Act (42 U.S.C. 5422(c)(12)) calls for the implementation of ''a dispute resolution program for the timely resolution of disputes between manufacturers, retailers, and installers of manufactured homes regarding responsibility, and for the issuance of appropriate orders, for the correction or repair of defects in manufactured homes that are reported during the 1-year period beginning on the date of installation.'' A state is not required to be a State Administrative Agency under HUD's manufactured home program to administer its own dispute resolution program. However, any state submitting a state plan to change its status from a nonparticipating state to a conditionally or fully approved State Administrative Agency after the effective date must provide for a dispute resolution program as part of its plan. Any state that was conditionally or fully approved before the effective date will not be required to include a dispute resolution program in its state plan, as long as the state maintains conditionally or fully approved status. Section 623(g)(2) of the Act requires HUD to implement a HUD Manufactured Home Dispute Resolution Program that will meet the above requirements in any state that has not established a program that complies with the Act. The state where the home is sited determines whether the HUD Manufactured Home Dispute Resolution Program or the state program applies.

Proposed Rule

On October 20, 2005, HUD published the Manufactured Home Dispute Resolution Program Proposed Rule (70 FR 61178) with a comment due date of December 19, 2005. HUD received responses from 20 commenters during the comment period. The commenters included two state agencies, several statewide and national manufactured housing associations, individuals, the Manufactured Housing Consensus Committee (MHCC), and one low-income housing organization.

II. Particular Areas of Interest to Commenters

This section of the preamble discusses particular areas of interest to commenters in addition to the discussions of public comments that appear throughout the preamble in conjunction with the description of the dispute resolution program adopted in this final rule.

General

As previously discussed, HUD was charged with implementing a system to resolve disputes among manufacturers, retailers, and installers. As several commenters noted, the proposed rule did not include a definition of ''installer.'' In response to this comment, this rule defines the term ''installer.'' Additional information regarding installers may be found in the Manufactured Home Installation Program Proposed Rule published June 14, 2006 (71 FR 34476).

Even though the Act does not require their participation in the HUD Dispute Resolution Program, HUD views the participation of homeowners as a crucial element to a viable program. Under Section 625 of the Act, HUD has the broad authority to involve homeowners in the dispute resolution program. Consistent with the proposed rule, this final rule gives homeowners the right to participate in the HUD Dispute Resolution Program by initiating the Mediation and Arbitration Process and by acting as observers of the process. This final rule does not recognize homeowners as parties.

HUD and the MHCC, in its meetings, recognized that it may have been possible under the proposed rule for the parties to argue that there is no dispute between them when in fact there is a defect that needs correction. In this final rule, HUD has ensured that the HUD Manufactured Home Dispute Resolution Program results in a proper determination of defect and culpability.

Funding

The MHCC and commenters have continued to recommend that parties that use and receive the benefits of the dispute resolution process pay at least a portion of the direct costs associated with the program. HUD agrees with this ''fees for service'' approach and is currently seeking statutory authority to assess users of the program a fee for costs associated with the program. Absent such authority, the Department will absorb the cost of running the program in HUD-administered states as general program expenses. It is anticipated that such fees for service would not be used to cover the purely administrative costs to HUD of implementing the program, but would include a filing fee to initiate a dispute resolution process, a fee to initiate arbitration, and the assessment of arbitration costs to a losing party. Other administrative costs of the program in HUD-administered states would be funded as general program expenses.

Several commenters stated it is unfair to consumers in states with their own dispute resolution programs both to pay for their state's program and subsidize the administration of HUD's program in states that are not offering programs. The Department is sensitive to this issue. However, because fees for service are not currently authorized, the financing of the HUD Manufactured Home Dispute Program will be absorbed as a general Office of Manufactured Housing program expense as described above.

As discussed in the proposed rule, HUD will use mediation and arbitration, two widely accepted methods of dispute resolution, as well as an alternative process that will allow manufacturers, retailers, and installers an opportunity to resolve disputes outside of the HUD Mediation and Arbitration Process established by this rule. The addition of an alternate process to the HUD Manufactured Home Dispute Resolution Program is based on comments received from the MHCC. In its comments to the proposed rule, the MHCC recommended that a term other than ''Commercial Opt-Out Option'' be used for the alternate process. In its place, HUD has substituted the term ''Alternative Process.''

The HUD Manufactured Home Dispute Resolution Program reflects the Executive Branch's emphasis on utilizing dispute resolution processes to resolve conflicts in a cost-effective and expeditious manner, and on fostering good government by giving parties the opportunity to resolve disputes amicably and creatively through alternative dispute resolution. It also dovetails with Congress' active promotion of alternative dispute resolution as set forth in the Administrative Dispute Resolution Act of 1996 (5 U.S.C. 571 *et seq.*).

There were several comments to the proposed rule about the relationship between the HUD Dispute Resolution Program and subpart I of 24 CFR part 3282 (Subpart I). This final dispute resolution rule is not inconsistent with other requirements of the Act. Specifically, nothing in this final rule absolves the manufacturer of its notification and correction responsibilities or other obligations under Subpart I. The dispute resolution program provides an additional homeowner protection mechanism and does not toll or replace the manufacturer's responsibilities under Subpart I. Furthermore, the HUD Dispute Resolution Program does not replace any manufacturer's warranty program.

III. Program Administration for the HUD-Administered Program

HUD interprets the language set forth in section 623(g)(3) of the Act (42 U.S.C. 5422(g)(3)) as permitting the use of contractors in the implementation of the dispute resolution program in HUD-administered states. HUD will likely use contractors as screening neutrals, mediators, and arbitrators, and they will be required to become familiar with HUD's manufactured home program. HUD acknowledges, however, that dispute resolution experts emphasize that a primary consideration for selecting neutrals, mediators, and arbitrators should be their background and experience in dispute resolution.

The HUD Manufactured Home Dispute Resolution Program is governed by the Administrative Dispute Resolution Act, 5 U.S.C. 571 *et seq.* The HUD Manufactured Home Dispute Resolution Program consists of a Mediation and Arbitration Process comprised of six parts, in addition to the Alternative Process. The six parts of the Mediation and Arbitration Process are: Initial Reporting of an Alleged Defect, Initiating Dispute Resolution, Intake and Screening, Mediation, Nonbinding Arbitration, and HUD Review. When the manufacturer, retailer, and installer agree that the homeowner is not responsible for causing the defect, they may elect to use the Alternative Process instead of the HUD Mediation and Arbitration Process. The parties would then engage in a neutral evaluation process of their own design. However, if the defect is not corrected or repaired, the homeowner has the right to invoke the HUD Mediation and Arbitration Process after 30 days have elapsed from the initiation of the Alternative Process.

IV. HUD Manufactured Home Dispute Resolution Program in HUD-Administered States

As noted previously, HUD will administer its dispute resolution program only in states that choose not to operate their own dispute resolution programs. The following discussion of the HUD-administered program will not apply in any state that provides satisfactory assurances that it has implemented its own qualifying dispute resolution program, and that certifies its program to HUD, as described in Section VI of this preamble.

A. Initial Reporting of an Alleged Defect

Under the Act, alleged defects that can be referred to the dispute resolution program must be reported within the first year after the date of home installation. It is only alleged defects reported in the first year after the first installation that are covered under the HUD Manufactured Home Dispute Resolution Program. As used in HUD's Manufactured Home Dispute Resolution Program and this new part 3288, the term ''defect'' is defined to parallel its definition in the Act. Accordingly, the rule also makes clear that for the HUD Manufactured Home Dispute Resolution Program, the term ''defect'' includes each defect in the installation, construction, or safety of the home. Persons familiar with HUD's long-established program for manufactured home construction and safety standards are likely to be accustomed to using the term ''defect'' in a narrower way. In regulations implementing the historical aspects of HUD's manufactured home program, the term has been defined to encompass only construction and safety standards, and to exclude matters that involve significant health and safety issues. See the definition in § 3282.7(j). For purposes of the HUD Manufactured Home Dispute Resolution Program, however, a defect is any problem in the performance, construction, components, or material of the home that renders the home or any part of it not fit for the ordinary use for which it was intended, including, but not limited to, a defect in the construction, safety, or installation of the home. The broader use of the term as it applies to rights and responsibilities established under this new part 3288, is distinguished from the term's historical use in part 3282.

As previously discussed, alleged defects must be reported within 1 year of the date of home installation to be eligible for the HUD Manufactured Home Dispute Resolution Program. The Department strongly encourages the parties and homeowners to seek to resolve disputes directly with the party or parties that they believe to be responsible for causing the alleged defect before invoking the HUD Manufactured Home Dispute Resolution Program. Nevertheless, any of the parties, and the homeowners, must report the existence of possible defects within the 1-year period in order to preserve the option of initiating the HUD Manufactured Home Dispute Resolution Program. The report may be made to the Department, any of the parties, or a State Administrative Agency. To be more flexible, the Department is permitting reports to be made to State Administrative Agencies in addition to the Department and the parties. The Department recommends that reports of alleged defects be made in writing, including, but not limited to,

e-mail, written letter, certified mail, or fax. Reports are also permitted by telephone. A report of an alleged defect must, at a minimum, include a description of the alleged defect, the name of the homeowner, and the address of the home. Parties alleging defects are encouraged to send any written correspondence via certified mail, fax, e-mail or other method, so that there will be proof of date of delivery. After reporting an alleged defect, the reporting party or homeowner is encouraged to allow time for a satisfactory response before initiating the HUD Manufactured Home Dispute Resolution Program.

B. Initiating the Process

Any party or a homeowner may initiate the HUD Mediation and Arbitration Process in a HUD-administered state by submitting a request for dispute resolution to the dispute resolution provider or by calling a toll-free number.

C. Intake and Screening

When the request for dispute resolution has been received by the dispute resolution provider, the screening neutral will review the sufficiency of the information provided with the request. Although there is no specified time period established for the screening neutral to review the request for dispute resolution, as recommended by the MHCC and other commenters, it is HUD's intention to perform this task in a timely manner. If a defect is properly alleged and timely reported, notice of the request will be forwarded to the manufacturer, retailer, and installer by the screening neutral to the extent the appropriate parties can be identified based on the information in the request. If the screening neutral determines there is sufficient documentation of an alleged defect presenting an unreasonable risk of injury or death, a copy of the request will be sent to HUD. If a request is lacking any of the required information, the screening neutral will contact the requester or the parties to supplement the initial request. If information necessary to qualify the matter for the HUD Manufactured Home Dispute Resolution Program is not received within a reasonable time established by the screening neutral, the request for dispute resolution will be considered withdrawn. The Department anticipates establishing additional specific time periods for intake and screening as part of the contracting process with the third-party dispute resolution provider and publicizing these time periods on HUD's Web site *http://www.hud.gov.*

D. Mandatory Mediation

The second stage in the process is mandatory mediation. The dispute resolution provider will select a mediator, who will be a different individual from the screening neutral used during the intake and screening process. The mediator will mediate the dispute and attempt to facilitate a settlement. The parties will be given 30 days from the commencement of the mediation to reach a settlement. For cases involving defects presenting an unreasonable risk of injury, death, or significant loss or damage to valuable personal property, the parties will have a maximum of 10 days from the commencement of the mediation to reach an agreement. The dispute resolution provider will notify the parties and the homeowner in writing of the date of the commencement of the mediation. Sample agreements will be made available to the parties as drafting guidance. Upon the parties reaching and signing an agreement, the mediator will forward copies of any settlements reached to the parties, the homeowner, and HUD. Except for the report of an alleged defect, any request for dispute resolution, and any written settlement agreement, all other documents and communications provided in confidence and used in the mediation will be confidential, in accordance with the Administrative Dispute Resolution Act of 1996 (5 U.S.C. 571 *et seq.*). Once the settlement agreement is signed, the corrective repairs must be completed within 30 days, unless a longer period is agreed to by the homeowner and the parties.

E. Nonbinding Arbitration

The third stage that may be invoked is nonbinding arbitration. If the parties fail to reach a settlement during mediation, a party or the homeowner may, within 15 days of the expiration of the time allowed for reaching a settlement, request nonbinding arbitration. The party or the homeowner requesting nonbinding arbitration will be required to submit a written request for arbitration to the dispute resolution provider. The dispute resolution provider will determine how an arbitrator will be selected for each case. The parties may request an in-person hearing, to be held at the discretion of the arbitrator, after considering factors such as cost. If such a request is not made by all parties within 5 days of the dispute resolution provider's receipt of the request for arbitration, the arbitrator may conduct either a record review or a telephonic hearing. The dispute resolution provider will issue a notice to the parties and the homeowner setting forth the date, place, and time the arbitration is to be held. If a party chooses not to participate in the arbitration, the process will continue without input from that party. The arbitrator will have the authority to issue requests for documentation and information necessary to complete the record, conduct on-site inspections, dismiss frivolous allegations, and set hearing dates and deadlines. The arbitrator will be required to complete the arbitration within 21 days of receipt of the request for arbitration, unless good cause is found by HUD. After conducting a hearing, the arbitrator will provide the parties and HUD with a written nonbinding recommendation as to who the responsible party or parties are and what actions should be taken. Several commenters, including the MHCC, proposed that the contents of the recommendation be made available to HUD and the parties simultaneously. The Department agrees and has restructured the Mediation and Arbitration Process accordingly. Several commenters, including the MHCC, stated that the parties should have the ability to enter into binding agreements of their choosing at any point in the process. Taking this into consideration, HUD has modified the procedures set out in the proposed rule. Under the final rule, at any time before HUD issues a final order, the parties may submit an offer of settlement to HUD that HUD may, at its discretion, incorporate into the order.

F. HUD Review

The final stage of the process is HUD Review. After the arbitrator makes a recommendation, he or she will forward it to HUD. HUD will review the arbitrator's recommendation, the record, and any settlement offers. HUD will accept, modify, or reject the recommendation. Several commenters, including the MHCC, were opposed to HUD having the option to accept, modify, or reject the arbitrator's recommendation. HUD considers it appropriate for HUD to issue final enforceable orders and that this inherent governmental function cannot be delegated to a private party. It is HUD's obligation to issue an order that under the Administrative Procedure Act can withstand the arbitrary and capricious standard. When a defect is determined to be present, HUD will issue an appropriate order that assigns responsibility for correction of the defect. In the order for correction, HUD will include a date by which the correction of all defects must be completed, taking into consideration the

seriousness of the defect. A party's failure to comply with an order of HUD will be considered a violation of section 610(a)(5) of the Act (42 U.S.C. 5409(a)(5)).

The responsible party or parties will be required to pay for or provide any repair of the home. HUD may apportion the costs for correction and repair if culpability rests with more than one party.

G. Alternative Process When Homeowners Are Not Responsible for the Defect

Manufacturers, retailers, and installers who have been unable to resolve a dispute involving a defect among themselves and who certify that the homeowner is not responsible for the defect will have the option of electing to use an Alternative Process under the HUD Manufactured Home Dispute Resolution Program. The Alternative Process permits the parties to seek neutral evaluation outside of the procedures established by the HUD Mediation and Arbitration Process. To participate in the Alternative Process, at least one of the parties must submit a written notification to the dispute resolution provider after it has reported an alleged defect or has been informed that an alleged defect has been reported to another party. Parties must elect to use the Alternative Process no more than 7 days after notification of a request for dispute resolution has been delivered by overnight delivery, or commercial carrier, or by fax, to the screening neutral. Parties who elect to use the Alternative Process must agree to engage a neutral of their own selection. The selected neutral will evaluate the dispute and make an assignment of responsibility for correction and repair. The actual process followed will be designed and agreed to by the parties; there are no particular procedural requirements, such as witnesses or formal evidence. The parties may elect to memorialize the assignment of responsibility in writing and should agree to act upon the neutral's assignment of responsibility for correction and repair. The participants must agree to allow the homeowner or the homeowner's representative to be present at any meetings and to be informed of the outcome. The parties may inform the Department of the outcome. At any time after 30 days of the Alternative Process notification, any party or the homeowner may invoke the HUD Mediation and Arbitration Process and proceed to mediation by following the established procedures.

V. Informing Homeowners About Manufactured Home Dispute Resolution

One key component of the HUD Manufactured Home Dispute Resolution Program is notifying homeowners about the availability of dispute resolution in HUD-administered states through the HUD Manufactured Home Dispute Resolution Program, and in all other states through state dispute resolution programs. Homeowners will be advised of the availability of the HUD Manufactured Home Dispute Resolution Program from retailers when purchasing a manufactured home. The rule requires retailers to provide each homeowner with a standard notice at the time of signing of a contract for the sale or lease of a manufactured home. This is consistent with numerous comments received from the MHCC and others opposed to the posting of a notice in each home, but favoring a standard notice to be provided at or before the signing of the sales contract.

The Department will notify the public about the HUD Manufactured Home Dispute Resolution Program through the Consumer Manual that 42 U.S.C. 5416 and 24 CFR 3282.207 currently require be provided with each manufactured home. The manufacturer will be required to include in the Consumer Manual the specific language that is set out in the revised § 3282.207 in this rule. The language gives detailed information about the HUD program.

VI. State Dispute Resolution Programs in Non-HUD-Administered States

The HUD Manufactured Home Dispute Resolution Program will not be implemented in states that are certified by HUD and have dispute resolution programs that comply with the minimum requirements set out in these regulations. These states will administer their own dispute resolution programs. A state dispute resolution program will be required to meet criteria listed in a certification form. However, the final rule does not specify how the criteria are to be met. Comments from the MHCC and others strongly supported redefining HUD's proposed state requirements for certification. Those commenters were in favor of having the state requirements parallel the statutory requirements. Additionally, those commenters noted that some states have already implemented programs that closely model the statutory requirements. The proposed rule included six requirements for full certification and five for conditional approval. In response to the comments, HUD has reduced the minimum requirements for full certification to four, and to three for conditional approval. The proposed rule also required that states allow homeowners to initiate complaints. Comments from the MHCC and others recommended that this requirement be removed. HUD has changed the certification form to allow states flexibility when operating their own programs and to give them the ability to design programs that closely model the statutory requirements. The minimum requirements for certification are set forth in Part II of the Dispute Resolution Certification attached as an appendix, and include provisions for: (1) The timely resolution of disputes regarding responsibility for correction and repair of defects in manufactured homes involving manufacturers, retailers, or installers; (2) provisions for issuance of appropriate orders for correction and repairs of defects in the homes; (3) a coverage period for disputes involving defects that are reported within a minimum of 1 year from the date beginning on the date of first installation; and (4) adequate funding and personnel. Any state that certifies that its program meets these four minimum requirements will be accepted and permitted to implement its own program. A state that meets three of the four minimum requirements under § 3288.205(a)(1) through (4) will be conditionally approved by HUD.

HUD recognizes that some states may have a different definition of ''defect'' or use a different threshold for its program than the one set forth in these regulations for the HUD program. For purposes of state certification, this rule provides for state approval if the threshold for the program is functionally equivalent to the federal definition of ''defect.''

VII. Role of the Manufactured Housing Consensus Committee in Future Revisions of This Regulation

Several commenters expressed a desire to have the Department work closely with the MHCC in future rulemaking for the dispute resolution program. Such involvement is not specifically provided for in the Act. However, HUD provides in this rule for the MHCC's input prior to publication of any new dispute resolution rulemaking initiated by HUD. This rule also provides that the MHCC may initiate its own recommendations for HUD regarding dispute resolution regulations, and that HUD will explain to the MHCC any modification or rejection by HUD of the MHCC recommendations.

VIII. Conforming Amendments

As stated in the October 20, 2005, proposed rule, since HUD is using the term ''manufactured home'' in this rule, it is taking this opportunity to correct the definition in 24 CFR 3280.2 by adding the reference to self-propelled vehicles found in section 603(6) of the Act (42 U.S.C. 5402(6)). HUD is also clarifying the methodology for the calculation of square footage that is included in the current regulatory definition. This action will result in consistent usage of the term for all parts of the manufactured home program. The definition in this final rule is unchanged from the definition that appeared in the proposed rule.

IX. Changes to the Proposed Rule in This Final Rule

The following changes to the October 20, 2005, proposed rule are made by this final rule, consistent with the discussion of public comments in this preamble and as further explained below:

1. To provide consistency in this rule with the terminology used in other HUD regulations, the term ''manufactured home'' rather than ''manufactured housing'' is used, and references to ''HUD'' have been substituted for references to ''the Secretary.''

2. While this final rule gives homeowners the right to participate in the HUD Dispute Resolution Program by initiating the Mediation and Arbitration Process and by acting as observers of the process, it does not recognize homeowners as parties.

3. A statement has been added to the dispute resolution language required in the consumer manual by § 3280.2(e) that the HUD Dispute Resolution Program does not replace any manufacturer's warranty program.

4. A definition of the term ''installer'' has been added to the list of definitions at § 3288.3.

5. The rule at § 3288.5 requires retailers to provide each homeowner with a standard notice at the time of signing of a contract for the sale or lease of a manufactured home, rather than the posting of a notice in each home.

6. The rule at § 3288.15(b) now permits reports of defects to be made to State Administrative Agencies in addition to the Department and the parties.

7. A provision is added at § 3288.30(c) that denial of a dispute by all of the parties that there is a dispute does not preclude the dispute resolution process from going forward to mediation. A provision is also added at § 3288.35(c) that, during mediation, denial of a dispute by all parties without acceptance of responsibility will result in the mediator referring the matter to arbitration for determination of the defect and responsibility for the defect. A similar provision is added at § 3288.40(d), that if the parties deny a dispute exists and the arbitrator determines there is a defect, the arbitrator will make a determination of responsibility for the defect. These additions protect the homeowner's right to have the existence of, and responsibility for, any alleged defect determined through the HUD Manufactured Home Dispute Resolution Program in HUD-administered states in the event existence of a dispute is denied by all of the parties without determination of the defect and of responsibility for the defect.

8. A procedure cited in the preamble of the proposed rule (at 70 FR 61180), that if the screening neutral determines there is sufficient documentation of an alleged defect presenting an unreasonable risk of injury or death, a copy of the request will be sent to HUD, is explicitly added to this rule at § 3288.30(d). Similarly, a procedure cited in the preamble of the proposed rule (at 70 FR 61180), to make sample agreements available to the mediation parties as drafting guidance, is included in the final rule at § 3288.35(d)(2).

9. Section 3288.40(c) makes explicit the arbitrator's authority to make proposed findings of the presence of a defect and culpability.

10. An extension of the 21-day time period by which the arbitrator is required to complete the arbitration is now permitted for good cause under § 3288.40(h).

11. Under § 3288.40(h), the contents of the arbitrator's recommendation are to be made available to HUD and the parties simultaneously, rather than only to HUD as was stated in the proposed rule.

12. The final rule, at § 3288.40(i), allows the parties to submit an offer of settlement to HUD at any time before a final order is issued that HUD may, at HUD's discretion, incorporate into the order.

13. For the alternate dispute resolution procedure of subpart C, the term ''Alternative Process'' has been substituted for ''Commercial Opt-Out Option.''

14. In § 3288.205(a), the final rule has reduced the minimum requirements for full certification from six to four, and from five to three for conditional approval. The proposed requirements dealing with homeowner initiation of the process and conflict of interest have been removed.

15. A new subpart E has been added to address the role of the MHCC in Dispute Resolution Program rulemaking procedures.

X. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0562. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule, which implements a statutory mandate to establish a program for the resolution of a narrow category of disputes, will not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured

housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.

HUD has conducted a labor and travel cost impact analysis for this rule. The cost analysis determines the cost difference between a typical dispute resolution process (the process) involving manufactured housing and the civil litigation costs between one or more parties involved in a manufactured housing dispute. A typical dispute resolution method is a two-step process: mediation and, for a small percent of unsuccessful mediation cases, arbitration.

The potential cost impact of the mediation step for manufacturers would be approximately $1,550 per dispute, $237 for retailers, and $177 for installers. HUD anticipates that it may be administering the dispute resolution process in 26 states where approximately 37,800 homes are expected to be installed annually. Currently, 45 manufacturing corporate entities ship into those states, while 1,719 retailers sell homes and approximately 5,000 individuals or businesses install manufactured homes in those states.

Based on the preceding data, HUD anticipates taking action on 1,890 complaints under the federal manufactured home dispute resolution process during an average year. Presuming that the average cost of this action ($1,964) will be incorporated into the home price or related service fees of every installed home in the 26 states (37,800), the cost impact to each installed home would be $98.

If all 1,890 cases were settled through litigation rather than dispute resolution, the cost of litigating 1,890 cases would total $18.9 million. Averaged across 37,800 homes, the average cost of litigation incorporated into each home price would be $500 per home, compared to the average cost of dispute resolution of $98 per home. Dispute resolution would, therefore, provide an average savings of $402 per home.

Several commenters claimed that the number of complaints was not properly substantiated and was unrealistically low. However, these numbers were developed by carefully sampling 12 current state dispute resolution programs. Furthermore, the Small Business Administration has accepted these estimates while none of the commenters supplied any numbers of their own. Some commenters also complained that the cost estimate provided by HUD runs only through the mediation phase. While this is true, HUD's research, which was again based on current state program experience, determined that the number of disputes requiring arbitration would be minimal.

The small increase in total cost associated with this final rule would not impose a significant burden for a small business. The rule would regulate establishments primarily engaged in the production of manufactured homes (NAICS 32991) and the sale of manufactured homes (NAICS 453930). In addition, manufactured home set-up and tie-down establishments (installers) would be included within the definition of all other special trade contractors (NAICS 23599). Of the 222 firms included under the NAICS 32991 definition, 198 are small manufacturers, which fall below the small business threshold of 500 employees. There are 10,691 retailers included under NAICS 453930; all of the firms fall below the $11 million annual income rate. Of the 31,320 firms included under NAICS 23599 definitions, only 53 firms exceed the small business threshold of 500 employees and none of these is primarily a manufactured home set-up and tie-down establishment. The rule, therefore, would affect a substantial number of small entities. However, the home manufacturers, retailers, and installers would be subject only to an associated labor cost and travel expense necessary to attend the mediation process and labor costs to participate in the expected record review and possible telephonic or face-to-face meeting for arbitration. Moreover, because the great majority of manufacturers, retailers, and installers are considered small entities, there would not be any disproportionate impact on them. Therefore, although this rule would affect a substantial number of small entities, it would not have a significant economic impact on them. In addition, the speedier and more certain resolution of disputes should help the affected businesses.

Accordingly, the undersigned certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order. State and local governments are not required to establish dispute resolution programs, but the rule provides a mechanism to recognize state programs that meet the statutory elements of a dispute resolution program to operate in lieu of the federal manufactured home dispute resolution program.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Manufactured Housing is 14.171.

List of Subjects

24 CFR Part 3280

Housing standards, Incorporation by reference, Manufactured homes.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements, Warranties.

24 CFR Part 3288

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Manufactured homes, Reporting and recordkeeping requirements.

■ Accordingly, HUD amends parts 3280 and 3282 and adds a new part 3288 in chapter XX of title 24 of the Code of Federal Regulations to read as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

■ 1. The authority citation for part 3280 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, and 5424.

■ 2. In § 3280.2, the definition of ''manufactured home'' is revised to read as follows:

§ 3280.2 Definitions.

* * * * *

Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or which when erected on-site is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure. This term includes all structures that meet the above requirements except the size requirements and with respect to which the manufacturer voluntarily files a certification pursuant to § 3282.13 of this chapter and complies with the construction and safety standards set forth in this part 3280. The term does not include any self-propelled recreational vehicle. Calculations used to determine the number of square feet in a structure will include the total of square feet for each transportable section comprising the completed structure and will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site. These dimensions will include all expandable rooms, cabinets, and other projections containing interior space, but do not include bay windows. Nothing in this definition should be interpreted to mean that a manufactured home necessarily meets the requirements of HUD's Minimum Property Standards (HUD Handbook 4900.1) or that it is automatically eligible for financing under 12 U.S.C. 1709(b).

* * * * *

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

■ 3. The authority citation for part 3282 is revised to read as follows:

Authority: 28 U.S.C. 2461 note; 42 U.S.C. 3535(d) and 5424.

■ 4. In § 3282.207, redesignate paragraph (e) as paragraph (f), add a new paragraph (e), and revise the second sentence of paragraph (f) as redesignated, to read as follows:

§ 3282.207 Manufactured home consumer manual requirements.

* * * * *

(e) *Dispute resolution information.* (1) The manufacturer must include the following language under a heading of ''Dispute Resolution Process'' in the consumer manual:

Many states have a consumer assistance or dispute resolution program that homeowners may use to resolve problems with manufacturers, retailers, or installers concerning defects in their manufactured homes that render part of the home unfit for its intended use. Such state programs may include a process to resolve a dispute among a manufacturer, a retailer, and an installer about who will correct the defect. In states where there is not a dispute resolution program that meets the federal requirements, the HUD Manufactured Home Dispute Resolution Program will operate. These are ''HUD-administered states.'' The HUD Manufactured Home Dispute Resolution Program is not for cosmetic or minor problems in the home. You may contact the HUD Manufactured Housing Program Office at (202) 708–6423 or (800) 927–2891, or visit the HUD website at *www.hud.gov* to determine whether your state has a state program or whether you should use the HUD Manufactured Home Dispute Resolution Program. Contact information for state programs is also available on the HUD website. If your state has a state program, please contact the state for information about the program, how it operates, and what steps to take to request dispute resolution. When there is no state dispute resolution program, a homeowner may use the HUD Manufactured Home Dispute Resolution Program to resolve disputes among the manufacturer, retailer, and installer about responsibility for the correction or repair of defects in the manufactured home that were reported during the 1-year period starting on the date of installation. Even after the 1-year period, manufacturers have continuing responsibility to review certain problems that affect the intended use of the manufactured home or its parts, but for which correction may no longer be required under federal law.

(2) The manufacturer must include the following language under a heading of ''Additional Information '' HUD Manufactured Home Dispute Resolution Program'' in the consumer manual:

The steps and information outlined below apply only to the HUD Manufactured Home Dispute Resolution Program that operates in HUD-administered states, as described under the heading ''Dispute Resolution Information'' in this manual. Under the HUD Manufactured Home Dispute Resolution Program, homeowners must report defects to the manufacturer, retailer, installer, a State Administrative Agency, or HUD within 1 year after the date of the first installation. Homeowners are encouraged to report defects in writing, including, but not limited to, email, written letter, certified mail, or fax, but they may also make a report by telephone. To demonstrate that the report was made within 1 year after the date of installation, homeowners should report defects in a manner that will create a dated record of the report: for example, by certified mail, by fax, or by email. When making a report by telephone, homeowners are encouraged to make a note of the phone call, including names of conversants, date, and time. No particular format is required to submit a report of an alleged defect, but any such report should at a minimum include a description of the alleged defect, the name of the homeowner, and the address of the home.

Homeowners are encouraged to send reports of an alleged defect first to the manufacturer, retailer, or installer of the manufactured home, or a State Administrative Agency. Reports of alleged defects may also be sent to HUD at: HUD, Office of Regulatory Affairs and Manufactured Housing, Attn: Dispute Resolution, 451 Seventh Street, SW., Washington, DC 20410–8000; faxed to (202) 708–4213; e-mailed to *mhs@hud.gov,* or reported telephonically at (202) 708–6423 or (800) 927–2891.

If, after taking the steps outlined above, the homeowner does not receive a satisfactory response from the manufacturer, retailer, or installer, the homeowner may file a dispute resolution request with the dispute resolution provider in writing, or by making a request by phone. No particular format is required to make a request for dispute resolution, but the request should generally include the following information:

(1) The name, address, and contact information of the homeowner;

(2) The name and contact information of the manufacturer, retailer, and installer of the manufactured home;

(3) The date or dates the report of the alleged defect was made;

(4) Identification of the entities or persons to whom each report of the alleged defect was made and the method that was used to make the report;

(5) The date of installation of the manufactured home affected by the alleged defect; and

(6) A description of the alleged defect.

Information about the dispute resolution provider and how to make a request for dispute resolution is available at *http://www.hud.gov* or by contacting the Office of Manufactured Housing Programs at (202) 708–6423 or (800) 927–2891.

A screening agent will review the request and, as appropriate, forward the request to the manufacturer, retailer, installer, and mediator. The mediator will mediate the dispute and attempt to facilitate a settlement. The parties to a settlement include, as applicable, the manufacturer, retailer, and installer. If the parties are unable to reach a settlement that results in correction or repair of the alleged defect, any party or the homeowner may request nonbinding arbitration. Should any party refuse to participate, the arbitration shall proceed without that party's input. Once the arbitrator makes a non-binding recommendation, the arbitrator will forward it to the parties and HUD. HUD will have the option of adopting, modifying, or rejecting the recommendation when issuing an order requiring the responsible party or parties to make any corrections or repairs in the home. At any time before HUD issues a final order, the parties may submit an offer of settlement

to HUD that may, at HUD's discretion, be incorporated into the order.

In circumstances where the parties agree that one or more of them, and not the homeowner, is responsible for the alleged defect, the parties will have the opportunity to resolve the dispute outside of the HUD Mediation and Arbitration process by using the Alternative Process. Homeowners will maintain the right to be informed in writing of the outcome when the Alternative Process is used, within 5 days of the outcome. At any time after 30 days of the Alternative Process notification, any participant or the homeowner may invoke the HUD Manufactured Home Dispute Resolution Program and proceed to mediation.

The HUD Manufactured Home Dispute Resolution Program is not a warranty program and does not replace the manufacturer's or any other warranty program.

(f) * * * A manual substantially complies with the guidelines if it includes the language in paragraph (e) of this section and presents current material on each of the subjects covered in the guidelines in sufficient detail to inform consumers about the operation, maintenance, and repair of manufactured homes.* * *

■ 5. In chapter XX, add a new part 3288, to read as follows:

PART 3288—MANUFACTURED HOME DISPUTE RESOLUTION PROGRAM

Subpart A—General

Sec.
3288.1 Purpose and scope.
3288.3 Definitions.
3288.5 Retailer notification at sale.

Subpart B—HUD Manufactured Home Dispute Resolution Program in HUD-Administered States

3288.10 Applicability.
3288.15 Eligibility for dispute resolution.
3288.20 Reporting a defect.
3288.25 Initiation of dispute resolution.
3288.30 Screening of dispute resolution request.
3288.33 Notice of dispute resolution.
3288.35 Mediation.
3288.40 Nonbinding arbitration.
3288.45 HUD review and order.

Subpart C—Alternative Process in HUD-Administered States

3288.100 Scope and applicability.
3288.105 Time when Alternative Process is available.
3288.110 Alternative Process agreements.

Subpart D—State Dispute Resolution Programs in Non-HUD-Administered States

3288.200 Applicability.
3288.205 Minimum requirements.
3288.210 Acceptance and recertification process.
3288.215 Effect on other manufactured home program requirements.

Subpart E—Dispute Resolution Program Rulemaking Procedures

3288.300 Applicability.
3288.305 Consultation with the Manufactured Housing Consensus Committee.

Authority: 42 U.S.C. 3535(d), 5422 and 5424.

Subpart A—General

§ 3288.1 Purpose and scope.

(a) *Purpose.* The Act is intended, in part, to protect the quality, safety, durability, and affordability of manufactured homes. Section 623(c)(12) of the Act (42 U.S.C. 5422 (c)(12)) requires the implementation of ''a dispute resolution program for the timely resolution of disputes between manufacturers, retailers, and installers of manufactured homes regarding responsibility, and for the issuance of appropriate orders, for the correction or repair of defects in manufactured homes that are reported during the 1-year period beginning on the date of installation.'' The purpose of this part is to provide a dispute resolution program for the timely resolution of disputes among manufacturers, retailers, and installers regarding the responsibility for correction or repair of defects reported by the homeowner or others and reported in the 1-year period after the first installation of the manufactured home.

(b) *Scope*— (1) *Applicability.* In carrying out this purpose, it is presumed that if a manufactured home contains an alleged defect that is reported in the first year after installation and was not caused by the homeowner, then the manufacturer, retailer, or installer is responsible for the alleged defect and the dispute resolution process recognized in this part is an appropriate means for resolving disputes about responsibility for correction and repair of the alleged defect. For purposes of the dispute resolution process recognized in this part, only alleged defects reported in the first year after the first installation are covered by the process. The state where the home is sited determines whether the HUD Manufactured Home Dispute Resolution Program or a state program applies. Subpart A of this part establishes general provisions applicable to HUD's implementation of a dispute resolution program as required by the Act. Subpart B of this part establishes the HUD Manufactured Home Dispute Resolution Program that HUD will administer in any state that does not establish a program that complies with the Act and been accepted by HUD as provided in subpart D of this part. Subpart C of this part provides an Alternative Process for manufacturers, retailers, and installers who agree that a homeowner is not responsible for the alleged defect to resolve their disputes about responsibility for correction or repair outside of the HUD Mediation and Arbitration Process under subpart B. Subpart D of this part establishes the minimum requirements that must be met by a state applying to implement its own dispute resolution program that complies with the Act, and the procedure for determining whether the requirements for complying have been met. Subpart E of this part establishes special rulemaking procedures that apply to the issuance of new regulations that implement the dispute resolution requirements set forth in section 623 of the Act (42 U.S.C. 5422).

(2) *Warranties not affected.* This part is not a warranty program and the requirements established in this part do not replace the manufacturer's or any other warranty program. Such warranty program may have its own requirements.

§ 3288.3 Definitions.

The following definitions apply in this part:

Act means the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401–5426.

Appropriate order means an order issued by HUD or an order that is enforceable under state law.

Date of installation means the date all utilities are connected and the manufactured home is ready for occupancy as established, if applicable, by a certificate of occupancy, except as follows: if the manufactured home has not been sold to the first person purchasing the home in good faith for purposes other than resale by the date the home is ready for occupancy, the date of installation is the date of closing under the purchase agreement or sales contract for the manufactured home.

Day means a calendar day.

Defect means any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part of the home not fit for the ordinary use for which it was intended, including, but not limited to, a defect in the construction, safety, or installation of the home. For purposes of state certification under § 3288.205, HUD will find it acceptable if the threshold for the state's program is functionally equivalent to this definition.

Dispute resolution provider means a person or entity providing dispute resolution services for HUD.

Homeowner means a person who purchased or leased the manufactured home in good faith for purposes other than resale.

HUD means the U.S. Department of Housing and Urban Development.

Installer means the person who is retained to engage in, or who engages in, the business of directing, supervising, controlling, or correcting the initial installation of a manufactured home.

Manufactured home has the same meaning as the term ''manufactured home'' as defined in 24 CFR 3280.2.

Manufactured Housing Consensus Committee or MHCC means the consensus committee established pursuant to section 604(a)(3) of the Act, 42 U.S.C. 5403(a)(3).

Party or parties means, individually or collectively, the manufacturer, retailer, or installer of a manufactured home in which a defect has been reported in accordance with § 3288.20.

State Administrative Agency means an agency of a state that has been approved or conditionally approved to carry out the state plan for enforcement of the standards pursuant to section 623 of the Act, 42 U.S.C. 5422.

Timely reporting means the reporting of an alleged defect within 1 year after the date of installation of a manufactured home in accordance with § 3288.20.

Timely resolution means the resolution of disputes among manufacturers, retailers, and installers within 120 days of the time a request for dispute resolution is made, except that if the defect presents an unreasonable risk of injury, death, or significant loss or damage to valuable personal property, the resolution must be within 60 days of the time a request for dispute resolution is made.

§ 3288.5 Retailer notification at sale.

Retailer notice at the time of signing. At the time of signing a contract for sale or lease for a manufactured home, the retailer must provide the purchaser with a retailer notice. This notice may be in a separate document from the sales contract or may be incorporated clearly in a separate section on consumer dispute resolution information at the top of the sales contract. The notice must include the following language:

The U.S. Department of Housing and Urban Development (HUD) Manufactured Home Dispute Resolution Program is available to resolve disputes among manufacturers, retailers, or installers concerning defects in manufactured homes. Many states also have a consumer assistance or dispute resolution program. For additional information about these programs, see sections titled ''Dispute Resolution Process'' and ''Additional Information—HUD Manufactured Home Dispute Resolution Program'' in the Consumer Manual required to be provided to the purchaser. These programs are not warranty programs and do not replace the manufacturer's, or any other person's, warranty program.

Subpart B—HUD Manufactured Home Dispute Resolution Program in HUD-Administered States

§ 3288.10 Applicability.

The requirements of the HUD Manufactured Home Dispute Resolution Program established in this subpart B apply in each state that does not establish a state dispute resolution program that complies with the Act and has been accepted by HUD as provided in subpart D of this part.

§ 3288.15 Eligibility for dispute resolution.

(a) *Initiation of actions.* Manufacturers, retailers, and installers of manufactured homes are eligible to initiate and participate in the HUD Manufactured Home Dispute Resolution Program. Homeowners may initiate action under, and be observers to, the HUD Manufactured Home Dispute Resolution Program.

(b) *Eligible disputes.* Only disputes concerning alleged defects that have been reported to the manufacturer, retailer, installer, HUD, or a State Administrative Agency within 1 year after the date of the first installation of the manufactured home are eligible for resolution through the HUD Manufactured Home Dispute Resolution Program. The eligible dispute includes the defect alleged in a timely report and any related issues.

§ 3288.20 Reporting a defect.

(a) *Making a report.* To preserve the right to request dispute resolution through HUD, alleged defects must be reported to the manufacturer, retailer, installer, HUD, or a State Administrative Agency. An alleged defect may be reported by a homeowner, manufacturer, retailer, or installer.

(b) *Form of report.* It is recommended that alleged defects be reported in writing, including, but not limited to, e-mail, written letter, certified mail, or fax. The existence of an alleged defect may also be reported by telephone.

(c) *Content of report.* No particular form or format is required to report an alleged defect, but any such report must, at a minimum, include a description of the alleged defect, the name of homeowner, and the address of the home.

(d) *Record of report*—(1) *To evidence timeliness.* To establish timely reporting, the report of an alleged defect that is made to the manufacturer, retailer, installer, or a State Administrative Agency of the manufactured home should be done in a manner that will create a dated record of the report that demonstrates that the report was made within 1 year after the date of installation; for example, by certified mail, fax, or email. Persons who report an alleged defect by telephone should make a contemporaneous note of the telephone call, including date, time, the name of the person who received the report, the name of the business contacted, and the telephone number called. If the matter goes to arbitration, the arbitrator and HUD will review whether there is sufficient evidence to believe the report was made on a timely basis.

(2) *Obligation to retain.* Each report of a defect, including logs of telephonic complaints, received by a manufacturer, retailer, a State Administrative Agency or installer, must be maintained for 3 years from the date of receipt.

(e) *Reports made to a State Administrative Agency.* Reports of defects in the manufactured home that are made in the first year after its installation can be sent to the appropriate State Administrative Agency. Contact information about a State Administrative Agency is available at *http://www.hud.gov.* Contact the appropriate State Administrative Agency to determine the method for making the report.

(f) *Reports made to HUD.* Reports of alleged defects in the manufactured home that are made in the first year after its installation can be sent to HUD. The report to HUD may be made using any of the following methods:

(1) In writing at: HUD, Office of Regulatory Affairs and Manufactured Housing, Attn: Dispute Resolution, 451 Seventh Street, SW., Washington, DC 20410–8000;

(2) By telephone at: (202) 708–6423 or (800) 927–2891;

(3) By fax at: (202) 708–4213; or

(4) By e-mail at *mhs@hud.gov.*

(g) *Effect of report.* The reporting of an alleged defect does not initiate the HUD Manufactured Home Dispute Resolution Program, but only establishes whether the requirement of timely reporting in accordance with § 3288.15(b) has been met. The HUD Manufactured Home Dispute Resolution Process is initiated when a request for dispute resolution is submitted to HUD in accordance with § 3288.25.

§ 3288.25 Initiation of dispute resolution.

(a) *Preliminary effort.* HUD strongly encourages the homeowner or party reporting an alleged defect to seek to

resolve the dispute directly with any manufacturer, retailer, or installer that the person reporting the defect believes to be responsible before initiating the HUD dispute resolution process.

(b) *Request for dispute resolution.* Any of the parties or the homeowner may initiate the HUD Manufactured Home Dispute Resolution Program at any time after an alleged defect has been reported, by requesting dispute resolution, as follows:

(1) By mailing, e-mailing, or otherwise delivering a written request for dispute resolution to the dispute resolution provider at the address or e-mail address provided either at *http://www.hud.gov,* or by contacting HUD's Office of Regulatory Affairs and Manufactured Housing at (202) 708–6423 or (800) 927–2891;

(2) By faxing a request for dispute resolution to the fax number provided either at *http://www.hud.gov,* or by contacting HUD's Office of Regulatory Affairs and Manufactured Housing at (202) 708–6423 or (800) 927–2891; or

(3) By telephoning a request for dispute resolution to the number provided either at *http://www.hud.gov,* or by contacting HUD's Office of Regulatory Affairs and Manufactured Housing at (202) 708–6423 or (800) 927–2891.

(c) *Requested information.* The dispute resolution provider will request at least the following information when a person seeks to initiate dispute resolution under the HUD Manufactured Home Dispute Resolution Program:

(1) The name, address, and contact information of the homeowner;

(2) The name and contact information of the manufacturer, retailer, and installer of the manufactured home, to the extent available;

(3) The date the report of the alleged defect was made;

(4) The name and contact information of the recipient or recipients of the report of the alleged defect;

(5) The date of installation of the manufactured home affected by the alleged defect; and

(6) A description of the alleged defect.

§ 3288.30 Screening of dispute resolution request.

(a) *Review for sufficiency.* When the request for dispute resolution has been received by the dispute resolution provider, a screening neutral will review the sufficiency of the information provided in the request for dispute resolution and determine if the dispute resolution process should proceed. If the screening neutral determines that a defect is properly alleged and timely reported, notice of the request will be forwarded, as provided in § 3288.33, to the manufacturer, retailer, and installer, as appropriate and to the extent the appropriate parties can be identified based on the information in the request.

(b) *Insufficient information.* If a request for dispute resolution is lacking any information necessary to determine if the dispute resolution process should proceed, the screening neutral will contact the requester or the parties about supplementing the initial request. If information necessary to qualify the matter for the HUD Manufactured Home Dispute Resolution Program is not received within a reasonable time established by the screening neutral, the request for dispute resolution will be considered withdrawn.

(c) *Denial of a dispute.* Denial by all of the parties that there is a dispute does not preclude the dispute resolution process from going forward to mediation. A screening neutral's determination that a defect is properly alleged is prima facie evidence of a dispute. If the defect has not been corrected or repaired, the matter will be referred to mediation.

(d) *Determination of unreasonable risk.* If the screening neutral determines there is sufficient documentation of an alleged defect presenting an unreasonable risk of injury or death, he or she will send a copy of the request to HUD.

§ 3288.33 Notice of dispute resolution.

(a) Once the screening neutral determines that a defect is properly alleged and timely reported, notice about the request will be forwarded to the parties by overnight delivery, commercial carrier, or fax.

(b) If the parties have not initiated the Alternative Process in accordance with § 3288.105 of this part within 7 days of the screening neutral's notification, the screening neutral will refer the matter to mediation.

§ 3288.35 Mediation.

(a) *Mediator.* The dispute resolution provider will provide for the selection of a mediator. The selected mediator will not be the person who screened the dispute resolution request. The selected mediator will mediate the dispute and attempt to facilitate a settlement. If a party identifies any other party that should be included in the mediation, the mediator will contact the other party and provide information about the scheduled mediation meetings.

(b) *Time*—(1) *For reaching settlement.* Except as provided in paragraph (b)(2) of this section, the parties are allowed 30 days from the commencement of the mediation to reach a mediated settlement. In every case, the dispute resolution provider will notify the parties and the homeowner, in writing, of the date of the commencement of the mediation.

(2) *Alleged defects presenting an unreasonable risk of injury, death, or significant loss or damage to valuable personal property.* For mediations involving alleged defects that appear to present an unreasonable risk of injury, death, or significant loss or damage to valuable personal property as determined by the screening neutral, the parties have a maximum 10 days from the commencement of the mediation to reach a settlement.

(3) *For corrective repairs.* Unless a longer period is agreed to in writing by the parties to the mediated settlement and the homeowner, corrective repairs must be completed no later than 30 days after the date the settlement agreement is signed by the applicable parties.

(c) *Denial of dispute.* During mediation, denial of a dispute by all parties without acceptance of responsibility will result in the mediator referring the matter to arbitration for determination of the defect and responsibility for the defect.

(d) *Written settlement agreement.*

(1) Upon reaching an agreement, the parties will sign a written settlement agreement. The dispute resolution provider will forward copies of the agreements with the original signatures of the parties to the parties, the homeowner, and to HUD.

(2) Sample agreements will be made available to the parties as drafting guidance by the dispute resolution provider.

(e) *Failure of mediation.* If mediation is not successful, parties or the homeowner may proceed to nonbinding arbitration, as provided in § 3288.40 of this part.

(f) *Confidentiality.* Except for the report of an alleged defect, any request for dispute resolution, and any written settlement agreement, all other documents and communications provided in confidence and used in the mediation will be confidential, in accordance with the Administrative Dispute Resolution Act of 1996 (5 U.S.C. 571 *et seq.*).

§ 3288.40 Nonbinding arbitration.

(a) *When initiated.* (1) If, following mediation under § 3288.35, the parties fail to reach a settlement, any party or the homeowner may, within 15 days of the expiration of the deadline applicable under § 3288.35(b), initiate nonbinding arbitration.

(2) In addition, arbitration may be initiated upon referral by the mediator pursuant to § 3288.35(c).

(b) *Written request*—(1) *Submission to HUD.* A written request for arbitration must be submitted to the dispute resolution provider. Information about the dispute resolution provider and how to make a request for dispute resolution will be available at *http://www.hud.gov* or by contacting HUD's Office of Manufactured Housing Programs at (202) 708–6423 or (800) 927–2891.

(2) *Contents of request.* The written request for arbitration must include:

(i) The name and address of the party making the request;

(ii) A brief description of the alleged defect or a copy of the report of the alleged defect; and

(iii) A copy of the request for dispute resolution.

(c) *Appointment and authority of arbitrator.* Upon receipt of the request, the dispute resolution provider will select an arbitrator. The arbitrator will have the authority to:

(1) Set hearing dates and deadlines;

(2) Conduct on-site inspections;

(3) Issue requests for documentation and information necessary to complete the record;

(4) Dismiss frivolous allegations;

(5) Make proposed findings, including findings of defect and culpability and a disposition recommendation to HUD; and

(6) Recommend apportionment of the responsibility of paying for or providing any correction or repair of the home when recommending that culpability be assessed to more than one party.

(d) *Denial of dispute.* If the parties deny a dispute exists and the arbitrator determines there is a defect, the arbitrator will make a determination of responsibility for the defect.

(e) *Notice to parties.* The dispute resolution provider will provide the parties and the homeowner with a notice setting forth the date, place, and time an arbitration is to be held.

(f) *Proceedings.* (1) If all parties do not request an in-person hearing under paragraph (f)(2) of this section within 5 days of the dispute resolution provider's receipt of the request for arbitration, or if the arbitrator rejects the request for an in-person hearing, the arbitrator may conduct either a record review or a telephonic hearing.

(2) If any party wants to request an in-person hearing, in which the parties or their representatives may personally appear before the arbitrator, the arbitrator will consider such a request if it is made by all of the parties that are participating in the arbitration. Such an in-person hearing will be held at the discretion of the arbitrator, after considering appropriate factors, such as cost.

(g) *Effect on nonparticipating parties.* If a party chooses not to participate in the arbitration, the process will continue without further input from that party. In such a case, the arbitrator may rely on the record developed through the arbitration to find a nonparticipating party responsible for correction or repair of a defect.

(h) *Completion of arbitration.* (1) Unless an extension is granted for good cause by HUD, the arbitrator, within 21 days of the dispute resolution provider's receipt of the request for arbitration, the arbitrator will complete the arbitration process and provide HUD with all background information used during the arbitration and with a written, nonbinding recommendation as to which party or parties are responsible for the defect, and what corrective actions should be taken.

(2) Unless an extension is granted for good cause by HUD, the arbitrator, within 21 days of the dispute resolution provider's receipt of the request for arbitration, will provide the parties with a copy of the nonbinding recommendation that was delivered to HUD, in accordance with § 3288.40(h)(1).

(i) *Settlement offers.* At any time before HUD issues a final order, the parties may submit to HUD a proposal to resolve the dispute.

§ 3288.45 HUD review and order.

(a) *Appropriate order.* HUD will review the arbitrator's recommendation provided in accordance with § 3288.40(h), any settlement offers presented by the parties in accordance with § 3288.40(i), and the information gathered during the arbitration, and will issue an appropriate order in which HUD may accept, modify, or reject the recommendations. HUD will forward a copy of the order to the arbitrator and to each of the parties and the homeowner, whether or not a party chose to participate in the arbitration.

(b) *Contents of order.* If HUD finds that a defect exists, the order will include the following:

(1) Assignment of responsibility for the correction and repair of all defects and associated costs; and

(2) If the manufacturer, retailer, or installer is responsible for corrective action, a date by which the correction and repair of each defect must be completed, taking into consideration the seriousness of the defect.

(c) *Failure to comply.* Failure to comply with an order issued by HUD is a violation of section 610(a)(5) of the Act (42 U.S.C. 5409(a)(5)).

Subpart C—Alternative Process in HUD-Administered States

§ 3288.100 Scope and applicability.

The requirements of this subpart C may be followed in lieu of the requirements of subpart B of this part to resolve disputes among manufacturers, retailers, and installers of manufactured homes in any state where subpart B of this part would otherwise apply. In limited circumstances, this subpart C permits manufacturers, retailers, and installers of manufactured homes to use neutrals of their choosing to resolve disputes concerning alleged defects in manufactured homes.

§ 3288.105 Time when Alternative Process is available.

(a) The Alternative Process may be invoked after an alleged defect has been reported, pursuant to § 3288.15(b). However, the Alternative Process may not be invoked more than 7 days after notification of a request for dispute resolution has been received by all of the parties. The notification must be delivered by overnight delivery, commercial carrier, or fax by the screening neutral, in accordance with § 3288.30. If within 7 days of the receipt of notification, the Alternative Process is not initiated, the screening neutral will refer the matter to the mediator. Once the Alternative Process is invoked, neither the parties nor the homeowner may invoke the Mediation and Arbitration Process in the HUD Manufactured Home Dispute Resolution Program for 30 days.

(b) No particular form or format is required to provide notification for the Alternative Process, but the party or parties submitting the notification must include a statement from the parties participating in the Alternative Process stating that the homeowner is not responsible for the alleged defect and that one or more of the parties will correct or repair the defect. All required agreements are set forth in § 3288.110 of this part. The parties must also make reasonable efforts to include the following information in the notification:

(1) Identification of the case; and

(2) Identification of the parties participating in the Alternative Process.

(c) The screening neutral will notify the parties if the case is referred to the Alternative Process for resolution.

§ 3288.110 Alternative Process agreements.

(a) *Required agreement.* To use the Alternative Process, the manufacturer,

retailer, and installer of the manufactured home at issue, as appropriate, must agree:

(1) That there is a defect in the manufactured home;

(2) That the manufacturer, retailer, or installer is responsible for the defect;

(3) That the homeowner is not responsible for the defect;

(4) To engage a neutral to evaluate the dispute and make an assignment of responsibility for correction and repair; and

(5) To notify the homeowner of, and allow the homeowner to be present at, any meetings and to inform the homeowner of the outcome.

(b) *Additional element of agreement.* In addition, the parties should agree to act upon the neutral's assignment of responsibility for correction and repair.

Subpart D—State Dispute Resolution Programs in Non-HUD Administered States

§ 3288.200 Applicability.

This subpart D establishes the minimum requirements that must be met by a state to implement its own dispute resolution program and therefore not be covered by the HUD Manufactured Home Dispute Resolution Program established in accordance with subpart B. The subpart also establishes the procedure for determining whether the state dispute resolution program meets the requirements of the Act for operating in lieu of the HUD Manufactured Home Dispute Resolution Program.

§ 3288.205 Minimum requirements.

(a) *List of requirements.* The HUD Manufactured Home Dispute Resolution Program will not be implemented in any state that complies with the procedures of this subpart D and that has a dispute resolution program that provides for the following minimum requirements:

(1) The timely resolution of disputes among manufacturers, retailers, or installers regarding responsibility for correction and repair of defects in manufactured homes;

(2) The issuance of appropriate orders for correction and repair of defects in such homes;

(3) A coverage period for disputes that includes at least defects that are reported within 1 year after the date of first installation; and

(4) Adequate funding and personnel.

(b) *Applicability to programs in state plans.* (1) In order to include a dispute resolution program in a state plan that on February 8, 2008 is fully or conditionally approved under § 3282.302 of this chapter, a state must amend its state plan to provide for the requirements of paragraphs (a)(1) through (3) of this section.

(2) After February 8, 2008, a state that submits a state plan for approval in accordance with § 3282.302 of this chapter must provide for the requirements of paragraphs (a)(1) through (3) of this section in its state plan.

§ 3288.210 Acceptance and recertification process.

(a) *Submission of certification.* A state seeking HUD acceptance of its state dispute resolution program under this subpart must submit to HUD a completed Dispute Resolution Certification Form, which is available by contacting HUD by telephone at (202) 708–6423 or by e-mail at *mhs@hud.gov.* The certification may be submitted as a part of, or independent of, a state plan under § 3282.302 of this chapter. If included as part of a state plan, the state does not have to separately certify that it meets the requirements of § 3288.205(a)(4).

(b) *HUD review and action.* (1) HUD will review the Dispute Resolution Certification Form submitted by a state and may contact the state to request additional clarification or information as necessary. Upon completing its review, HUD will provide the state with notice of acceptance, conditional acceptance, or rejection of its dispute resolution program.

(2) A notice of acceptance will include the date of acceptance.

(3) If HUD rejects a state's dispute resolution program, HUD will provide an explanation of what is necessary to obtain full acceptance. A revised Dispute Resolution Certification Form may be submitted within 30 days of receipt of such notification. If the revised Dispute Resolution Certification Form is inadequate or if the state fails to resubmit within the 30-day period or otherwise indicates that it does not intend to change its Dispute Resolution Certification Form, HUD will notify the state that its dispute resolution program is not accepted and that it has a right to a hearing on the rejection using the procedures set forth under subpart D of part 3282 of this chapter.

(c) *Conditional acceptance.* A state meeting three of the four minimum requirements set forth under § 3288.205(a)(1) through (4) will be conditionally accepted by HUD. If HUD conditionally accepts a state's dispute resolution program, HUD will provide an explanation of what is necessary to obtain full acceptance. A revised Dispute Resolution Certification Form may be submitted within 30 days of receipt of such notification. Any state conditionally accepted will be permitted to implement its own dispute resolution program for a period of not more than 3 years, absent extension of this period by HUD.

(d) *Revocation.* If HUD becomes aware at any time that a state no longer meets the minimum requirements set forth under § 3288.205, HUD may revoke acceptance of the state's certification after an opportunity for a hearing, using the procedures set forth under subpart D of part 3282.

(e) *Recertification of a program not included in state plan.* Except as provided in paragraph (f), to maintain its accepted status, a state whose program is not included in an approved or conditionally approved state plan must submit a current Dispute Resolution Certification Form to HUD for review and acceptance as follows:

(1) Every 3 years within 90 days of the day and month of the most recent date of HUD's acceptance of the state's program or

(2) Whenever there is a significant change to the program.

(f) *Inclusion in state plan.* If a state dispute resolution program is part of a state plan, it will be reviewed annually as part of the state plan and separate recertification of the state's dispute resolution program is not required.

§ 3288.215 Effect on other manufactured home program requirements.

A state with an accepted dispute resolution program will operate in lieu of HUD's Manufactured Home Dispute Resolution Program established under subpart B of this part 3288. A state dispute resolution program, even if it is an accepted dispute resolution program under this part, does not supersede the requirements applicable to any other aspect of HUD's manufactured home program. Any responsibilities, rights, and remedies applicable under the Manufactured Home Construction and Safety Standards in part 3280 of this chapter and the Manufactured Home Procedural and Enforcement Regulations in part 3282 of this chapter continue to apply as provided in those parts in all states.

Subpart E—Dispute Resolution Program Rulemaking Procedures

§ 3288.300 Applicability.

This subpart establishes special regulatory procedures for issuing or revising dispute resolution program regulations as codified in this part.

§ 3288.305 Consultation with the Manufactured Housing Consensus Committee.

HUD will seek input from the MHCC when revising the HUD Manufactured Home Dispute Resolution Program regulations in this part 3288. Before publication of a proposed rule to revise these regulations, HUD will provide the MHCC with an opportunity to comment on such revision. The MHCC may send to HUD any of the MHCC's own recommendations to adopt new dispute resolution program regulations or to modify or repeal any of the regulations in this part. Along with each recommendation, the MHCC must set forth pertinent data and arguments in support of the action sought. HUD will either: accept or modify the recommendation and publish it for public comment in accordance with section 553 of the Administrative Procedure Act (5 U.S.C. 553), along with an explanation of the reasons for any such modification; or reject the recommendation entirely, and provide to the MHCC a written explanation of the reasons for the rejection. This section does not supersede section 605 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5404).

Dated: May 7, 2007.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

BILLING CODE 4210–67–P

APPENDIX (This appendix will not be codified in the CFR)

DISPUTE RESOLUTION CERTIFICATION

Pursuant to 42 U.S.C. 5422(g) (section 623(g) of the National Manufactured Housing Construction and Safety Standards Act of 1974), HUD will implement a dispute resolution program in each state that does not have a program meeting the requirements of 42 U.S.C. 5422(c)(12). This Dispute Resolution Certification Form will be used for states to self-certify the adequacy of the state's dispute resolution program and for HUD to review that self-certification. Acceptance of your state's program will be determined by reviewing whether the response to Part II of this form complies with the requirements of 24 CFR 3288.205. Your answers to the following questions are requested for a proper review. Please answer each question concisely and certify the responses as full and accurate at the end of the form. Use additional pages if necessary.

Submit completed form to: Office of Manufactured Housing Programs
Department of Housing and Urban Development
Room _____
451 Seventh Street, SW
Washington, DC 20410

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-1000

Part I

Name, address, telephone number, and email address of the state agency responsible for administering the dispute resolution program:

Name and title of the administrator or director in charge of the state agency:

Name, title, address, telephone number, and email address of the person responsible for administering the dispute resolution program:

Part II

Indicate whether the state dispute resolution program being administered meets the following minimum requirements:

1. Provides for the timely resolution of disputes regarding responsibility for correction and repair of defects in manufactured homes involving manufacturers, retailers, and installers?
   Yes _____ No _____

2. Provides for the issuance of appropriate orders for the correction and repair of defects in the manufactured homes? Yes _____ No _____

3. Provides a coverage period for disputes involving defects that are reported within a minimum of one year from the date beginning on the date of the first installation? Yes _____ No _____

4. Provides adequate funding and personnel to carry out the program? Yes _____ No _____

Part III – Additional Information

1. Describe the state's dispute resolution program.

2. Describe how disputes regarding responsibility for correction and repair of defects in manufactured homes involving retailers, manufacturers, or installers are resolved.

3. Describe how the state's dispute resolution program addresses defects as defined in 24 CFR Part 3288, and any special requirements applicable to defects that involve an unreasonable risk of injury or death to occupants of a manufactured home or significant loss or damage to valuable personal property.

4. Explain the state's requirements for providing timely resolution of disputes.

5. What is the time period for initiating a dispute resolution process?

6. Describe the appropriate orders issued as part of the state's dispute resolution program.

7. Describe the staff and funding utilized by the state's dispute resolution program.

Part IV

COMPLIANCE CERTIFICATION

I hereby certify to the best of my knowledge that the answers given are truthful, accurate, and complete.

Date: _____ (Signature)

By: _____

(Print or type name and official capacity) _____

_____ (State)

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Federal Register

Monday,
May 14, 2007

Part IV

The President

Proclamation 8141—Military Spouse Day, 2007

Federal Register
Vol. 72, No. 92
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Presidential Documents

Title 3—

The President

Proclamation 8141 of May 9, 2007

Military Spouse Day, 2007

By the President of the United States of America

A Proclamation

America's military spouses inspire our Nation with their sense of duty and deep devotion to our country. On Military Spouse Day, we honor the husbands and wives of those who wear the uniform of the Armed Forces of the United States.

The husbands and wives of our service members have made significant sacrifices for freedom's cause, and they are an integral part of the success of our Armed Forces. Spouses may endure long periods of separation and frequent relocations, and they often set aside their own personal and professional ambitions for the benefit of their family and the Nation. Despite tremendous personal challenges, military spouses maintain everyday life for their families here at home, while sending love, prayers, encouraging words, and care packages to their loved ones stationed around the globe.

On behalf of a grateful Nation, we salute our Nation's military spouses. For ways to support our troops, their spouses, and their families, visit americasupportsyou.mil.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 11, 2007, as Military Spouse Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities and by expressing their gratitude to the husbands and wives of those serving in the United States Armed Forces.

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

[FR Doc. 07–2398
Filed 5–11–07; 9:16 am]
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1–59	(869–062–00040–5)	63.00	Jan. 1, 2007
60–139	(869–060–00041–1)	61.00	Jan. 1, 2006
140–199	(869–062–00042–1)	30.00	Jan. 1, 2007
200–1199	(869–062–00043–0)	50.00	Jan. 1, 2007
1200–End	(869–062–00044–8)	45.00	Jan. 1, 2007
15 Parts:			
0–299	(869–062–00045–6)	40.00	Jan. 1, 2007
300–799	(869–062–00046–4)	60.00	Jan. 1, 2007
800–End	(869–062–00047–2)	42.00	Jan. 1, 2007
16 Parts:			
0–999	(869–062–00048–1)	50.00	Jan. 1, 2007
1000–End	(869–062–00049–9)	60.00	Jan. 1, 2007
17 Parts:			
1–199	(869–060–00051–8)	50.00	Apr. 1, 2006
200–239	(869–060–00052–6)	60.00	Apr. 1, 2006
240–End	(869–060–00053–4)	62.00	Apr. 1, 2006
18 Parts:			
1–399	(869–060–00054–2)	62.00	Apr. 1, 2006
400–End	(869–060–00055–1)	26.00	[7] Apr. 1, 2006
19 Parts:			
1–140	(869–060–00056–9)	61.00	Apr. 1, 2006
141–199	(869–060–00057–7)	58.00	Apr. 1, 2006
200–End	(869–060–00058–5)	31.00	Apr. 1, 2006
20 Parts:			
1–399	(869–060–00059–3)	50.00	Apr. 1, 2006
400–499	(869–060–00060–7)	64.00	Apr. 1, 2006
500–End	(869–060–00061–5)	63.00	Apr. 1, 2006
21 Parts:			
1–99	(869–060–00062–3)	40.00	Apr. 1, 2006
100–169	(869–060–00063–1)	49.00	Apr. 1, 2006
170–199	(869–060–00064–0)	50.00	Apr. 1, 2006
200–299	(869–060–00065–8)	17.00	Apr. 1, 2006
300–499	(869–060–00066–6)	30.00	Apr. 1, 2006
500–599	(869–060–00067–4)	47.00	Apr. 1, 2006
600–799	(869–060–00068–2)	15.00	Apr. 1, 2006
800–1299	(869–060–00069–1)	60.00	Apr. 1, 2006
1300–End	(869–060–00070–4)	25.00	Apr. 1, 2006
22 Parts:			
1–299	(869–060–00071–2)	63.00	Apr. 1, 2006
300–End	(869–060–00072–1)	45.00	[8] Apr. 1, 2006
23	(869–060–00073–9)	45.00	Apr. 1, 2006
24 Parts:			
0–199	(869–060–00074–7)	60.00	Apr. 1, 2006
200–499	(869–060–00075–5)	50.00	Apr. 1, 2006
500–699	(869–060–00076–3)	30.00	Apr. 1, 2006
700–1699	(869–060–00077–1)	61.00	Apr. 1, 2006
1700–End	(869–060–00078–0)	30.00	Apr. 1, 2006
25	(869–060–00079–8)	64.00	Apr. 1, 2006
26 Parts:			
§§ 1.0–1–1.60	(869–060–00080–1)	49.00	Apr. 1, 2006
§§ 1.61–1.169	(869–060–00081–0)	63.00	Apr. 1, 2006
§§ 1.170–1.300	(869–060–00082–8)	60.00	Apr. 1, 2006
§§ 1.301–1.400	(869–060–00083–6)	47.00	Apr. 1, 2006
§§ 1.401–1.440	(869–060–00084–4)	56.00	Apr. 1, 2006
§§ 1.441–1.500	(869–060–00085–2)	58.00	Apr. 1, 2006
§§ 1.501–1.640	(869–060–00086–1)	49.00	Apr. 1, 2006
§§ 1.641–1.850	(869–060–00087–9)	61.00	Apr. 1, 2006
§§ 1.851–1.907	(869–060–00088–7)	61.00	Apr. 1, 2006
§§ 1.908–1.1000	(869–060–00089–5)	60.00	Apr. 1, 2006
§§ 1.1001–1.1400	(869–060–00090–9)	61.00	Apr. 1, 2006
§§ 1.1401–1.1550	(869–060–00091–2)	58.00	Apr. 1, 2006
§§ 1.1551–End	(869–060–00092–5)	50.00	Apr. 1, 2006
2–29	(869–060–00093–3)	60.00	Apr. 1, 2006
30–39	(869–060–00094–1)	41.00	Apr. 1, 2006
40–49	(869–062–00095–2)	28.00	Apr. 1, 2007
50–299	(869–060–00096–8)	42.00	Apr. 1, 2006

Title	Stock Number	Price	Revision Date
300–499	(869–060–00097–6)	61.00	Apr. 1, 2006
500–599	(869–062–00098–7)	12.00	[6] Apr. 1, 2007
600–End	(869–060–00099–2)	17.00	Apr. 1, 2006
27 Parts:			
1–399	(869–060–00100–0)	64.00	Apr. 1, 2006
400–End	(869–060–00101–8)	18.00	Apr. 1, 2006
28 Parts:			
0–42	(869–060–00102–6)	61.00	July 1, 2006
43–End	(869–060–00103–4)	60.00	July 1, 2006
29 Parts:			
0–99	(869–060–00104–2)	50.00	July 1, 2006
100–499	(869–060–00105–1)	23.00	July 1, 2006
500–899	(869–060–00106–9)	61.00	July 1, 2006
900–1899	(869–060–00107–7)	36.00	July 1, 2006
1900–1910 (§§ 1900 to 1910.999)	(869–060–00108–5)	61.00	July 1, 2006
1910 (§§ 1910.1000 to end)	(869–060–00109–3)	46.00	July 1, 2006
1911–1925	(869–060–00110–7)	30.00	July 1, 2006
1926	(869–060–00111–5)	50.00	July 1, 2006
1927–End	(869–060–00112–3)	62.00	July 1, 2006
30 Parts:			
1–199	(869–060–00113–1)	57.00	July 1, 2006
200–699	(869–060–00114–0)	50.00	July 1, 2006
700–End	(869–060–00115–8)	58.00	July 1, 2006
31 Parts:			
0–199	(869–060–00116–6)	41.00	July 1, 2006
200–499	(869–060–00117–4)	46.00	July 1, 2006
500–End	(869–060–00118–2)	62.00	July 1, 2006
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–060–00119–1)	61.00	July 1, 2006
191–399	(869–060–00120–4)	63.00	July 1, 2006
400–629	(869–060–00121–2)	50.00	July 1, 2006
630–699	(869–060–00122–1)	37.00	July 1, 2006
700–799	(869–060–00123–9)	46.00	July 1, 2006
800–End	(869–060–00124–7)	47.00	July 1, 2006
33 Parts:			
1–124	(869–060–00125–5)	57.00	July 1, 2006
125–199	(869–060–00126–3)	61.00	July 1, 2006
200–End	(869–060–00127–1)	57.00	July 1, 2006
34 Parts:			
1–299	(869–060–00128–0)	50.00	July 1, 2006
300–399	(869–060–00129–8)	40.00	July 1, 2006
400–End & 35	(869–060–00130–1)	61.00	[9] July 1, 2006
36 Parts:			
1–199	(869–060–00131–0)	37.00	July 1, 2006
200–299	(869–060–00132–8)	37.00	July 1, 2006
300–End	(869–060–00133–6)	61.00	July 1, 2006
37	(869–060–00134–4)	58.00	July 1, 2006
38 Parts:			
0–17	(869–060–00135–2)	60.00	July 1, 2006
18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–060–00137–9)	42.00	July 1, 2006
40 Parts:			
1–49	(869–060–00138–7)	60.00	July 1, 2006
50–51	(869–060–00139–5)	45.00	July 1, 2006
52 (52.01–52.1018)	(869–060–00140–9)	60.00	July 1, 2006
52 (52.1019–End)	(869–060–00141–7)	61.00	July 1, 2006
53–59	(869–060–00142–5)	31.00	July 1, 2006
60 (60.1–End)	(869–060–00143–3)	58.00	July 1, 2006
60 (Apps)	(869–060–00144–7)	57.00	July 1, 2006
61–62	(869–060–00145–0)	45.00	July 1, 2006
63 (63.1–63.599)	(869–060–00146–8)	58.00	July 1, 2006
63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–060–00148–4)	50.00	July 1, 2006
63 (63.1440–63.6175)	(869–060–00149–2)	32.00	July 1, 2006
63 (63.6580–63.8830)	(869–060–00150–6)	32.00	July 1, 2006
63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
64–71	(869–060–00152–2)	29.00	July 1, 2006
72–80	(869–060–00153–1)	62.00	July 1, 2006
81–85	(869–060–00154–9)	60.00	July 1, 2006
86 (86.1–86.599–99)	(869–060–00155–7)	58.00	July 1, 2006
86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–060–00157–3)	60.00	July 1, 2006
100–135	(869–060–00158–1)	45.00	July 1, 2006
136–149	(869–060–00159–0)	61.00	July 1, 2006
150–189	(869–060–00160–3)	50.00	July 1, 2006
190–259	(869–060–00161–1)	39.00	July 1, 2006
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–060–00163–8)	50.00	July 1, 2006
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–060–00165–4)	56.00	July 1, 2006
425–699	(869–060–00166–2)	61.00	July 1, 2006
700–789	(869–060–00167–1)	61.00	July 1, 2006
790–End	(869–060–00168–9)	61.00	July 1, 2006
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–060–00169–7)	24.00	July 1, 2006
101	(869–060–00170–1)	21.00	[9] July 1, 2006
102–200	(869–060–00171–9)	56.00	July 1, 2006
201–End	(869–060–00172–7)	24.00	July 1, 2006
42 Parts:			
1–399	(869–060–00173–5)	61.00	Oct. 1, 2006
400–413	(869–060–00174–3)	32.00	Oct. 1, 2006
414–429	(869–060–00175–1)	32.00	Oct. 1, 2006
430–End	(869–060–00176–0)	64.00	Oct. 1, 2006
43 Parts:			
1–999	(869–060–00177–8)	56.00	Oct. 1, 2006
1000–end	(869–060–00178–6)	62.00	Oct. 1, 2006
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
1–199	(869–060–00180–8)	60.00	Oct. 1, 2006
200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
500–1199	(869–060–00182–4)	56.00	Oct. 1, 2006
1200–End	(869–060–00183–2)	61.00	Oct. 1, 2006
46 Parts:			
1–40	(869–060–00184–1)	46.00	Oct. 1, 2006
41–69	(869–060–00185–9)	39.00	Oct. 1, 2006
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
140–155	(869–060–00188–3)	25.00	Oct. 1, 2006
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
47 Parts:			
0–19	(869–060–00193–0)	61.00	Oct. 1, 2006
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–060–00195–6)	40.00	Oct. 1, 2006
70–79	(869–060–00196–4)	61.00	Oct. 1, 2006
80–End	(869–060–00197–2)	61.00	Oct. 1, 2006
48 Chapters:			
1 (Parts 1–51)	(869–060–00198–1)	63.00	Oct. 1, 2006
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006
7–14	(869–060–00202–2)	56.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
15–28	(869–060–00203–1)	47.00	Oct. 1, 2006
29–End	(869–060–00204–9)	47.00	Oct. 1, 2006
49 Parts:			
1–99	(869–060–00205–7)	60.00	Oct. 1, 2006
100–185	(869–060–00206–5)	63.00	Oct. 1, 2006
186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–060–00208–1)	32.00	Oct. 1, 2006
300–399	(869–060–00209–0)	32.00	Oct. 1, 2006
400–599	(869–060–00210–3)	64.00	Oct. 1, 2006
600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
1200–End	(869–060–00213–8)	34.00	Oct. 1, 2006
50 Parts:			
1–16	(869–060–00214–6)	11.00	[10] Oct. 1, 2006
17.1–17.95(b)	(869–060–00215–4)	32.00	Oct. 1, 2006
17.95(c)–end	(869–060–00216–2)	32.00	Oct. 1, 2006
17.96–17.99(h)	(869–060–00217–1)	61.00	Oct. 1, 2006
17.99(i)–end and 17.100–end	(869–060–00218–9)	47.00	[10] Oct. 1, 2006
18–199	(869–060–00219–7)	50.00	Oct. 1, 2006
200–599	(869–060–00220–1)	45.00	Oct. 1, 2006
600–659	(869–060–00221–9)	31.00	Oct. 1, 2006
660–End	(869–060–00222–7)	31.00	Oct. 1, 2006
*CFR Index and Findings Aids	(869–062–00050–2)	62.00	Jan. 1, 2007
Complete 2007 CFR set		1,389.00	2007
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Subscription (mailed as issued)		332.00	2007
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Complete set (one-time mailing)		325.00	2005

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[8] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.