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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28022; Airspace Docket No. 07–ASO–7]

Establishment of Class E Airspace; Centreville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action established Class E airspace at Centreville, AL. An Area navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) Runway (RWY) 10 has been developed for Bibb County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP and for Instrument Flight Rules (IFR) operations at Bibb County Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

DATES: *Effective Date:* 0901 UTC, October 25, 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: Mark D. Ward, Manager, Group Manager, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5627.

SUPPLEMENTARY INFORMATION:

History

On May 22, 2007, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Centreville, AL, (72 FR 28622). This action provides adequate Class E airspace for IFR operations at Bibb County Airport. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Centreville, AL.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 routing matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 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 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 Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO AL E5 Centreville, AL [NEW]

Bibb County Airport, AL
(Lat. 32°56′12″ N., long. 87°05′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-radius of Bibb County Airport.

* * * * *

Issued in College Park, Georgia, on June 26, 2007.

Kathy Kutch,

Acting Group Manager, System Support, Eastern Service Center.

[FR Doc. 07–3345 Filed 7–10–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–28101; Airspace Docket No. 07–ASO–9]

Establishment of Class E Airspace; Vero Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E2 airspace at Vero Beach, FL. As a result of an evaluation, it has been determined Class E Airspace Designated as Surface Areas should be established for Vero Beach Municipal Airport. Miami Air Route Traffic Control Center

has communications capabilities and weather observation reporting when the Vero Beach tower is closed. Therefore, the airport will meet criteria for Class E2 airspace. Class E2 surface area airspace is required when the control tower is closed to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action establishes Class E2 airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of the airport and within 3.2 miles each side of the 261° bearing from the Vero Beach Nondirectional Radio Beacon (NDB) extending from the 4.2-mile radius of the Vero Beach Municipal Airport to 7 miles west of the NDB.

DATES: Effective Date: 0901 UTC, October 25, 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: Mark D. Ward, Group Manager, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On May 22, 2007, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E2 airspace at Vero Beach, FL (72 FR 28623). This action provides adequate Class E2 airspace for IFR operations at Vero Beach Municipal Airport when the tower is closed. Designations for Class E airspace areas designated as surface areas are published in FAA Order 7400.9P, dated September 16, 2006, and effective September 16, 2006, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E2 airspace at Vero Beach, FL.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 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 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 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO FL E2 Vero Beach, FL [NEW]

Vero Beach Municipal Airport, FL
(Lat. 27°39′20″ N., long. 80°25′05″ W.)
Vero Beach NDB
(Lat 27°39′51″ N., long. 80°25′10″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within 4.2 mile radius of the Vero Beach Municipal Airport and within 3.2 miles each side of the 261° bearing from the Vero Beach NDB extending from the 4.2-mile radius of the Vero Beach Municipal Airport to 7 miles west of the NDB. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on June 26, 2007.

Kathy Kutch,

Acting Group Manager, System Support, Eastern Service Center.

[FR Doc. 07–3346 Filed 7–10–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 552

[BOP–1089–F]

RIN 1120–AA90

Searches of Housing Units, Inmates, and Inmate Work Areas: Electronic Devices

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document adopts as final a Bureau of Prisons (Bureau) proposed rule on searches of inmates, housing units, and inmate work areas with respect to the use of electronic devices. This document also withdraws the Bureau's proposal to amend its rules on searches of non-inmates, which will be incorporated into a new and separate proposed rule. We intend this change to provide for the continued efficient and secure operation of the institution and prevent the introduction of contraband into Bureau institutions.

DATES: Effective Date: August 10, 2007.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau amends its regulations on searches of inmates, housing units, and inmate work areas with respect to the use of electronic devices (28 CFR part 552, subpart B). This document also withdraws the Bureau's proposal to amend its rules on searches of non-inmates (28 CFR part 511, subpart B), which has been incorporated into a separate rule (72 FR 31178, June 6, 2007, effective July 6, 2007). We published a proposed rule contemplating changes to both sets of rules on February 25, 1999 (64 FR 9431) (1999 proposed rule).

Our current regulations allow for the use of electronic devices as part of our general security measures. While the regulations refer to electronic devices in general in some instances, in other instances, they merely refer to metal detectors.

When we first issued regulations on this subject, the most commonly used electronic devices (that we used) were metal detectors. Due to advances in technology, new types of electronic devices (such as ion spectrometers) are now available which can detect non-metal contraband, such as narcotics or illegal drugs. We therefore revise our regulations to remove possible confusion regarding the use of the various electronic devices. Technically, this is a minor change in policy.

Regulations on searching visitors. The 1999 proposed rule would have amended current procedures for searching visitors in the following manner: We had planned to revise the definition of reasonable suspicion at 28 CFR 511.11(a), which stated that we may base reasonable suspicion on a positive reading of a metal detector, to state that we may base reasonable suspicion on an electronic detection device's positive reading. We had also planned to revise the reference to ''electronic means'' in § 511.12(b)(1) to read ''electronic devices'' to maintain consistency.

However, because the Bureau recently published a final rule (72 FR 31178, June 6, 2007, effective July 6, 2007) that revises regulations on searches of visitors and other non-inmates, we withdrew the change contemplated by the 1999 proposed rule, and revisited that change as part of the new final rule. We note that the changes made by the final rule regarding searches of non-inmates have no impact on the changes regarding searches of inmates described below.

Regulations on searches of housing units, inmates, and inmate work areas. The previous regulations required staff to use the least intrusive search method practicable, as indicated by the type of contraband and the method of suspected introduction. Procedures governing pat searches of inmates (§ 552.11(a)) further noted that a metal detector search may be done under the same circumstances (*i.e.*, on a routine or random basis to control contraband).

We revise these provisions to clarify the role of electronic devices in general. We redesignate existing procedures in § 552.11 to make room for a new paragraph (a) regarding electronic devices. Listing electronic devices first emphasizes the non-intrusive nature of such searches.

Summary of Public Comment

We received comment from the American Civil Liberties Union (ACLU) and five other respondents, all of whom opposed the proposed rule. The ACLU commented only with regard to the portion of the 1999 proposed rule relating to searches of non-inmates. Other commenters raised concerns similar to those of the ACLU. Because these comments relate to the portion of the 1999 proposed rule regarding searches of non-inmates, we will not address those comments in this document, as we published a final rule regarding searching non-inmates (72 FR 31178, June 6, 2007, effective July 6, 2007). We address comments regarding searches of non-inmates as part of that new rulemaking.

With regard to the portion relating to searches of inmates, one commenter expressed concern that random sampling was susceptible to racial profiling. Another was concerned that Bureau staff would be unable to operate the electronic detection devices in a fair manner. We disagree with concerns raised over possible racial profiling or the ability of staff to operate the testing devices in a fair manner. Both training for staff and documented procedures for random and follow-up sampling ensure nondiscriminatory and professional operation of the testing devices.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'' section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects 28 CFR Part 552

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Accordingly, under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR part 552 as set forth below.

Subchapter C—Institutional Management

PART 552—CUSTODY

■ 1. The authority citation for 28 CFR part 552 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. In § 552.11, revise the section heading, redesignate paragraphs (a) through (c) as paragraphs (b) through (d), add a new paragraph (a), and revise newly redesignated (b) to read as follows:

§ 552.11 Searches of inmates.

(a) *Electronic devices.* Inspection of an inmate using electronic devices (for example, metal detector, or ion spectrometry device) does not require the inmate to remove clothing. The inspection includes a search of the inmate's clothing and personal effects. Staff may conduct an electronic device search of an inmate on a routine or random basis to control contraband.

(b) *Pat Search.* Inspection of an inmate using the hands does not require the inmate to remove clothing. The inspection includes a search of the inmate's clothing and personal effects. Staff may conduct a pat search of an inmate on a routine or random basis to control contraband.

* * * * *

[FR Doc. E7–13403 Filed 7–10–07; 8:45 am]

BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R03–OAR–2007–0354 ; FRL–8338–7]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware, and West Virginia; Control of Emissions From Existing Other Solid Waste Incinerator Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is notifying the public that it has received negative declarations for other solid waste incinerator (OSWI) units from the States of Delaware, and West Virginia. These negative declarations certify that OSWI units subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA) do not exist within the jurisdictional boundaries of these air pollution control agencies.

DATES: The effective date is July 11, 2007.

ADDRESSES: Docket: All documents are located in the Regional Material Edocket, identified by Docket ID Number EPA–RO3–OAR–2007–0354. The RME index can be found at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information may not be 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 in RME or in hard copy at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. EPA requests that if all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. Copies of the State agency submittals are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903; and the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, WV 25304.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E. at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the CAA require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA, also requires EPA to promulgate EG for other solid waste incineration (OSWI) units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity).

On December 16, 2005 (70 FR 74870, and 74907), EPA promulgated OSWI unit new source performance standards, 40 CFR part 60, subparts EEEE, and emission guidelines (EG), subpart FFFF, respectively.

The designated facilities to which the EG apply are existing very small municipal solid waste combustion (MWC) units that have a design combustion capacity of less than 35 tons per day and institutional waste incineration units that commenced construction on or before December 9, 2004.

Subpart B of 40 CFR part 60 establishes procedures to be followed and requirements to be met in the development and submission of state plans for controlling designated pollutants. Also, 40 CFR parts 62 provides the procedural framework for the submission of these plans. When designated facilities are located in a state, the state must then develop and submit a plan for the control of the designated pollutant. However, 40 CFR 60.23(b) and 62.06 provide that if there are no existing sources of the designated pollutant in the state, the state may submit a letter of certification to that effect (i.e., negative declaration) in lieu of a plan. The negative declaration exempts the state from the requirements of subpart B that require the submittal of a 111(d)/129 plan. Under subpart FFFF, State are required to submit by December 18, 2006 a negative declaration or approvable section 111(d)/129 plan.

II. Final EPA Action

The States of Delaware and West Virginia have determined that there are no designated facilities, subject to subpart FFFF requirements, in their respective air pollution control jurisdiction. Accordingly, each air pollution control agency has submitted to EPA a negative declaration letter certifying that fact. The submittal dates of these letters are June 26, and June 2, 2006, respectively.

Accordingly, EPA is amending part 62 to reflect the receipt of these negative declaration letters from the noted air pollution control agencies. Amendments are being made to the following 40 CFR part 62 subparts: I—Delaware, and XX—West Virginia.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. 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 merely notifies the public of EPA receipt of negative declarations from state air pollution control agencies without any existing OSWI units in their jurisdiction. This action imposes no requirements. Accordingly, the Administrator certifies

that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action is only a notice 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 action 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 notifies the public of EPA's receipt of negative declarations for existing OSWI units from state agencies and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This action 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.

With regard to negative declarations for OSWI units received by EPA for states, EPA's role is only to notify the public of the receipt of such negative declarations. 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 approve or disapprove a CAA section 111(d)/129 plan negative declaration submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a CAA section 111(d)/129 negative declaration, to use VCS in place of a section 111(d)/129 negative declaration that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. This action is not a rulemaking, however, EPA will submit a report containing this action 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 September 10, 2007. Filing a petition for reconsideration by the Administrator of this action does not affect the finality of this action 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 action.

This action approving the section 111(d)/129 negative declarations submitted by the States of Delaware, and West Virginia may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: June 28, 2007.

William C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart I—Delaware

■ 2. Subpart I is amended by adding an undesignated center heading and § 62.1990 to read as follows:

Emissions From Existing Other Solid Waste Combustion Units

§ 62.1990 Identification of plan—negative declaration.

Letter from the Delaware Department of Natural Resources and Environmental Control submitted June 26, 2006, certifying that there are no existing other solid waste incinerator units within the State of Delaware that are subject to 40 CFR part 60, subpart FFFF.

Subpart XX—West Virginia

■ 3. Subpart XX is amended by adding an undesignated center heading and § 62.12165 to read as follows:

Emissions From Other Solid Waste Incinerator Units

§ 62.12165 Identification of plan—negative declaration.

Letter from the West Virginia Department of Environmental Protection submitted June 2, 2006, certifying that there are no existing other solid waste incinerator units within the State of West Virginia that are subject to 40 CFR part 60, subpart FFFF.

[FR Doc. E7–13426 Filed 7–10–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0149; FRL–8137–8]

Indoxacarb; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of indoxacarb and its R-enantiomer in or on cranberry; fruit, pome, except pear, group 11; fruit, stone, group 12; grape; grape, raisin; okra; pea, southern, seed; pear, oriental; peppermint, tops; spearmint, tops; turnip greens; vegetable, *Brassica*, leafy, group 5; vegetable, cucurbit, group 9; vegetable, leafy, except *Brassica*, group 4; and vegetable, tuberous and corm, subgroup 1-C. E.I. du Pont de Nemours and Company and the Interregional Research Project No. 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation also removes existing

tolerances on apple; *Brassica*, head and stem, subgroup 5A; lettuce, head; lettuce, leaf; and potato, which are superseded by the new tolerances; and removes expired time-limited tolerances on cherry, sweet; cherry, tart; peach; and collards; and the time-limited tolerance on cranberry (set to expire December 31, 2007), which are no longer needed as a result of this action. Finally, this regulation corrects a typographical error in the spelling of the word ''enantiomer'' in the tolerance expression for indoxacarb given in 40 CFR 180.564(a)(1).

DATES: This regulation is effective July 11, 2007. Objections and requests for hearings must be received on or before September 10, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0149. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*,or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6463; e-mail address: *madden.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0149 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 10, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2005–0149, by one of the following methods:

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

II. Petition for Tolerance

In the **Federal Register** of July 2, 2003 (68 FR 39541) (FRL–7312–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F6576) by E.I. du Pont de Nemours and Company, Newark, DE 19711. The petition requested that 40 CFR 180.564 be amended by establishing a tolerance for combined residues of the insecticide indoxacarb, (*S*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4][oxadiazine-4a(3*H*)-carboxylate, and its R-enantiomer, (*R*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4][oxadiazine-4a(3*H*)-carboxylate, in or on grape at 2.0 parts per million (ppm) and raisin at 6.0 ppm. That notice

included a summary of the petition prepared by E.I. du Pont de Nemours and Company, the registrant, which is available to the public in the docket EPA–HQ–OPP–2003–0212, *http://www.regulations.gov*. One comment was received on the notice of filing from a private citizen expressing support for the proposed tolerances.

In the **Federal Register** of May 5, 2004 (69 FR 25104) (FRL–7354–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2E6482) by the Interregional Research Project No. 4 (IR-4). The petition requested that 40 CFR 180.564 be amended by revoking *Brassica*, head and stem, subgroup at 5.0 ppm and establishing a tolerance for combined residues of the insecticide indoxacarb, (*S*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4][oxadiazine-4a(3*H*)-carboxylate, and its R-enantiomer, (*R*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4][oxadiazine-4a(3*H*)-carboxylate, in or on vegetable, , leafy, group 5 at 12 ppm and turnip greens at 12 ppm. That notice included a summary of the petition prepared by E.I. du Pont de Nemours and Company, the registrant, which is available to the public in the docket EPA–HQ–OPP–2004–0064, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

In the **Federal Register** of June 30, 2005 (70 FR 37852) (FRL–7718–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 5E6911 and 5E6926) by the Interregional Research Project No. 4 (IR-4). The petitions requested that 40 CFR 180.564 be amended by establishing a tolerance for combined residues of the insecticide indoxacarb, (*S*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4][oxadiazine-4a(3*H*)-carboxylate, and its R-enantiomer, (*R*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4][oxadiazine-4a(3*H*)-carboxylate, in or on leafy greens, except spinach, subgroup 4A at 10 ppm; spinach at 3.0 ppm; leaf petioles subgroup 4B at 1.5 ppm; fruit, pome, except pear, group 11 at 1.0 ppm; vegetable, tuberous and corm, subgroup 1C at 0.01 ppm; okra at 0.5 ppm (all requested in PP 5E6911); pea (Southern) at 0.1 ppm; and mint at 10 ppm (both requested in PP 5E6926). That notice included a summary of the petition prepared by E.I. du Pont de Nemours and Company, the registrant, which is available to the public in the docket EPA–HQ–OPP–2005–0149, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

In the **Federal Register** of April 12, 2006 (71 FR 18738) (FRL–7772–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5E6991) by the Interregional Research Project No. 4 (IR-4). The petition requested that 40 CFR 180.564 be amended by establishing a tolerance for combined residues of the insecticide indoxacarb, (*S*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4][oxadiazine-4a(3*H*)-carboxylate, and its R-enantiomer, (*R*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-e][1,3,4][oxadiazine-4a(3H)-carboxylate, in or on vegetable, cucurbit, group 9 at 0.5 ppm; fruit, stone, group 12 at 1 ppm; and cranberry at 1 ppm. That notice referenced a summary of the petition prepared by E.I. du Pont de Nemours and Company, the registrant, which is available to the public in the docket EPA–HQ–OPP–2005–0149, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petitions, EPA has modified the proposed tolerances. The reasons for these changes are explained in Unit V.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for combined residues of indoxacarb, (*S*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-*e*][1,3,4][oxadiazine-4a(3*H*)-carboxylate, and its R-enantiomer, (*R*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-*e*][1,3,4][oxadiazine-4a(3*H*)-carboxylate, in or on cranberry at 0.90 ppm; fruit, pome, except pear, group 11 at 1.0 ppm; fruit, stone, group 12 at 0.90 ppm; grape at 2.0 ppm; grape, raisin at 5.0 ppm; okra at 0.50 ppm; pea, southern, seed at 0.10 ppm; pear, oriental at 0.20 ppm; peppermint, tops at 11 ppm; spearmint, tops at 11 ppm; turnip greens at 12 ppm; vegetable, *Brassica*, leafy, group 5 at 12 ppm; vegetable, cucurbit, group 9 at 0.60 ppm; vegetable, leafy, except *Brassica*, group 4 at 14 ppm; and vegetable, tuberous and corm, subgroup 1-C at 0.01 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by indoxacarb as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov*. The referenced

document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA–HQ–OPP–2005–0149 in that docket.

Indoxacarb is an isomeric compound containing two enantiomers, the *S*-enantiomer (DPX-KN128, the insecticidally active component) and its *R*-enantiomer (DPX-KN127, the insecticidally inactive component). DPX-MP062 is an enantiomeric mixture containing the *S*-enantiomer and its *R*-enantiomer at approximately a 75:25 ratio. DPX-JW062 is the racemic mixture of the enantiomers at a 50:50 ratio.

DPX-KN128, DPX-MP062 and DPX-JW062 appear to be of similar toxicity acutely. DPX-KN128 and DPX-MP062 were moderately acutely toxic by the oral route (toxicity category II) while DPX-JW062 was practically non-toxic (toxicity category IV) due to its poor solubility in the corn oil vehicle. However, it was equally toxic orally, when tested using a solvent where it had a higher solubility, such as polyethylene glycol (PEG). By the dermal route, they had low toxicity (toxicity category III and IV). DPX-MP062 and DPX-JW062 had low acute inhalation toxicity (IV). DPX-MP062 and DPX-JW062 had moderate to low ocular irritant properties (III and IV), while DPX-KN128 was practically non-irritating to the rabbit's eyes. By the maximization test, DPX-KN128 and DPX-MP062 were considered dermal sensitizers, while DPX-JW062 was not a sensitizer.

There was possible evidence of lung damage in the acute inhalation studies with both DPX-MP062 and DPX-JW062. ''Lung noise,'' observed with JW062 may indicate the development of acute lung injury and high permeability pulmonary edema. This was not unexpected since an oxidant was generated during indoxacarb metabolism. ''Hunched over back and gasping'' were also present and suggested arterial hypoxemia that accompanies alveolar flooding. The acute inhalation study report with indoxacarb 70% manufacturing use product, noted that a ''red nasal discharge'' was detected for 2 days after exposure. This may be indicative of a lung exudate, a sign of lung injury. Subchronic (28 days) inhalation toxicity on indoxacarb in rats was characterized by increased spleen weights, increased pigmentation and hematopoiesis in the spleen, and hematological changes.

The toxicity profiles for DPX-KN128, DPX-MP062 and DPX-JW062 in rats, mice and dogs with both subchronic and chronic oral exposures were similar. Dermal subchronic exposure in the rat also resulted in a similar profile. The toxic signs occurred at similar doses and with a similar magnitude of response, with females generally being more sensitive than males. The endpoints that most frequently defined the LOAEL were non-specific, and included decreased body weight, weight gain, food consumption and food efficiency. These compounds also affected the hematopoietic system by decreasing the red blood cell count, hemoglobin and hematocrit in rats, dogs and mice. It was frequently accompanied by an increase in reticulocytes in all three species and an increase in Heinz bodies (dogs and mice only). None of these signs of toxicity appeared to get worse over time. In one subchronic rat study, the parameters appeared to return to normal levels following a four-week recovery period. High doses in the rats and mice also sometimes caused mortality.

There was no evidence of susceptibility from either *in utero* or neonatal exposure to both rat and rabbit young with either DPX-MP062 or DPX-JW062. There was no evidence of susceptibility from *in utero* exposure in rats with DPX-KN128. There was no evidence of increased susceptibility in the developmental neurotoxicity study in rats with DPX-KN128. No evidence of teratogenicity was observed in rats and rabbits with DPX-MP062 or DPX-JW062. No evidence of teratogenicity was observed in rats with DPX-KN128. There was no evidence of reproductive effects in the 2-generation reproduction study in rats.

Neurotoxicity was present in both rats and mice; however, it did not occur in the absence of other signs of toxicity. Neurotoxicity was characterized by one or more of the following symptoms in both male and female rats and mice: Weakness, head tilting, and abnormal gait or mobility with inability to stand, ataxia. Acute and subchronic neurotoxicity screening batteries were performed using DPX-MP062 in rats. Neurotoxicity was characterized by clinical signs (depression, abnormal gait, head shake, salivation) and functional-observation battery (FOB) (circling behavior, incoordination, slow righting reflex, decreased forelimb grip strength, decreased foot splay, decreased motor activity). However, there was no evidence of neurohistopathology in any study. Learning and memory parameters were affected in the pups in the developmental neurotoxicity study in rats with DPX-KN128.

There was no evidence of carcinogenicity in either the rat or mouse in acceptable studies using DPX-JW062. DPX-JW062 was not mutagenic in a complete battery of mutagenicity studies. There was also no evidence of mutagenicity with either DPX-KN128, or DPX-MP062.

Both DPX-JW062 and DPX-MP062 were rapidly absorbed and eliminated following oral administration. The absorption of DPX-JW062 was dose dependent and appeared to be saturated at the high dose. Both urine and feces represented major routes of excretion (35–45% and 33–47%, respectively). The distribution pattern did not vary with dosing regimen and overall tissue burden was limited to only 3.4–12.9% of the administered dose. The red blood cells of rats dosed with the trifluoromethoxyphenyl label consistently contained much greater levels of radioactivity than did plasma. Fat tissue contained the greatest level of radioactivity (1.76–8.76% of the administered dose) and, for both compounds, was greater in female rats. The finding also demonstrates a greater propensity for accumulation by female rats than by male rats. Both DPX-MP062 and DPX-JW062 were extensively metabolized and the metabolites were eliminated in the urine, feces, and bile. With the exception of parent compound (DPX-JW062, which accounted for 19.2% of a single low dose in the feces of female rats), none of the metabolites from any source represented more than 12.3% of the administered dose. The metabolite profile for DPX-JW062 was dose dependent and varied quantitatively between males and females. Differences in metabolite profiles were also observed for the different label positions. All of the biliary metabolites appear to undergo further biotransformation in the gut.

B. Toxicological Endpoints

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

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

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

A summary of the toxicological endpoints for indoxacarb used for human risk assessment can be found at *www.regulations.gov* in document ''PP#s: 2E6482, 3F6576, 5E6911, 5E6926, and 5E6991. Indoxacarb. Health Effects Division (HED) Risk Assessment for Grapes; Vegetable, *Brassica*, Leafy, Group 5; Turnip Greens; Vegetable, Leafy, Except *Brassica* (Group 4); Pome Fruits (Group 11, except pear); Tuberous and Corm Vegetables (Subgroup 1C); Cucurbit Vegetables (Group 9); Stone Fruits (Group 12); Cranberry; Mint; Okra; Southern Pea; and Fire Ant Bait.'' at pages 23–24 in Docket ID EPA–HQ–OPP–2005–0149.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to indoxacarb, EPA considered exposure under the petitioned-for tolerances as well as all existing indoxacarb tolerances in (40 CFR 180.564). EPA assessed dietary exposures from indoxacarb in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. In estimating acute dietary exposure, EPA used food consumption information from the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA relied upon anticipated residues for most commodities and percent crop treated information for most currently registered commodities. EPA assumed 100 percent crop (PCT) treated for all of the new commodities. Anticipated residues for all registered and new food commodities were based on field trial data.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Nationwide CSFII. As to residue levels in food, EPA relied upon anticipated residues for most commodities and PCT information for most currently registered commodities. EPA assumed 100 PCT for all of the new commodities. Anticipated residues for all registered and new food commodities were based on field trial data.

iii. *Cancer*. EPA has classified indoxacarb as ''not likely'' to be carcinogenic to humans via relevant routes of exposure using the Guidelines for Carcinogen Risk Assessment. Therefore, a cancer exposure assessment was not conducted.

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

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

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

b. The exposure estimate does not underestimate exposure for any significant subpopulation group; and

c. Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

For the acute assessment, maximum PCT estimates were used for the following commodities: apple (5%), broccoli (50%), cabbage (25%), cauliflower and the remaining *Brassica* head and stem vegetables (55%), sweet corn (2.5%), head lettuce (25%), leaf lettuce (11%), peanut (2.5%), pear (2.5%), peppers (15%), potato (2.5%), soybean (1%), spinach (5%) and tomato (25%).

For the chronic assessment, average weighted PCT estimates were used for the following commodities: apple (1%), broccoli (40%), cabbage (15%), cauliflower and the remaining *Brassica* head and stem vegetables (35%), sweet corn (1%), head lettuce (18%), leaf lettuce (9%), peanut (1%), pear (1%), peppers (10%), potato (1%), soybean (1%), spinach (5%) and tomato (15%).

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available federal, state, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of five percent except for those situations in which the average PCT is less than one. In those cases <1% is used as the average and <2.5% is used as the maximum. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available federal, state, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of five percent. In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent six years.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's

exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which indoxacarb may be applied in a particular area.

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

Based on the EPA's Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of indoxacarb for acute exposures are estimated to be 25.1 parts per billion (ppb) for surface water and 0.21 ppb for ground water. The EECs for chronic exposures are estimated to be 5.37 ppb for surface water and 0.21 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 25.1 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 5.37 ppb was used to assess the contribution to drinking water.

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

Indoxacarb is currently registered for the following residential non-dietary sites: as a fire ant bait for turf, which may be applied as a mound treatment or as a broadcast application by ''residential'' (i.e., private persons) applicators as well as by commercial handlers.

EPA assessed residential exposure using the following assumptions: EPA has determined that residential handlers are likely to be exposed to indoxacarb residues via dermal and inhalation routes during handling and applying activities. Based on the current use pattern, EPA expects duration of exposure to be short-term (1–30 days). The broadcast treatment results in a higher handler exposure than the mound treatment and is, therefore, the scenario assessed by EPA. EPA assessed exposure of residential handlers applying indoxacarb with a push-type spreader using SOPs for Residential Exposure Assessments (DEC-1997) in conjunction with unit exposures developed by the Outdoor Residential Exposure Task Force (ORETF).

There is also the potential for short-term and intermediate-term post-application exposure of adults and children from entering areas previously treated with indoxacarb (i.e., turf treated for fire ants). The post-application scenarios assessed from exposure to treated turf include: Dermal exposure from treated lawns due to high contact lawn activities (adult and toddler); Dermal exposure from treated turf due to golfing (adults and youths); Hand-to-mouth transfer of pesticide residues on lawns (toddler); Incidental ingestion of granules from pesticide-treated residential areas (toddler); and Incidental ingestion of soil from pesticide-treated residential areas (toddler).

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to indoxacarb and any other substances and indoxacarb does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that indoxacarb has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional uncertainty/safety factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There was no quantitative or qualitative evidence of increased prenatal or postnatal sensitivity in the two developmental toxicity studies in rats with DPX-JW062, one developmental toxicity study in rats with DPX-MP062 and DPX-KN128, one developmental toxicity study in rabbits with DPX-JW062, one 2-generation reproduction studies in rats with DPX-JW062 and a developmental neurotoxicity (DNT) study in rats with DPX-KN128. In these studies, developmental toxicity was observed in the presence of maternal toxicity.

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

i. The toxicity database for indoxacarb is complete.

ii. Neurotoxicity was seen in animal studies in rats and mice but at higher doses than the hematologic effects on which EPA's risk assessments are based. To evaluate the potential for increased sensitivity of infants and children to neurotoxic effects, EPA required a rat developmental neurotoxicity (DNT) study. The study has been submitted and reviewed. There was no evidence of increased sensitivity of offspring in the submitted study. Clinical observations, motor activity, acoustic startle habituation, and learning and memory testing were all comparable between the control and treated groups. Mean brain weight, gross and microscopic examinations and morphometric measurements of the brain were also

comparable between the controls and treated groups.

iii. There is no evidence that indoxacarb results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the two-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The acute and chronic dietary food exposure assessments utilize anticipated residues for most commodities that are based on reliable field trial data. They also utilize PCT data that have been verified by the Agency for most existing uses. For all new uses, 100 PCT is assumed. The acute and chronic assessments are somewhat refined and based on reliable data and will not underestimate exposure/risk. Conservative ground and surface water modeling estimates were used. Similarly conservative Residential SOPs were used to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by indoxacarb.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to indoxacarb will occupy 84% of the aPAD for the population group (children, 3 to 5 years old) receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to indoxacarb from food and water will utilize 53% of the cPAD for the population group (children, 1 to 2 years old) with greatest exposure. Based the use pattern, chronic residential exposure to residues of indoxacarb is not expected.

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

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 620 for the general U.S. population and 190 for children, 1 to 2 years old. The aggregate MOE for the general U.S. population is based on the residential turf (fire ant control) scenario and includes combined residential applicator and post-application dermal exposures. EPA determined that it is not appropriate to include applicator inhalation exposure in the aggregate exposure assessment, since toxicological endpoints of concern for dermal and inhalation exposures are different. The aggregate MOE for children includes post-application dermal and incidental oral exposures from entering turf areas previously treated with indoxacarb for fire ants.

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

Indoxacarb is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for indoxacarb.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 620 for the general U.S. population and 190 for children, 1 to 2 years old. The aggregate MOE for the general U.S. population is based on the residential turf (fire ant control) scenario and includes combined residential applicator and post-application dermal exposures. EPA determined that it is not appropriate to include applicator inhalation exposure in the aggregate exposure assessment, since toxicological endpoints of concern for dermal and inhalation exposures are different. The aggregate MOE for children includes post-application dermal and incidental oral exposures from entering turf areas previously treated with indoxacarb for fire ants.

5. *Aggregate cancer risk for U.S. population*. EPA has classified indoxacarb as ''not likely'' to be carcinogenic to humans via relevant routes of exposure using the Guidelines for Carcinogen Risk Assessment. Therefore, a cancer aggregate exposure assessment was not conducted. Indoxacarb is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression (high-performance liquid chromatography (HPLC)/column switching/ultraviolet (UV) methods AMR 2712-93 and Du Pont 11978 with confirmation/specificity provided by gas chromatography (GC)/mass-selective detector method AMR 3493-95, Supplement No. 4). These methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established or proposed Codex maximum residue limits (MRLs) for indoxacarb.

V. Conclusion

Based upon review of the data supporting the petitions, EPA has modified the proposed tolerances as follows:

(1) PP 3F6576: Revised the commodity term and tolerance for ''raisin'' to read ''grape, raisin'' at 5.0 ppm;

(2) PP 5E6911: Replaced the proposed tolerances for ''leafy greens, except spinach, subgroup 4A'', ''leaf petioles subgroup 4B'' and ''spinach'' with a single tolerance in or on ''vegetable, leafy, except *Brassica*, group 4'' at 14 ppm; and added a tolerance for ''pear, oriental'' at 0.20 ppm;

(3) PP 5E 6926: Revised the commodity term ''pea (southern'') to read ''pea, southern, seed''; and revised the commodity term and tolerance level for ''mint'' to read ''peppermint, tops'' at 11 ppm and ''spearmint, tops'' at 11 ppm; and

(4) PP 5E6991: Revised the tolerances for ''vegetable, cucurbit, group 9'', ''fruit, stone, group 12'' and ''cranberry'' to 0.60 ppm, 0.90 ppm and 0.90 ppm, respectively. The reasons for these changes are discussed below.

EPA revised the commodity terms ''raisin'', mint'' and ''pea (southern)'' to agree with recommended commodity terms in the Office of Pesticide Program's Food and Feed Commodity Vocabulary. Based on data submitted with PP 5E6911 and data previously submitted to support the existing tolerances on leaf and head lettuce, EPA determined that it was appropriate to establish a tolerance for the crop group ''vegetable, leafy, except *Brassica*, group 4'' instead of the proposed separate tolerances on ''leafy greens, except spinach, subgroup 4A'', ''spinach'' and ''leaf petioles subgroup 4B''. The crop group tolerance of 14 ppm is based on data for the crop with the highest field trial residues (spinach). EPA is establishing a tolerance for ''pear, oriental'' at 0.20 ppm. A tolerance for ''pear'' currently exists at this level. Although residue field trial data for pear may be translated to oriental pear, a separate tolerance must be established under current regulations. EPA is taking this action to clarify tolerances for all members of the pome fruit crop group. Based on the submitted grape processing data showing a maximum concentration in raisins of 2.7x and the highest average field trial (HAFT) residue on grapes of 1.52 ppm, EPA has determined that the proposed raisin tolerance of 6.0 ppm should be revised to 5.0 ppm. EPA also determined that the proposed tolerance levels for ''peppermint, tops'', ''spearmint, tops'', ''vegetable, cucurbit, group 9'', ''fruit, stone, group 12'' and ''cranberry'' were inappropriate and should be revised as specified above based on analyses of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's Guidance for Setting Pesticide Tolerances Based on Field Trial Data Standard Operating Procedure (SOP).

Therefore, tolerances are established for combined residues of indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-*e*][1,3,4][oxadiazine-4a(3*H*)-carboxylate, and its R-enantiomer, (R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-*e*][1,3,4][oxadiazine-4a(3*H*)-carboxylate, in or on cranberry at 0.90 ppm; fruit, pome, except pear, group 11 at 1.0 ppm; fruit, stone, group 12 at 0.90 ppm; grape at 2.0 ppm; grape, raisin at 5.0 ppm; okra at 0.50 ppm; pea, southern, seed at 0.10 ppm; pear, oriental at 0.20 ppm; peppermint, tops at 11 ppm; spearmint, tops at 11 ppm; turnip greens at 12 ppm; vegetable, *Brassica*, leafy, group 5 at 12 ppm; vegetable, cucurbit, group 9 at 0.60 ppm; vegetable, leafy, except *Brassica*, group 4 at 14 ppm; and vegetable, tuberous and corm, subgroup 1-C at 0.01 ppm. Existing tolerances on apple; *Brassica*, head and stem, subgroup 5A; lettuce, head; lettuce, leaf; and potato, which are superseded by the new tolerances, are revoked.

Time-limited tolerances were established for combined residues of indoxacarb and its R-enantiomer in or on cherry, sweet; cherry, tart; and peach in connection with a FIFRA section 5 experimental use permit granted by EPA. Time-limited tolerances were established for combined residues of indoxacarb and its R-enantiomer in or on collards and cranberry in connection with FIFRA section 18 emergency exemptions granted by EPA. All of these time-limited tolerances have expired, except the time-limited tolerance on cranberry, which is set to expire on December 31, 2007. Because EPA is establishing tolerances on stone fruit, *Brassica* leafy vegetables and cranberry, these time-limited tolerances, most of which have already expired, are not needed. Therefore, the time-limited tolerances for residues of indoxacarb and its R-enantiomer under 40 CFR 180.564(a)(2) and 40 CFR 180.564(b) are revoked.

Finally, the word ''enantiomer'' is incorrectly spelled (''enantimomer'') in the tolerance expression for indoxacarb in 40 CFR 180.564(a)(1) and is being corrected in this regulation.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 2, 2007.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.564, paragraph (a) is revised and paragraph (b) is removed and reserved to read as follows:

§ 180.564 Indoxacarb; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the insecticide indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-*e*][1,3,4][oxadiazine-4a(3*H*)-carboxylate, and its R-enantiomer, (R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl]indeno[1,2-*e*][1,3,4][oxadiazine-4a(3*H*)-carboxylate, in or on the following raw agricultural commodities:

Commodity	Parts per million
Apple, wet pomace	3.0
Alfalfa, forage	10
Alfalfa, hay	50
Cattle, fat	1.5
Cattle, meat	0.05
Cattle, meat byproducts	0.03
Corn, sweet, forage	10
Corn, sweet, kernel plus cob with husk removed	0.02
Corn, sweet, stover	15
Cotton, gin byproducts	15
Cotton, undelinted seed	2.0
Cranberry	0.90
Fruit, pome, except pear, group 11	1.0
Fruit, stone, group 12	0.90
Goat, fat	1.5
Goat, meat	0.05
Goat, meat byproducts	0.03
Grape	2.0
Grape, raisin	5.0
Hog, fat	1.5
Hog, meat	0.05
Hog, meat byproducts	0.03
Horse, fat	1.5
Horse, meat	0.05
Horse, meat byproducts	0.03
Milk	0.15
Milk, fat	4.0
Okra	0.50
Pea, southern, seed	0.10
Peanut	0.01
Peanut, hay	40
Pear	0.20
Pear, oriental	0.20
Peppermint, tops	11
Sheep, fat	1.5
Sheep, meat	0.05
Sheep, meat byproducts	0.03
Soybean, aspirated grain fractions	45
Soybean, hulls	4.0
Soybean, seed	0.80
Spearmint, tops	11
Turnip, greens	12
Vegetable, *Brassica*, leafy, group 5	12
Vegetable, cucurbit, group 9	0.60
Vegetable, fruiting, group 8	0.50
Vegetable, leafy, except *Brassica*, group 4	14
Vegetable, tuberous and corm, subgroup 1-C	0.01

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

* * * * *

[FR Doc. E7–13339 Filed 7–10–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0331; FRL–8130–5]

Cymoxanil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of cymoxanil in or on grape, hop, and caneberry. The Interregional Research Project (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 11, 2007. Objections and requests for hearings must be received on or before September 10, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0331. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also

be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0331 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before September 10, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2006–0331, by one of the following methods:

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

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

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

II. Petition for Tolerance

In the **Federal Register** of May 10, 2006, (71 FR 27247) (FRL–8067–5), and November 15, 2006, (71 FR 66522) (FRL–8101–8) EPA issued notices pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions PP 5E7000 (grape and hop), and PP 6E7100 (caneberry) by the IR-4, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petitions requested that 40 CFR 180.503(a) be amended by establishing tolerances for residues of the fungicide cymoxanil, in or on grape (east of the Rocky Mountains) at 1.0 parts per million (ppm); hop, dried cones at 5.0 ppm; and caneberry at 4.0 ppm. These notices referenced a summary of the petitions prepared by Dupont, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. Comments were received from a private citizen on the notice of filing for grape; and hop, dried cones. EPA's response to comment is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of the FFDCA, and the factors specified in section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of cymoxanil on grape at 0.10 ppm; hop, dried cone at 7.0 ppm; and caneberry at 4.0 ppm. EPA's assessment of exposures and risks associated with establishing these tolerances follow.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by cymoxanil as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov*. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as EPA–HQ–OPP–2006–0331 in that docket. Please refer to the Human Health Risk Assessment for Cymoxanil for New section 3 Uses in/on Grapes (East of the Rocky Mountains); Hop, dried cones; and Caneberry Subgroup 13A on pages 16–19.

B. Toxicological Endpoints

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

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

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

A summary of the toxicological endpoints for cymoxanil used for human risk assessment can be found at www.regulations.gov in the Human Health Risk Assessment for Cymoxanil for New section 3 Uses in/on Grapes (East of the Rocky Mountains); Hop, dried cone; and Caneberry Subgroup 13A, pages 19–20 in Docket ID EPA–HQ–OPP–2006–0331.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to cymoxanil, EPA considered exposure under the petitioned-for tolerances as well as all existing cymoxanil tolerances in (40 CFR 180.503(a)). EPA assessed dietary exposures from cymoxanil in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. An acute dietary exposure assessment was performed for females 13–49 years old only, since an acute endpoint of concern was not identified for the general U.S. population. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996, and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed that cymoxanil residues were present in all registered and proposed food commodities at tolerance levels, and 100 percent crop treated (PCT) for all commodities. Dietary Exposure Evaluation Model (DEEM) version 7.81 default processing factors were used for all registered and proposed commodities except for grape juice and raisin.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Nationwide CSFII. As to residue levels in food, EPA used tolerance level residues for all commodities except lettuce, hops and grapes. Average residues from field trials were used for lettuce, hops and grapes. DEEM default processing factors were used for all commodities except grapes. Processing factors for grape juice (1.4x) and raisins (1x) were derived from grape processing data. Exposure estimates were further refined using screening-level PCT (% CT) data for several registered commodities. For all other commodities, including the proposed new uses, 100 %CT was assumed.

iii. *Cancer*. EPA has classified cymoxanil as a ''not likely'' human carcinogen. Therefore, a cancer dietary exposure analysis was not performed.

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

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

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

b. The exposure estimate does not underestimate exposure for any significant subpopulation group; and

c. Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: Cucumber, head lettuce, pepper, potato, and tomato at 10%; pumpkin, squash, and watermelon at 1%.

EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available federal, state, and private market survey data for that use, averaging by year, averaging across all years, and rounding up to the nearest multiple of five percent except for those situations in which the average PCT is less than one. In those cases <1% is used as the average and <2.5% is used as the maximum. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the single maximum value reported overall from available federal, state, and private market survey data on the existing use, across all years, and rounded up to the nearest multiple of five percent. In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (USDA/NASS), Proprietary Market Surveys, and the National Center for Food and Agriculture Policy (NCFAP) for the most recent six years.

The Agency believes that the three conditions have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which cymoxanil may be applied in a particular area.

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

The Agency calculated screening level surface and ground water estimates for cymoxanil using FQPA Index Reservoir Screening Tool (FIRST (version 1.0)), and SCI-GROW (Screening Concentration In GROund Water) models, respectively. The proposed application rates for use on grape and hop are higher than the rates evaluated previously. Estimated drinking water concentrations were estimated based on the newly proposed application rate for grape (0.25 lbs per acre, 10 times), which was the highest application rate reported for the new proposed uses.

Based on the FIRST and SCI-GROW models, the estimated environmental concentrations (EECs) of cymoxanil for acute and chronic exposures are 0.019 parts per billion (ppb), and 0.0001 ppb, respectively for surface water. The EECs for groundwater (acute and chronic) are estimated to be 0.000003 ppb.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 0.019 ppb was used to access the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 0.0001 ppb was used to access the contribution to drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Cymoxanil is not registered for use on any sites that would result in residential exposure.

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to cymoxanil and any other substances and cymoxanil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cymoxanil has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional uncertainty/safety factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is an indication of increased susceptibility (qualitative and quantitative) of rats and rabbits to *in utero* exposure to cymoxanil. In the rat developmental toxicity study, decreased fetal body weights and skeletal malformations were observed at 25 mg/kg/day LOAEL, which is below the maternal toxicity of 75 mg/kg/day LOAEL. In the rabbit developmental study increased skeletal malformations were observed at 8 mg/kg/day LOAEL, also below the maternal NOAEL of 32 mg/kg/day. In the 2–generation reproduction study there was an indication of increased qualitative susceptibility in the offspring, since there was decreased pup viability at a dose that produced less severe effects in maternal animals.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for the infants and children FQPA safety factor to be reduced to 1X for acute dietary exposures. The EPA believes that this will be protective of infants and children based on the following findings:

i. The toxicity database for cymoxanil is complete for dietary risk assessment.

ii. Although there is qualitative evidence of increased susceptibility in the prenatal developmental studies in rats and rabbits, the risk assessment team did not identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment of cymoxanil. The degree of concern for pre-and/or postnatal toxicity is low.

iii. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessment was performed based on 100 PCT, tolerance-level residues, and DEEM default processing factors for all registered and proposed commodities. Conservative ground and surface water modeling estimates were also used and incorporated directly in the DEEM analysis. The Agency has determined with reasonably certainty that the identified assessment will not underestimate the exposure and risks posed by cymoxanil. However, the 10X FQPA safety factor was retained for chronic dietary exposure because a LOAEL was used to extrapolate a NOAEL for the chronic toxicity study in the dog.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to cymoxanil will occupy 72% of the aPAD for the population group (females 13–49 years old).

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded

that exposure to cymoxanil from food and water will utilize 51% of the cPAD for children 1–2 years old, the subpopulation group with greatest exposure. There are no residential uses for cymoxanil that result in chronic residential exposure to cymoxanil.

3. *Short and intermediate-term risks*. Short and Intermediate-term aggregate exposures takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cymoxanil is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population*. EPA has classified cymoxanil as a ''not likely'' human carcinogen. Therefore, cymoxanil is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies (high performance liquid chromatography with ultra violet detection (HPLC/UV) and (HPLC/MS) using (mass spectroscopy) on grape, caneberry, and hop, respectively) are available to enforce the tolerance expression. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no for CODEX maximum residue levels established for cymoxanil on grape; hop, dried cone; and caneberry.

C. Response to Comments

Comments were submitted by a private citizen who opposed the establishment of cymoxanil tolerances for the following reasons:

1. The availability of numerous products previously registered for the same purpose in which the new cymoxanil tolerances are intended, and

2. Cymoxanil is toxic to aquatic plants, bees, and birds, and therefore has potential harmful effects on the environment. These comments are considered irrelevant because the safety standard for approving tolerances under section 408 of the FFDCA focuses on potential harms to human health and does not permit consideration of effects on the environment or the availability of other registered products.

V. Conclusion

The proposed hop, dried cone tolerance was revised from 5.0 to 7.0 ppm based on submitted field trial residues. For grape, the proposed tolerance of 1.0 was lowered to 0.10 ppm. The residue field trials indicate 0.10 ppm as the appropriate regional tolerance for grape. Therefore, tolerances are established for residues of cymoxanil, 2-cyano-N-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide in or on grape (east of the Rocky Mountains) at 0.10 ppm; hop, dried cone at 7.0 ppm; and caneberry at 4.0 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 3, 2007.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.503 is amended by revising the table in paragraph (a); and by adding text to paragraph (c) to read as follows:

§ 180.503 Cymoxanil, tolerance for residues.

(a) * * *

Commodity	Parts per million
Caneberry	4.0
Hop, dried cones	7.0
Lettuce, head	4.0
Lychee[1]	1.0
Potato	0.05
Vegetable, cucurbit, group 9	0.05
Vegetable, fruiting, group 8	0.2

[1] There is no U.S. registration for lychee.

* * * * *

(c) *Tolerances with a regional registration*. Tolerances with a regional registration as defined in § 180.1(n) are established for the residues of the fungicide cymoxanil, 2-cyano -*N*-[(ethylamino)carbonyl]-2-(methoxyimino) acetamide) in or on the raw agricultural commodities:

Commodity	Parts per million
Grape	0.10

* * * * *

[FR Doc. E7–13419 Filed 7–10–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0483; FRL–8131–6]

Chlorpropham, Linuron, Pebulate, Asulam, and Thiophanate–methyl; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking certain tolerances for the herbicides linuron and pebulate and the fungicide thiophanate–methyl. Also, EPA is modifying certain tolerances for the herbicides chlorpropham, linuron, asulam and the fungicide thiophanate–methyl. In addition, EPA is establishing new tolerances for the herbicides chlorpropham, linuron, asulam and the fungicide thiophanate–methyl. The regulatory actions in this document are part of the Agency's reregistration program under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective July 11, 2007. Objections and requests for hearings must be received on or before September 10, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0483. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jane Smith, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0048; e-mail address: *smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0483 in the subject line on the first page of your submission. All requests must be in writing, and must be

mailed or delivered to the Hearing Clerk on or before September 10, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0483, by one of the following methods.

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

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

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

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of September 20, 2006 (71 FR 54953) (FRL–8078–2), EPA issued a proposed rule to revoke, remove, modify, and establish certain tolerances and/or tolerance exemption for residues for the herbicides chlorpropham, linuron, asulam and pebulate and the fungicide thiophanate-methyl. Also, the proposal of September 20, 2006 (71 FR 54953) (FRL–8078–2) provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under the Federal Food, Drug, and Cosmetic Act (FFDCA) standards.

EPA is revoking, removing, modifying, and establishing specific tolerances for residues of the herbicides chlorpropham, linuron, asulam and pebulate and the fungicide thiophanate-methyl in or on commodities listed in the regulatory text.

EPA is finalizing these tolerance actions in order to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of the reregistration and tolerance reassessment processes, EPA is required to determine whether each of the amended tolerances meets the safety standards under the FQPA. The safety finding determination of ''reasonable certainty of no harm'' is found in detail in each Reregistration Eligibility Decision (RED) and Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend certain tolerance actions to be implemented to reflect current use patterns, to meet safety findings and change commodity names and groupings in accordance with new EPA policy. Printed copies of REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone: 1–800–490–9198; fax: 1–513–489–8695; internet at *http://www.epa.gov/ncepihom* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone: 1–800–553–6847 or (703) 605–6000; internet at *http://www.ntis.gov.* Electronic copies of REDs and TREDs are available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm*.

In this final rule, EPA is revoking certain tolerances and tolerance exemptions because these specific tolerances and exemptions correspond to uses no longer current or registered under FIFRA in the United States. The tolerances revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

EPA's policy is to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

This final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of September 20, 2006 (71 FR 54953) (FRL–8078–2), EPA received two comments during the 60–day public comment period, as follows:

Comment. A comment was received from a private citizen that expressed concern with pesticide residues in general and that pesticide residue levels should be zero. Concern was also expressed for the number of chemicals found in the bodies of adults and children.

Agency response. The private citizen's comment did not take issue with the Agency's conclusion that certain tolerances should be revoked, established and modified. The Agency conducts a detailed risk assessment to determine whether establishing and/or increasing tolerances is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue. Also, it is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist.

Comment. Cerexagri, Inc. commented that the term postharvest associated with the tolerances for thiophanate-methyl residues of concern on apple, apricot, cherry, peach and plum is not appropriate because the use patterns are based on pre-harvest applications. Cerexagri, Inc. also took issue with the increase of the tolerance for thiophanate-methyl residues of concern on canola at 0.1 parts per million (ppm) to 0.2 ppm. They cited data and analytical methods which indicate the tolerance increase is not appropriate.

Agency response. The thiophanate-methyl Residue Chemistry Chapter and RED included recommendations that certain tolerances be designated as postharvest. The Agency agrees that the uses of thiophanate-methyl include pre-harvest applications such that the post-harvest designation is not appropriate.

Therefore, the Agency has determined that the postharvest designation should not be linked to the tolerances in the 40 CFR. Therefore, EPA is removing the references to ''postharvest'' from the tolerances in 40 CFR 180.371. Cerexagri, Inc, also commented on the proposed tolerance level increase for canola from 0.1 to 0.2 ppm.

Setting the tolerance on canola at 0.2 ppm was recommended in the thiophanate-methyl RED based on an enforcement method limit of quantitation (LOQ) of 0.05 ppm. Crexagri believes that the tolerance on canola should remain at 0.1 ppm, the current tolerance level, based on an appropriate enforcement method LOQ of 0.025 ppm. The field trial data showed non-detectable residues of thiophanate-methyl and one sample with detection equivalent to 0.018 ppm of the metabolite methyl 2-benzimidazolyl carbamate (MBC). Later, Cerexagri submitted an addendum to the crop field trial data which details an estimation of a practical limit of detection (LOD) of 0.005 ppm in/on canola seed for MBC. The Agency believes that a viable LOQ is usually about 3x the method LOD, and therefore, an LOD would correspond to about a 0.015 ppm for the method. Consequently, the Agency believes that an LOD of 0.025 ppm is a conservative estimate. Based on the estimated method LOQ for the metabolite MBC, the Agency agrees that the canola seed tolerance should remain at 0.1 ppm in 40 CFR 180.371(c).

1. *Chlorpropham.* A plant commodity tolerance on potato for chlorpropham is currently regulated for residues of CIPC (isopropyl m-chlorocarbanilate) and its metabolite 1-hydroxy-2-propyl 3'-chlorocarbanilate (calculated as CIPC) in 40 CFR 180.181. Because the regulated metabolite was not detected in potato following treatment with radiolabelled 14C-chlorpropham, EPA determined that the tolerance expression for plants should be expressed in terms of chlorpropham *per se*. Meanwhile, the current interim milk and livestock tolerances in 40 CFR 180.319 are regulated for isopropyl m-chlorocarbanilate (CIPC) residues. However, based on available ruminant data that show residues of chlorpropham and its metabolite 4-hydroxychlorpropham-O-sulfonic acid (4-HSA) in milk and edible tissues, EPA determined that the tolerance expression should be expressed in terms of the combined residues of chlorpropham and 4-hydroxychlorpropham-O-sulfonic acid (4-HSA) and recodified under 40 CFR 180.181 as permanent tolerances. Therefore, EPA is recodifying plant tolerances for chlorpropham from 40 CFR 180.181(a) to (a)(1) and regulate the plant regulator and herbicide chlorpropham (isopropyl m-chlorocarbanilate (CIPC) in plants. Also, EPA is removing the interim milk and livestock tolerances (meat, fat, and meat byproducts of cattle, hog, horse, goat, and sheep) for chlorpropham in 40 CFR 180.319, recodify them as permanent tolerances in 40 CFR 180.181(a)(2) and regulate tolerances there for the plant growth regulator and herbicide chlorpropham (isopropyl m-chlorocarbanilate [CIPC]) and its metabolite 4-hydroxychlorpropham-O-sulfonic acid (4-HSA).

In addition, based on ruminant feeding data and the calculated maximum theoretical dietary burden (MTDB) estimates, EPA determined that tolerances on the meat of cattle, hog, horse, goat, and sheep should be increased from 0.05 to 0.06 parts per million (ppm), the limit of quantitation (LOQ). Also, based on exaggerated feeding study data that showed combined residues of concern in kidney at about 0.3 ppm, the Agency determined that tolerances for kidney of cattle, hog, horse, goat, and sheep should be separated from their existing meat byproduct tolerances at 0.05 ppm and increased to 0.30 ppm. Since the combined residues of concern were shown to be near or below the LOQ (0.06 ppm), the Agency determined that tolerances for meat byproducts, except kidney of cattle, hog, horse, goat, and sheep should be increased from 0.05 to 0.06 ppm. In addition, based on ruminant feeding data that showed combined residues of concern in fat at 0.17 ppm, the Agency determined that tolerances for the fat of cattle, hog, horse, goat, and sheep should be increased from 0.05 to 0.20 ppm. Moreover, based on ruminant feeding data and the maximum tolerated dietary burden (MTDB) burden estimates that showed combined residues of concern to be 0.25 ppm, the Agency determined that the tolerance for milk should be increased from 0.05 to 0.30 ppm. Therefore, EPA is increasing tolerances in newly recodified 40 CFR 180.181(a)(2) for the combined residues of chlorpropham and 4-hydroxychlorpropham-O-sulfonic acid (4-HSA) as follows: Milk from 0.05 to 0.30 ppm; cattle, fat; hog, fat; horse, fat; goat, fat; and sheep, fat from 0.05 to 0.20 ppm; cattle, meat; hog, meat; horse, meat; goat, meat; and sheep, meat from 0.05 to 0.06 ppm; cattle, meat byproducts, except kidney; hog, meat byproducts, except kidney; horse, meat byproducts, except kidney; goat, meat byproducts, except kidney; and sheep, meat byproducts, except kidney from 0.05 to 0.06 ppm; and cattle, kidney; hog, kidney; horse, kidney; goat, kidney; and sheep, kidney from 0.05 to 0.30 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available potato field trial data that show chlorpropham residues as high as 24 ppm, the Agency determined that the tolerance in newly recodified 40 CFR 180.181(a)(1) should be decreased from 50 to 30 ppm. The term ''postharvest'' associating these tolerances with the timing of the use is being removed, since the enforcement Agency would not know whether a commodity bore residues resulting from postharvest treatment. Therefore, EPA is decreasing the tolerance in newly recodified 40 CFR 180.181(a)(1) in or on potato, postharvest from 50 to 30 ppm and revising potato, postharvest to potato.

Based on available potato processing data that demonstrate an average concentration factor of chlorpropham residues at 3X, and the highest average field trial (HAFT) whole potato residue of 12.0 ppm, the Agency determined that residues in the wet potato peel would be 36 ppm; therefore, a tolerance should be established on potato, wet peel at 40 ppm. (Residues did not concentrate in potato granules, flakes or chips.) Therefore, EPA is establishing a tolerance in newly recodified 40 CFR 180.181(a)(1) for the chlorpropham residues of concern or on potato, wet peel at 40 ppm.

2. *Linuron.* According to the TRED, the tolerance expression, which is currently expressed as ''residues of the herbicide linuron (3-(3,4-dichloro phenyl)-1-methoxy-1-methylurea)'' in 40 CFR 180.184(a) and (c), should be modified to include metabolites that can be converted to 3,4-dichloroaniline that are of toxicological concern. Consequently, EPA is establishing the tolerance expression in 40 CFR 180.184(a) to regulate the combined residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron in/on food commodities and in 40 CFR 180.184(c) to regulate the combined residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron in/on food commodities.

The feeding of treated soybean forage or hay to livestock is prohibited as stated on the registration labels and therefore, the tolerances are no longer needed. Consequently, EPA is revoking the tolerances in 40 CFR 180.184(a) soybean, forage and soybean, hay.

Based on field trial data that indicate linuron residues of concern in or on field corn stover are as high as 5.5 ppm, the Agency determined that a tolerance should be 6.0 ppm on corn, field, stover. The RED indicates a data deficiency for corn, sweet, stover; however, the field corn stover data can be translated to sweet corn stover, therefore, the Agency has determined the tolerance for corn, sweet, stover can be increased from 1.0 to 6.0 ppm. Therefore, EPA is increasing the tolerance in 40 CFR 180.184(a) for the combined residues of the herbicide linuron and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron in or on corn, field, stover and corn, sweet, stover from 1.0 to 6.0 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

In order to conform to current Agency practice, EPA is revising the commodity terminology in 40 CFR 180.184(a) for corn, grain (inc. pop) at 0.25 ppm into corn, field, grain and corn, pop, grain. However, because there are no active U.S. registrations for the use of linuron on popcorn, the tolerance is no longer needed and should be revoked. Therefore, EPA is revoking the tolerance in 40 CFR 180.184(a) on corn, pop, grain. In addition, based on field trial data that indicate linuron residues of concern in or on corn grain as high as 0.06 ppm, the Agency determined that the corn, field, grain tolerance should be decreased from 0.25 to 0.1 ppm. Therefore, EPA is decreasing the tolerance in 40 CFR 180.184(a) for the combined residues of the herbicide linuron and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron in or on corn, field, grain from 0.25 to 0.1 ppm.

Ruminant feeding data at an exaggerated level (6.9x) show that linuron residues of concern expected at a 1x feeding level are 0.16 ppm in fat, 0.07 ppm in meat, 1.9 ppm in liver and kidney, and 0.05 ppm in milk. Based on these expected residue levels, the Agency determined that the tolerances for the fat of cattle, goat, horse and sheep should be decreased from 1.0 to 0.2 ppm; meat tolerances of cattle, goat, horse and sheep should be decreased from 1.0 to 0.1 ppm; meat byproduct tolerances of cattle, goat, horse, and sheep should be separated into tolerances for meat byproducts, except kidney and liver, and decreased from 1.0 to 0.1 ppm; kidney of cattle, goat, horse, and sheep, which should be established separately and increased from 1.0 to 2.0 ppm; liver of cattle, goat, horse, and sheep, which should be established separately and increased from 1.0 to 2.0 ppm; and a tolerance for milk should be established at 0.05 ppm. Therefore, EPA is decreasing tolerances from 1.0 ppm in 40 CFR 180.184(a) for the following: Cattle, fat; goat, fat; horse, fat; and sheep, fat; each to 0.2 ppm; cattle, meat; cattle, meat byproducts, except kidney and liver; goat, meat; goat, meat byproducts, except kidney and liver; horse, meat; horse, meat byproducts, except, kidney and liver; sheep, meat and sheep, meat byproducts, except kidney and liver; each from 1.0 ppm to 0.1 ppm. Also, EPA is establishing separate tolerances in 40 CFR 180.184(a) for the following commodities: Cattle, kidney; cattle, liver; goat, kidney; goat, liver; horse, kidney; horse, liver; sheep, kidney; and sheep, liver; each at 2.0 ppm. In addition, EPA is establishing a tolerance in 40 CFR 180.184(a) in milk at 0.05 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on ruminant feeding data and an estimated dietary burden in swine that is much less than that for beef and dairy cattle, the Agency calculated likely linuron residues of concern to be less than 0.007 ppm in hog fat, 0.003 ppm in hog meat, and 0.08 ppm in hog liver and kidney; therefore, the Agency determined the tolerances should be decreased to 0.05 ppm, 0.05 ppm and 0.1 ppm for hog fat, hog meat and hog meat byproducts, respectively. Therefore, EPA is decreasing tolerances in 40 CFR 180.184(a) for the combined residues of the herbicide linuron and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron in or on hog, fat and hog, meat from 1.0 to 0.05 ppm; and hog, meat byproducts from 1.0 to 0.1 ppm.

Based on field trial data, the Agency determined that linuron residues of concern were non-detectable (<0.05 ppm) in or on parsnips. Therefore, EPA is decreasing the tolerance in 40 CFR 180.184(a) for the combined residues of the herbicide linuron and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron in or on parsnip (with or without tops) from 0.5 to 0.05 ppm and revising the commodity terminology to parsnip, roots and parsnip, tops.

Since completion of the Linuron TRED, data deficiencies for cotton gin byproducts have been adequately addressed. Based on more recent cotton storage stability and field trial data reflecting all cotton growing regions of the U.S. submitted in response to the TRED, the maximum residues of linuron in or on stripper cotton gin byproducts were 3.32 ppm, the Agency determined that the tolerance should be established for cotton gin byproducts at 5.0 ppm. Therefore, EPA is establishing a tolerance in 40 CFR 180.184(a) for the combined residues of the herbicide linuron and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron in or on cotton, gin byproducts at 5.0 ppm.

Because use of linuron on potatoes and celery is restricted to east of the Rocky Mountains, and use on wheat is restricted to the states of Idaho, Oregon, and Washington, the Agency determined that tolerances on celery, potato, and the forage, grain, hay and straw of wheat should be recodified as regional registrations. Also, based on field trial data that indicate combined linuron residues of concern were nondetectable (<0.05 ppm) in or on all but one sample (0.07 ppm) of potato, nondetectable (<0.03 ppm) in or on wheat grain, and as high as 2.0 ppm in or on wheat straw, the Agency determined that the tolerances should be decreased from 1.0 to 0.2 ppm on potato and from 0.25 to 0.05 ppm on wheat, grain, and increased to 0.5 to 2.0 ppm on wheat straw. Therefore, EPA is recodifying tolerances on celery, potato, and the forage, grain, hay and straw of wheat from 40 CFR 180.184(a) to (c) for the combined residues of the herbicide linuron and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron as follows: Potato decreased from 1.0 to 0.2 ppm; wheat, grain decreased from 0.25 to 0.05 ppm; and wheat, straw increased from 0.5 to 2.0 ppm and correcting 180.1(N) to 180.1(M). The Agency determined that the increased tolerance is safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Interregional Research Project #4 (IR-4) has submitted petitions (PP 8E5027 and PP 8E5028) requesting the establishment of tolerances on celeriac and rhubarb based on use directions and data translated from carrots and celery, respectively. Based on field trial data that show linuron residues of concern for carrot samples treated at 0.75X were as high as 0.56 ppm and celery samples treated at 1X were as high as 0.42 ppm, the Agency determined that tolerances should be established at 1.0 ppm on

celeriac and 0.5 ppm on rhubarb. Therefore, EPA is establishing tolerances in 40 CFR 180.184(a) for the combined residues of the herbicide linuron and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron in or on celeriac at 1.0 ppm and rhubarb at 0.5 ppm.

Although additional data are anticipated in 2007 in response to the TRED, tolerances associated with sorghum and sweet corn have been reassessed at the current tolerance levels. The Agency determined that the tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residues. EPA is maintaining the tolerance level and revising the commodity terminology in 40 CFR 180.184(a) to conform to current Agency practice as follows: ''Sorghum, forage'' to ''sorghum, grain, forage'' at 1.0 ppm; ''corn, fresh (inc. sweet, kernel plus cob with husks removed)'' to ''corn, sweet, kernel plus cob with husks removed'' at 0.25 ppm; and splitting ''soybean, (dry or succulent)'' to separate tolerances fo ''soybean, seed'' and ''soybean, vegetable'' both at 1.0 ppm.

3. *Pebulate.* The last U.S. registration was cancelled October 24, 2003 due to non-payment of registration fees and a notice was published in the **Federal Register** on November 6, 2003 (68 FR 62785, FRL–7331–3). Therefore, tolerances are no longer needed and EPA is revoking the tolerances in 40 CFR 180.238 for residues of pebulate (S-propyl butylethylthiocarbamate) in or on beet, sugar roots; beet sugar, tops; and tomato.

4. *Asulam.* The tolerance expression in 40 CFR 180.360 currently regulates asulam (methyl sulfanilylcarbamate) *per se*. The Agency recommended in the asulam TRED that the tolerance expression be revised to include metabolites containing the sulfanilamide moiety because in the absence of toxicological data the Agency assumed these compounds to be potentially comparable in toxicity to the parent compound, asulam. Therefore, EPA is revising the tolerance expression in 40 CFR 180.360 to read as follows: ''(a) General. Tolerances are established for the combined residues of asulam (methyl sulfanilylcarbamate) and its metabolites containing the sulfanilamide moiety in or on the following food commodities.''

Based on field trial data that showed asulam residues of concern as high as 0.23 ppm and a correction for a 70% loss of residues during storage, the Agency calculated that the maximum residue should be 0.71 ppm, and determined that the tolerance on sugarcane should be increased form 0.1 to 1.0 ppm. Therefore, EPA is increasing the tolerance in 40 CFR 180.360(a) for the combined residues of asulam and its metabolites containing the sulfanilamide moiety in or on sugarcane, cane from 0.1(N) to 1.0 ppm. The Agency is removing the ''N'' (negligible residues) to conform to current Agency Administrative practice. The Agency determined that the increased tolerance is safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available sugarcane processing data that show an average concentration factor of asulam residues at 48x and a HAFT residue value that when corrected for a 70% loss in storage is expected to be 0.557 ppm (0.167 ppm/0.3), the Agency calculated that the residues would be about 26.7 ppm and determined a tolerance should be established for sugarcane molasses at 30 ppm. Therefore, EPA is establishing a tolerance in 40 CFR 180.360(a) for the combined residues of asulam and its metabolites containing the sulfanilamide moiety in or on sugarcane, molasses at 30 ppm.

Based on a 1.2x exaggerated feeding study, animal metabolism data and a ruminant diet containing 10% molasses (a livestock feed item), the Agency determined that because the anticipated residues of asulam and sulfanilamide containing metabolites in milk are <0.025 ppm, in/on fat, liver, and muscle are <0.05 ppm, and kidney is 0.12 ppm, that tolerances should be established in milk, and on the fat and meat of cattle, goats, hogs, horses, and sheep at 0.05 ppm, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.2 ppm. Therefore, EPA is establishing tolerances in 40 CFR 180.360(a) for the combined residues of asulam and its metabolites containing the sulfanilamide moiety in/on commodities, as follows: Cattle, fat; goat, fat; hog, fat; horse, fat; and sheep, fat; cattle, meat; goat, meat; hog, meat; horse, meat; and sheep, meat at 0.05 ppm; and cattle, meat byproducts; goat, meat byproducts; hog, meat byproducts; horse, meat byproducts; and sheep, meat byproducts at 0.2 ppm; and milk at 0.05 ppm.

5. *Thiophanate-methyl.* Currently, the tolerances for thiophanate-methyl are expressed in 40 CFR 180.371(a) in terms of thiophanate-methyl(dimethyl regulates thiophanate-methyl and its oxygen analogue dimethyl-4,4-o-phenylenebis(allophonate), and its benzimidazole-containing metabolites (calculated as thiophanate-methyl); and in 40 CFR 180.371(b) and (c) in terms of thiophanate-methyl and its metabolite (methyl 2-benzimidazoyl carbamate (MBC)). The Agency has determined that the residues of concern for plant and animal commodities for tolerance enforcement consists of the parent and its metabolite methyl 2-benzimidazolyl carbamate (MBC). Therefore, EPA is amending the tolerance expression in 40 CFR 180.371(a), (b), and (c) so as to regulate tolerances for the combined residues of thiophanate-methyl (dimethyl[(1,2-phenylene) bis(iminocarbonothioyl)] bis(carbamate)) and its metabolite methyl 2-benzimidazoyl carbamate (MBC), calculated as thiophanate-methyl in/on food commodities.

EPA no longer considers dry apple pomace, banana pulp, and bean forage and hay, and peanut forage to be significant animal feed items and tolerances are no longer needed (A listing of significant food and feed commodities is found in ''Table 1.—Raw Agricultural and Processed Commodities and Feedstuffs Derived from Crops'' which is found in Residue Chemistry Test Guidelines OPPTS 860.1000 dated August 1996, available at*http://www.epa.gov/opptsfrs/publications/OPPTS_Harmonized/ 860_Residue_Chemistry_Test_Guidelines/Series/)*. Currently, there is a tolerance in 40 CFR 180.371 on peanut (forage and hay). Based on field trial data that show thiophanate-methyl residues of concern as high as 3.76 ppm, the Agency has determined that the tolerance on peanut hay should be decreased from 15.0 to 5.0 ppm. In addition, thiophanate-methyl registrations were approved by EPA to be amended to delete use on celery by request of the registrant in 1997 (62 FR 67365, FRL–5761–8). Therefore, EPA is revoking the tolerances in 40 CFR 180.371(a) on apple, dry pomace; banana, pulp; bean (forage and hay), and celery, and revise the commodity terminology from peanut (forage and hay) into separate tolerance for peanut, forage and peanut, hay, and revoke peanut forage, and decrease peanut, hay from 15.0 to 5.0 ppm.

Based on available exaggerated (10x) poultry feeding data, EPA determined that there is no reasonable expectation of finite thiophanate-methyl residues of concern in poultry commodities and therefore, the tolerance for egg (the only existing poultry commodity tolerance) is no longer needed under 40 CFR 180.6(a)(3). Therefore, EPA is revoking the tolerance in 40 CFR 180.371 for egg.

Based on the available ruminant feeding study, the Agency determined that the thiophanate-methyl residues of

concern in milk and animal tissues were at the combined limit of quantitations (LOQs) of 0.05 ppm. Therefore, the tolerances for the milk and fat, meat and meat byproducts of cattle, goat, horse, and sheep should be increased to 0.15 ppm. Since the tolerance should be 0.15 ppm for all meat byproducts which includes liver and kidney tissues, the tolerances should be revised from ''meat byproducts, except liver and kidney'' to ''meat byproducts'' and the tolerances for ''horse, liver'' and ''cattle, goat, and sheep liver and kidney'' should be removed. Further, the Agency is removing the ''(N)'' (negligible residues) designation to conform to current Agency administrative practice. Therefore, EPA is increasing the tolerances in 40 CFR 180.371 for the combined residues of thiophanate-methyl and methyl 2-benzimidazolyl carbamate in or on milk from 0.1 to 0.15 ppm; cattle, goats, horses, and sheep meat and fat from 0.1(N) to 0.15 ppm; revising ''cattle, goats, and sheep meat byproducts, except liver and kidney at 0.1(N)'' and ''horse, meat byproducts, except liver at 0.1(N)'' to ''cattle, goats, horses, and sheep meat byproducts at 0.15 ppm''; and removing cattle, goats, and sheep liver each at 2.5 ppm; horse, liver at 1.0 ppm; cattle, kidney at 0.2(N) ppm; and goat and sheep kidney each at 0.2 ppm. The Agency determined that the increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on field trial data that show thiophanate-methyl residues of concern as high as 16.25 ppm in/on tart and sweet cherries, 6.22 ppm on strawberries, less than the LOQ (<0.1 ppm) on wheat, the Agency determined that the tolerances should be increased on cherries from 15.0 to 20.0, on strawberries from 5.0 to 7.0 ppm, and on wheat, grain from 0.05 to 0.1 ppm. Therefore, EPA is increasing and revising the tolerances in 40 CFR 180.371(a) for the combined residues of thiophanate-methyl and methyl 2-benzimidazolyl carbamate in/on cherry, postharvest at 15.0 to cherry, sweet and cherry, tart at 20.0 ppm, strawberry from 5.0 to 7.0 ppm, and wheat, grain from 0.05 to 0.1 ppm. The Agency determined that the increased tolerance is safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on the available field trial data that indicate thiophanate-methyl and methyl 2-benzimidazolyl carbamate residues of concern were less than 2.0 ppm in/on apples, less than the combined LOQs (<0.1 ppm each) in/on almond nutmeat and as high as 0.49 ppm in/on almond hulls, <0.1 ppm in/on pecans and peanut nutmeat, as high as 0.19 ppm in/on dry beans (as high as 1.43 ppm on snap beans), as high as 2.55 ppm in/on peaches, and less than 0.5 ppm in/on plums, the Agency determined that established tolerances should be decreased for apples; almonds; almond, hulls; dry beans; peaches; peanuts; peanut hay; pecans; and plums. Therefore, EPA is decreasing the tolerances in 40 CFR 180.371(a) for the combined residues of thiophanate-methyl and methyl 2-benzimidazolyl carbamate in/on apple, postharvest from 7.0 to 2.0 ppm; almond from 0.2(N) to 0.1 ppm; almond, hulls from 1.0 to 0.5 ppm; dry, beans from 2.0 to 0.2 ppm and revise the commodity terminology from bean (snap and dry) to bean, snap, succulent at 0.2 ppm and bean, dry, seed at 0.2 ppm; peach, postharvest from 15.0 to 3.0 ppm; peanut from 0.2(N) to 0.1 ppm; pecans from 0.2 ppm to 0.1 ppm, and revise the commodity terminology from plum, postharvest from 15.0 to 0.5 ppm.

In accordance with 40 CFR 180.1(h), residues in/on nectarines are covered by the reassessed tolerance on peaches, and therefore the tolerance on postharvest nectarines is no longer needed. Therefore, EPA is proposing to remove the tolerance in 40 CFR 180.371(a) on nectarine, postharvest.

Based on plum processing data form plums treated at 10x that show thiophanate-methyl residues of concern do not concentrate in prunes, the Agency determined that the tolerance on plum, prune, postharvest is no longer needed since residues in/on prunes would be covered by the reassessed tolerance on plum, postharvest at 0.5 ppm. Therefore, EPA is removing the tolerance in 40 CFR 180.371(a) on plum, prune, postharvest.

Based on field trial data that show thiophanate-methyl residues of concern in or on dry bulb onions as high as 0.30 ppm, the Agency determined that the tolerance onion, dry should be decreased from 3.00 to 0.5 ppm and residues on garlic are covered by the bulb onion tolerance in accordance with 40 CFR 180.1(h). EPA is decreasing the tolerance in 40 CFR 180.371 for the combined thiophanate-methyl residues of concern in/on onion, dry from 3.0 to 0.5 ppm and revising the term to onion, bulb.

Based upon the HAFT residues of 0.2 ppm in/on soybeans and the observed 6.5X concentration factor for hulls, the Agency determined that a separate tolerance should be established on soybean hulls at 1.5 ppm. Therefore, EPA is establishing a tolerance in 40 CFR 180.371(a) for the combined residues of thiophanate-methyl and methyl 2-benzimidazolyl carbamate in/on soybean, hulls at 1.5 ppm.

The available field trial residue data in/on cucumbers, melons, pumpkins, and squash are adequate to support a cucurbit vegetable group 9 tolerance at 1.0 ppm. Because a crop group tolerance covers all of the cucurbit vegetables, individual tolerances are no longer needed. Therefore, EPA is removing the individual tolerances in 40 CFR 180.371(a) in/on cucumber, melon, pumpkin, and squash at 1.0 ppm, and combining them into a crop group tolerance on vegetable, cucurbit, group 9 at 1.0 ppm.

As discussed in the comments in Unit II.A., the thiophanate-methyl Residue Chemistry Chapter and RED included recommendations that certain tolerances be designated as postharvest when the use is not solely postharvest. Therefore, the term postharvest should be removed. The Agency has determined that timings of treatment should not be included as part of these tolerances because a tolerance enforcement agency collecting and analyzing samples wouldn't know whether a commodity bore residues resulting from a seed treatment. The Agency is revising commodity terminology to conform to current Agency practice. Therefore, EPA is revising tolerances in 40 CFR 180.371(a) as follows: ''Apple, postharvest'' to ''apple;'' ''apricot, postharvest'' to ''apricot;'' ''cherry, postharvest'' to ''cherry;'' ''peach, postharvest'' to ''peach;'' ''plum, postharvest'' to ''plum;'' ''sugar beet, roots'' to ''beet, sugar, roots;'' ''sugar beet, tops'' to ''beet, sugar, tops;'' ''soybean'' to ''soybean, seed;'' ''sugarcane, seed piece treatment PRE-H'' to ''sugarcane, cane'' and in 40 CFR 180.371(b) from ''cotton'' to ''cotton, undelinted seed.''

B. What is the Agency's Authority for Taking this Action?

EPA may issue a regulation establishing, modifying, or revoking a tolerance under section 408(e) of FFDCA. In this final rule, EPA is establishing, modifying, and revoking tolerances to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes, and as follow-up on canceled uses of pesticides. As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standards under the Food Quality Protection Act (FQPA). The safety finding determination is found in detail

in each Reregistration Eligibility Document (RED) and Tolerance Reassessment Document (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued post-FQPA REDs for pebulate and thiophanate-methyl and TREDs for chlorpropham, linuron, and asulam, which had REDs completed prior to FQPA. REDs and TREDs contain the Agency's evaluation of the data base for these pesticides, including statements regarding additional data on the active ingredients that may be needed to confirm the potential human health and environmental risk assessments associated with current product uses, and REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FQPA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are made final in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, the Agency gives consideration to possible pesticide residues in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticides residues (40 CFR 180.6). If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, then tolerances do not need to be established for these commodities (40 CFR 180.6(b) and 180.6(c)).

C. When Do These Actions Become Effective?

These actions become effective on the date of publication of this final rule in the **Federal Register** because their associated uses have been canceled for several years. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to section 408(1)(5) of FFDCA, as established by the FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. Are There Any International Trade Issues Raised by this Final Action?

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international Maximum Residue Limits (MRLs) established by the Codex Alimentarius Commission, as required by Section 408(b)(4) of FFDCA. The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, section 408(b)(4) of FFDCA requires that EPA explain the reasons for departing from the Codex level in a notice published for public comment. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs and TREDs, and in the Residue Chemistry document which supports the RED and TRED, as mentioned in the proposed rule cited in Unit II.A.

IV. Statutory and Executive Order Reviews

In this final rule EPA establishes tolerances under section 408(e) of FFDCA, and also modifies and revokes specific tolerances established under section 408 of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions (i.e., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks*(62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter,

these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' 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 final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, 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.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule 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. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: July 2, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.181 is amended by revising the heading and paragraph (a) to read as follows:

§180.181 Chlorpropham; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the plant regulator and herbicide chlorpropham (isopropyl m-chlorocarbanilate (CIPC) in or on the following food commodities:

Commodity	Parts per million
Potato	30
Potato, wet peel	40

(2) Tolerances are established for the combined residues of the plant regulator and herbicide chlorpropham (isopropyl m-chlorocarbanilate (CIPC) and its metabolite 4-hydroxychlorpropham-O-sulfonic acid (4-HSA) in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.20
Cattle, kidney	0.30
Cattle, meat	0.06
Cattle, meat byproducts except kidney	0.06
Goat, fat	0.20
Goat, kidney	0.30
Goat, meat	0.06
Goat, meat byproducts except kidney	0.06
Hog, fat	0.20
Hog, kidney	0.30
Hog, meat	0.06
Hog, meat byproducts except kidney	0.06
Horse, fat	0.20
Horse, kidney	0.30
Horse, meat	0.06
Horse, meat byproducts except kidney	0.06
Milk	0.30
Sheep, fat	0.20
Sheep, kidney	0.30
Sheep, meat	0.06
Sheep, meat byproducts except kidney	0.06

* * * * *

■ 3. Section 180.184, paragraphs (a) and (c) are revised to read as follows:

§180.184 Linuron; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on the following food commodities:

Commodity	Parts per million
Asparagus	7.0
Carrot, roots	1.0
Cattle, fat	0.2

Commodity	Parts per million
Cattle, kidney	2.0
Cattle, liver	2.0
Cattle, meat	0.1
Cattle, meat byproducts except kidney and liver	0.1
Celeriac	1.0
Corn, field, forage	1.0
Corn, field, grain	0.1
Corn, field, stover	6.0
Corn, sweet, forage	1.0
Corn, sweet, kernel plus cob with husks removed	0.25
Corn, sweet, stover	6.0
Cotton, gin byproducts	5.0
Cotton, undelinted seed	0.25
Goat, fat	0.2
Goat, kidney	2.0
Goat, liver	2.0
Goat, meat	0.1
Goat, meat byproducts except kidney and liver	0.1
Hog, fat	0.05
Hog, meat	0.05
Hog, meat byproducts	0.1
Horse, fat	0.2
Horse, kidney	2.0
Horse, liver	2.0
Horse, meat	0.1
Horse, meat byproducts except kidney and liver	0.1
Milk	0.05
Parsnip, roots	0.05
Parsnip, tops	0.05
Rhubarb	0.5
Sheep, fat	0.2
Sheep, kidney	2.0
Sheep, liver	2.0
Sheep, meat	0.1
Sheep, meat byproducts except kidney and liver	0.1
Sorghum, grain, forage	1.0
Sorghum, grain, grain	0.25
Sorghum, grain, stover	1.0
Soybean, seed	1.0
Soybean, vegetable	1.0

* * * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registrations, as defined in §180.1(m), are established for the combined residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on the following food commodities:

Commodity	Parts per million
Celery	0.5
Parsley, leaves	0.25
Potato	0.2
Wheat, forage	0.5
Wheat, grain	0.05
Wheat, hay	0.5
Wheat, straw	2.0

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§ 180.238 [Removed]

■ 4. Section 180.238 is removed.

§ 180.319 [Amended]

■ 5. Section 180.319 is amended by removing from the table the entry isopropyl m-chlorocarbanilate (IPC).

■ 6. Section 180.360, paragraph (a) is revised to read as follows:

§ 180.360 Asulam; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of asulam (methyl sulfanilylcarbamate) and its sulfanilamide containing metabolites in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, meat byproducts	0.2
Goat, fat	0.05
Goat, meat	0.05
Goat, meat byproducts	0.2
Hog, fat	0.05
Hog, meat	0.05
Hog, meat byproducts	0.2
Horse, fat	0.05
Horse, meat	0.05
Horse, meat byproducts	0.2
Milk	0.05
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, meat byproducts	0.2
Sugarcane, cane	1.0
Sugarcane, molasses	30

* * * * *

■ 7. Section 180.371, paragraphs (a), (b), and (c) are revised to read as follows:

§ 180.371 Thiophanate-methyl; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of thiophanate-methyl (dimethyl [(1,2-phenylene) bis (iminocarbonothioyl)] bis(carbamate)) and its metabolite methyl 2-benzimidazoyl carbamate (MBC), calculated as thiophanate-methyl in or on the following commodities:

Commodity	Parts per million
Almond	0.1
Almond, hulls	0.5
Apple	2.0
Apricot	15.0
Banana	2.0
Bean, dry, seed	0.2
Bean, snap, succulent	0.2
Beet, sugar, roots	0.2
Beet, sugar, tops	15.0
Cattle, fat	0.15
Cattle, meat	0.15
Cattle, meat byproducts	0.15
Cherry, sweet	20.0
Cherry, tart	20.0
Goat, fat	0.15
Goat, meat	0.15
Goat, meat byproducts	0.15
Grape	5.0
Horse, fat	0.15
Horse, meat	0.15
Horse, meat byproducts	0.15
Milk	0.15
Onion, bulb	0.5
Onion, green	3.0
Peach	3.0
Peanut	0.1
Peanut, hay	5.0
Pear	3.0
Pecan	0.1
Pistachio	0.1
Plum	0.5
Potato	0.1
Sheep, fat	0.15
Sheep, meat	0.15
Sheep, meat byproducts	0.15
Soybean, seed	0.2
Soybean, hulls	1.5
Strawberry	7.0
Sugarcane, cane	0.1
Vegetable, cucurbit, group 9	1.0
Wheat, grain	0.1
Wheat, hay	0.1
Wheat, straw	0.1

(b) *Section 18 emergency exemptions.* Tolerances are established for the combined residues of thiophanate-methyl (dimethyl [(1,2-phenylene) bis (iminocarbonothioyl)] bis(carbamate)) and its metabolite methyl 2-benzimidazoyl carbamate (MBC), calculated as thiophanate-methyl in or on the following commodities:

Commodity	Parts per million	Expiration/Revocation Date
Blueberry	1.5	6/30/09
Citrus	0.5	6/30/09
Cotton, gin byproducts	5.0	12/31/07
Cotton, undelinted seed	0.05	12/31/07
Mushroom	0.01	12/31/07
Vegetable, fruiting, group 8	0.5	12/31/08

(c) *Tolerances with regional registrations.* Tolerances with a regional registration, as defined in 180.1(m), are established for the combined residues of thiophanate-methyl(dimethyl[(1,2-phenylene)bis(iminocarbonothioyl)] bis(carbamate)) and its metabolite methyl 2-benzimidazoyl carbamate (MBC), calculated as thiophanate-methyl in or on the following commodities:

Commodity	Parts per million
Canola, seed	0.1

* * * * *

[FR Doc. E7–13420 Filed 7–10–07; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 12

[EB Docket No. 06–119; WC Docket No. 06–63; FCC 07–107]

Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) directs the Public Safety and Homeland Security (PSHSB) to implement several of the recommendations made by the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (Katrina Panel). The Commission also adopts rules requiring some communications providers to have emergency/back-up power and to conduct analyses and submit reports on the redundancy and resiliency of their 911 and E911 networks. Finally, the Commission extended limited regulatory relief from Section 272 of the Communications Act of 1934, as amended, accorded last year by the Wireline Competition Bureau (WCB).

DATES: Effective August 10, 2007, except for § 12.3 which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of this section. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this document as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due September 10, 2007.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. You may submit your Paperwork Reduction Act (PRA) comments by electronic mail or U.S. mail. To submit your PRA comments by electronic mail, send comments to: *PRA@fcc.gov.* To submit your PRA comments by U.S. mail, mark them to the attention of Judith B. Herman and address them to the Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jean Ann Collins, Deputy Chief, Communications Systems Analysis Division, Public Safety and Homeland Security Bureau, Federal Communications Commission at (202) 418–2792. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at (202) 418–0214.

SUPPLEMENTARY INFORMATION: The Commission further orders the PSHSB to report to it on PSHSB's efforts three months from the date of release of this *Order* and nine months from the date of release of this *Order.* This is a summary of the Commission's *Order* in EB Docket No. 06–119 and WC Docket No. 06–63, FCC 07–107, adopted May 31, 2007, and released June 8, 2007. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530, TTY (202) 418–0432. This document is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Order

Preparation for Disasters

1. *Readiness Checklists.* The Katrina Panel recommended that the Commission work with and encourage each industry sector, through their organizations or associations, to develop and publicize sector-specific readiness recommendations. This recommendation further stated that ''such a checklist should be based upon relevant industry best practices as set forth by groups such as the Media Security and Reliability Council (''MSRC'') and the Network Reliability and Interoperability Council (''NRIC''). The Katrina Panel also stated that such checklists should include: (i) Developing and implementing business continuity plans; (ii) conducting exercises to evaluate business continuity plans and train personnel; (iii) developing and practicing a communications plan to identify ''key players'' and multiple means of contacting them; and (iv) routinely archiving critical system backups and providing for their storage in ''secure off-site'' facilities.

2. Commenters generally supported the creation of voluntary sector-based readiness checklists with input from industry. Some commenters specifically encouraged development by industry trade associations with encouragement from the Commission. In fact, one such readiness checklist has already been developed for the telecommunications industry by the Alliance for Telecommunication Industry Solutions (''ATIS'') Network Reliability Steering Committee (''NRSC'').

3. Testimony before the Katrina Panel revealed that industry sectors had not adequately prepared for a disaster of Hurricane Katrina's magnitude. We find that implementation of the Panel's recommendations in this area will improve the security and reliability of the Nation's communications infrastructure. Hence, we direct the Public Safety & Homeland Security Bureau to work with the industry to develop voluntary industry-sector readiness checklists to ensure that industry is better prepared for future disasters and emergencies, including an influenza pandemic. MSRC and NRIC best practices and other materials should serve as a foundation for developing these checklists. To ensure that the checklists take into account the needs of different types of companies, we direct the Bureau to reach out to a variety of trade organizations including those representing small communications companies. The Bureau should also publicize and

promote implementation of the readiness checklists once developed, for example, by placing the readiness checklists on the Bureau's Web site and encouraging use of these checklists at summits and conferences.

4. *Awareness Program on Alternative Technologies.* In the *Notice,* we sought comment on the Katrina Panel's recommendation that we act to enhance the public safety community's awareness of non-traditional emergency alternative technologies that might be of value as back-up communications systems in a crisis. In particular, the Panel mentioned satellite systems and two-way paging systems as especially resilient to disaster. Other technologies, such as WiFi and WiMAX, were cited for their ability to restore service rapidly. In addition to a lack of knowledge about these alternatives, the Panel described the need that members of the public safety community be trained in their use prior to disasters. The Katrina Panel suggested that the lack of such training may have contributed to these technologies being overlooked during Katrina, and such training would have to occur prior to a crisis since the days following such an event are consumed with far more pressing issues.

5. Commenting parties favored the Katrina Panel's recommendation that the Commission work to enhance the public safety community's awareness of alternative communications technologies. Many emphasized the importance of satellite technologies, with most of these commenters stressing the need for training in alternative technologies before disaster strikes. Motorola also emphasizes that ''* * * these important technologies will be of little help unless public safety trains on them frequently.'' SIA and USA Mobility suggested that the Commission improve awareness through a combination of fact sheets and web site distribution of relevant information about alternative technologies. Several commenters suggested that the public safety community be educated about the applicability of amateur radio in a crisis. MAET observed that digital television datacasting is an alternative technology that should not be overlooked for emergency communications.

6. The Commission agrees that improving the public safety community's knowledge of, and training in, alternative technologies would improve preparedness for future crises. We direct PSHSB to develop and implement an awareness program to educate public safety agencies about alternative technologies and to encourage agencies to provide regular training on any alternative technologies to be used. The program could include: (i) Web pages describing alternative technologies and how they work; (ii) hosting summits and conferences that include discussion of alternative technologies; (iii) educating public safety agencies about alternative technologies at events sponsored by third parties; and (iv) making staff available to provide advice to public safety agencies on issues regarding specific technologies. Commenters have suggested a number of technologies be included in this program, including two-way paging, satellite, IP-based systems, WiFi and WiMAX. We agree that these technologies as well as others to be determined by PSHSB should be included.

7. *Outreach Program for Emergency Medical and Other Communities.* The Katrina Panel recommended that the Commission work to assist the emergency medical community to facilitate the resiliency and effectiveness of their emergency communications systems. Specifically, the Katrina Panel stated that the Commission should: (i) Educate the emergency medical community about emergency communications and help to coordinate this sector's emergency communications efforts; (ii) work with Congress and other appropriate federal departments and agencies to ensure emergency medical personnel are treated as public safety personnel under the Stafford Act; and (iii) support the U.S. Department of Homeland Security's (DHS) efforts to make emergency medical providers eligible for funding for emergency communications equipment under the State Homeland Security Grant Program. In the Notice, we also sought comment on whether and how the Commission can assist organizations whose primary business is not communications (*e.g.* hospitals, nursing homes, day care facilities) with developing communications plans for an emergency. Commenters generally support these recommendations.

8. The PSHSB provides guidance and assistance to state and local governments, health care providers and law enforcement agencies on the use of Land Mobile Radio (LMR) equipment and systems, licensing requirements, and spectrum and frequency use for public safety emergency communications. The PSHSB continues to provide assistance to various stakeholder groups in their efforts to ensure that they have operable, reliable, resilient and redundant emergency communications systems in place. In 2006, several state and regional hospital associations ran on-line articles describing the Commission's expanded outreach to the health care sector regarding emergency communications, noting that the PSHSB is committed to working closely with the nation's health care providers to further strengthen emergency response capabilities and preparedness. The Commission has also conducted outreach to encourage the emergency medical community and others to enroll in priority communications service programs.

9. We direct PSHSB to continue these efforts, including its coordination with the Department of Health and Human Services (HHS) in the area of health care emergency preparedness as it relates to communications. PSHSB should continue to educate and encourage the ability of health care providers to employ a plurality of communications systems (*e.g.*, land mobile relay systems, satellite communications, and/or high frequency communications) on premises, outside of their facility, and facility-to-facility. PSHSB should also work with DHS and other federal agencies to ensure emergency medical personnel are treated as public safety personnel under the Stafford Act. This recommendation is critical because the medical sector will be supporting first responders and potential disaster victims.

10. We further direct PSHSB to work with the Nation's health care, education and business communities to include, in their business continuity planning, robust emergency communication plans that ensure that these entities will be able to function during emergencies such as an influenza pandemic. Such emergencies could result in sudden and significant shortages of personnel, changes in communications traffic, possible disruptions to communications networks (*i.e.*, due to increased telecommuting by the nation's workforce and society in general during an influenza pandemic), and lack of manpower to immediately repair affected communications networks. PSHSB has already begun efforts to establish a new federal advisory committee that will replace NRIC and MSRC and will address, *inter alia,* communications issues related to an influenza pandemic. PSHSB has also started to assemble information regarding pandemic influenza to place on its Web site. We direct PSHSB to continue with these efforts. In particular, PSHSB should update its Web site as soon as possible to include information that addresses pandemic influenza and how to prepare communications systems for such an emergency. The Web site should include links to other relevant

government Web sites, such as *http://www.pandemicflu.gov.*

11. *Monitoring of Situational Awareness During Disasters.* The Katrina Panel observed that there was often a lack of clarity about which federal agency was responsible for collecting outage information and that competing requests for such information at the federal, state and local levels was distracting to restoration efforts and added to confusion about agency roles. In the *Notice,* we sought comment on the Katrina Panel's recommendation that the Commission coordinate all federal outage and infrastructure reporting requirements in times of crisis, functioning as a single repository and contact with consistent data collection procedures. We asked parties to comment on the appropriate content of such emergency outage reports, their format, frequency, distribution and related issues. We also asked parties to comment on whether additional safeguards should be put into effect to address the potential disclosure of commercially sensitive information to avoid potential harm to communications providers or others.

12. The vast majority of commenting parties agreed with the Katrina Panel's recommendation that the Commission serve as a single repository for outage information and implement appropriate safeguards to protect sensitive information that would be provided in such instances. DHS agrees that a central repository for network outage information during a disaster is necessary and suggests that a rulemaking is necessary to facilitate outage reporting to such a repository to improve NS/EP programs. The National Telecommunications and Information Administration (NTIA) supports the Panel's recommendation to the extent that it does not include Federal communications system outages and suggests that the outage database be maintained by the Commission representative to the Joint Field Office (JFO). Several commenting parties urged the Commission to ensure that the data collection effort is coordinated with the National Communications System (NCS) and the National Coordinating Center for Telecommunications (NCC) and conducted in a way that does not alter the NCC's role as the ''primary entity in the federal government for coordinating communications network recovery and information sharing among affected industry members.'' Commenting parties urged the Commission to implement the steps necessary to protect network outage information from unauthorized disclosure. Commenters also encouraged the Commission to work proactively with state and local entities on a process to share outage information that preserves appropriate confidentiality safeguards, thereby minimizing duplicative requests for such information from different sources. Others encouraged the Commission to work with industry prior to the onset of a disaster to select data fields that are necessary to support emergency management and systems that facilitate data collection, and asserted that the decisions about what data to collect should be balanced against the burden that it would impose on communications providers that are actively engaged in restoration efforts. SIA suggested that reporting entities maintain a method of submitting outage data to the Commission during a disaster even if their primary reporting facility is impaired and urges the Commission to encourage the use of satellite technology for this purpose. NENA suggests that the Commission conduct detailed analyses of the 911 outage data that it routinely collects pursuant to part 4 and ''* * * work with appropriate entities to mitigate these conditions where appropriate.''

13. We agree with the Katrina Panel that the Commission should serve as the central point of contact for communications outage information during major events and should provide access to this information to other agencies. The Commission has extensive experience in this area both through its collection of outage information pursuant to part 4 of the Commission's rules (outage reporting requirements) and from its efforts to collect situational awareness information from licensees in the aftermath of the 2005 hurricanes. Moreover, we note that, prior to the Katrina Panel's Report, PSHSB staff had already begun working with the communications industry and the NCS on ways to streamline the process used to collect situational awareness information from FCC licensees during emergencies. Indeed, PSHSB is now in the late stages of developing a system and process for collection of this information. Under the process contemplated by the PSHSB staff, communications companies serving areas affected by disasters could voluntarily submit information regarding, *inter alia,* the status of their operations, the status of their restoration efforts, their power status (i.e., are they operating based on commercial power, a generator or battery power) and their use of fuel. The information submitted would be accorded confidential treatment, and would be shared with NCS on a confidential basis. This information would allow the Commission and other governmental agencies to not only track the status of communications companies' operations in the aftermath of a disaster, but also their restoration status. The information could also be used to determine communications companies' needs (*e.g.*, generator, fuel).

14. We direct PSHSB to continue working with NCS and the communications industry, including the broadcast and cable industries, to resolve any outstanding issues in order to facilitate the activation of the system as soon as possible. The Bureau should also work to obtain any necessary regulatory approvals for collection of this information as soon as possible. Finally, we direct the Bureau to work with the communications industry, NCS and state government agencies to address whether information submitted by the industry should be shared with state governments.

15. We decline to initiate a rulemaking at this time to make the outage reporting process mandatory. The voluntary process that was put in place during Katrina provided the necessary information on a timely basis. Furthermore, a mandatory process would be less flexible and would not adapt well to the unique needs of a particular crisis. For these reasons we find that a voluntary situational awareness process is more effective during disasters. Finally, we note that PSHSB currently conducts the analyses of 911 outage data recommended by NENA, including coordination with appropriate entities and industry bodies to effectuate improvements in 911 reliability where appropriate.

16. *Automatic Special Temporary Authority and Waiver Relief.* The *Notice* sought comment on the Katrina Panel's recommendation that the Commission establish a prioritized system by which affected parties could automatically be granted waivers of certain regulatory requirements, or be granted automatic Special Temporary Authority (STA) in a particular geographic area if the President declares that area to be a ''disaster area.'' The Katrina Panel stated that, as a condition of such waivers or STAs, the Commission could require verbal or written notification to Commission staff contemporaneously with activation or promptly after the fact. The Katrina Panel also recommended that the Commission examine expanding the on-line filing opportunities for STA requests. In this recommendation, the Katrina Panel also included a list of ''possible rule waivers and STAs to study for this treatment.'' For the reasons indicated below, we

have concluded not to automate the waiver and STA process.

17. Although most commenters supported this recommendation, few commented on how such an automatic waiver/STA process would work or be structured. Further, no commenter asserted that the manner in which the Commission expedited the grant of waivers and STAs during the 2005 hurricanes was not effective. We believe that, on balance, public safety would be better served by an expedited review, rather than a fully automated system. Although we wish to relieve all licensees of unnecessary regulatory burdens during an emergency, we are concerned that a general policy of allowing the automatic grant of STAs and waivers of operational requirements could have serious consequences.

18. For example, without minimal Commission review, an automatic STA could allow operations of a new facility using spectrum already in use by an essential communications provider and thereby inadvertently cause essential communications to fail. We believe that it would be far easier, and more consistent with public safety to grant expedited review of an STA application than to try to undo an automatic STA once operations have begun. Further, the declaration of a ''presidential disaster area'' does not appear to be a sufficient basis, by itself, to grant an STA or waiver, whether automatically or otherwise. For example, there could be instances where the communications infrastructure in a Presidentially declared disaster area remains intact. In such a case, an STA or waiver may be unwarranted. On the other hand, there may be situations where there is damage to a telecommunications carrier's infrastructure in an area that is never declared a disaster area. Thus, an automatic STA or waiver process based on a Presidentially declared disaster area could be overinclusive in some cases and underinclusive in others. For the same reason we disagree that the triggering by a licensee of its emergency plan generally should act as a trigger for automatic STAs or waivers. There may also be legal impediments to automatic STAs for Title III authorizations under Sections 308(a) and 309(f) of the Communications Act. Finally, we agree with NTIA that, in an emergency, the close coordination that is required between the Commission and NTIA regarding the use of shared Federal/non-Federal bands and shared spectrum management responsibilities precludes a fully automated waiver/STA process. Accordingly, we conclude that some level of Commission review is necessary during an emergency to ensure that STAs or waivers are properly granted.

19. We believe, at this time, the best approach would be to use an expedited process for acting on requests for STAs, waivers and other regulatory relief based on the particular circumstances of the disaster at hand. An expedited process would allow the Commission to ensure that there is a link between the relief being requested and the emergency at issue. During Hurricane Katrina, the Commission publicized its procedures for seeking regulatory relief, granted some relief on its own motion and otherwise processed requests for relief on an expedited basis. Many of these requests were processed within four hours and all were processed within 24 hours. Additionally, Commission rules permit the suspension or waiver of rule requirements on its own motion, STA requests by telephone during emergencies and the grant of station licenses, modification, renewal or STAs without the filing of formal applications in certain emergency situations. Other rules provide additional flexibility for licensees to adjust operations during emergency situations. Therefore, the Commission has procedures in place to ensure that waivers and STAs are promptly reviewed and granted during an emergency. Accordingly, we direct PSHSB to work with other Bureaus and Offices, as necessary, to publicize emergency-related rules and procedures prior to disaster. This could be done by, among other things, providing relevant information on PSHSB's Web site as well as through outreach programs directed at public safety agencies and the industry.

20. *Other Pre-Positioning Recommendations From Commenters.* Several commenters submitted additional suggestions for improving network resiliency and redundancy.

21. *Permanent Relief from InterLATA Restrictions.* BellSouth recommends that the Commission grant the Bell Operating Companies (BOCs) permanent relief from interLATA boundary restrictions. It argues that such action would enhance network resiliency and redundancy. The BOCs have already raised the issue of relief from Section 272 and its implementing rules in a number of pending forbearance petitions and waiver requests. Accordingly, we will consider this issue in those proceedings as appropriate.

22. *One Year Section 272 Relief.* Last year, WCB granted a one-year Special Temporary Authority from enforcement of Section 272 and its implementing rules to BOCs in order to allow them to share non-public, BOC network information with their Section 272 and other affiliates to engage in disaster planning. In addition, WCB granted Verizon a one-year waiver of part 64 requirements to allow Verizon to engage in disaster planning with its former GTE company affiliates. The relief for disaster planning ends April 20, 2007 for AT&T and June 9, 2007 for BellSouth, Qwest and Verizon. Verizon and BellSouth argue that the Commission should reconsider the one-year limitation of this relief or change its rules so that an STA or waiver is not necessary. Verizon, for example, states that it will need to conduct disaster planning well beyond June 2007 to prepare for, among other things, next summer's hurricane season.

23. In light of the upcoming hurricane season and the separate tornadoes that recently struck parts of Kansas and Alabama, we grant an extension of the regulatory relief granted by WCB last year to AT&T, Qwest and Verizon for a period of one-year from the date the originally-granted relief is due to expire. Specifically, we grant AT&T, Verizon and Qwest a one-year STA and waiver of Section 272 of the Act and the Commission's accounting and non-accounting structural separation safeguards. We also extend for an additional year, a waiver previously issued to Verizon to engage in integrated disaster recovery planning with its former GTE affiliates. Under the STA and waiver, AT&T, Qwest and Verizon will continue to be permitted to share non-public BOC network information with its Section 272 affiliates (as well as other affiliates that adhere to the Section 272-like safeguards), as necessary to engage in integrated disaster planning.

24. We find that an extension of the regulatory relief previously accorded these carriers serves the public interest. The unique circumstances of a hurricane, tornado or other disaster warrant a deviation from Section 272 and the accompanying rules, and such deviation will better serve the public interest in a time of emergency. This relief will allow AT&T, Verizon and Qwest to continue to develop risk mitigation strategies and contingency plans that will reduce the likelihood and duration of any service outage and will permit these carriers' networks to continue to operate in the event a ''choke point'' is compromised.

Recovery Coordination

25. *Credentialing Guidelines.* In the *Notice,* we sought comment on the Katrina Panel's recommendation that the Commission work with other appropriate federal departments and agencies and the communications

industry to promptly develop national credentialing requirements and process guidelines to enable communications infrastructure providers and their contracted workers access to affected areas after a disaster. The President's National Security Telecommunications Advisory Committees (NSTAC) made similar recommendations to the President last year. The Panel advocated, however, expanding the NSTAC's credentialing recommendations to include repair workers of all communications infrastructure (*e.g.*, wireline, wireless, Wireless Internet Service Providers (WISPs), cable, broadcasting, and satellite). Further, the Katrina Panel recommended that the Commission work with the communications industry to develop an appropriate basic NIMS training course for communications repair workers that can be completed online as a requirement for credentialing. Additionally, the Katrina Panel recommended that the Commission should: (i) Encourage states to develop and implement a credentialing program consistent with NSTAC guidelines as promptly as possible and encourage appropriate communications industry members to secure any necessary credentialing; (ii) encourage states to recognize and accept credentials issued by other states; and (iii) encourage, but not require, each regional, state and local EOC or JFO to develop credentialing requirements and procedures, consistent with any national credentialing guidelines, for purposes of allowing communications infrastructure providers, their contracted workers and private security teams, if any, access to the affected areas post-disaster.

26. Most commenters generally supported credentialing communications personnel to access affected areas post-disaster. Many stressed that credentialing recommendations should apply to all communications providers, including their contracted workers. In fact, DHS noted that it is making significant efforts to advance the implementation of a national standard for the credentialing of telecommunications repair workers. Commenters were split regarding whether NIMS training should be required as a requirement for credentialing.

27. The Commission's experience with Hurricane Katrina and the record in this proceeding reveal that access to affected areas post-disaster was one of the most critical issues for the communications industry. As the National Response Plan makes clear, DHS has primary responsibility to coordinate federal incident management activities, including disaster site access and credentialing, for all emergency personnel. As such DHS, rather than the FCC, has jurisdiction and authority to adopt credentialing guidelines that apply to the communications industry.

28. DHS and the states have taken a number of steps to develop credentialing guidelines that would allow communications providers access to disaster areas. For example, DHS/NCS worked with the State of Georgia and BellSouth to develop a pilot access program focused on priority access for critical response personnel, including telecommunications, which resulted in the publication of a Georgia Standard Operating Procedure (SOP) for emergency access. This SOP has been distributed as suggested protocol to all 50 states and the territories. DHS/Federal Emergency Management Agency (FEMA) is also working on an access pilot program to give telecommunication repair crews better access to disaster areas and is aggregating documentation for emergency personnel nationwide into a National Emergency Responder Credentialing Program that DHS/FEMA expects to make operational this year.

29. PSHSB staff is already working with DHS to help ensure that any credentialing program would encompass critical communications infrastructure repair crews and their contracting support staff and to support coordination with regional, state and local officials regarding the development of consistent credentialing programs for communications providers. We believe the issue of whether to require NIMS training as a requirement for credentialing is best addressed by DHS/NCS and regional, state and local authorities as they develop their credentialing programs. We agree with DHS's assertion that the Commission's credentialing efforts should complement, not supersede or duplicate, those of DHS/NCS. We direct PSHSB to continue to work with DHS and the states on these efforts.

30. *Emergency Responder Status for Communications Infrastructure Providers*. In the Notice, we sought comment on the Katrina Panel's recommendations that the Commission work with Congress and appropriate federal departments and agencies to afford all communications infrastructure providers, including wireline, wireless, WISPs, satellite, cable and broadcast infrastructure providers and their contracted workers emergency responder status under the Stafford Act and to incorporate this designation into the National Response Plan (''NRP'') and state and local emergency response plans. Most commenters supported this recommendation and stressed that the emergency responder status should be afforded to all communications service providers.

31. Section 607 of the recently enacted Warning, Alert and Response Network Act (WARN Act) amended the Stafford Act to add the term ''essential service provider'' which includes entities that provide telecommunications service. This section of the WARN Act also states that, unless exceptional circumstances apply, in an emergency or major disaster, the head of a Federal agency, to the greatest extent practicable, shall not deny or impede access to the disaster site to an essential service provider whose access is necessary to restore and repair an essential service and shall not impede the restoration or repair of telecommunications services. We direct PSHSB to work with DHS, and all other relevant federal, state, tribal and local government agencies, to facilitate: (i) Access to disaster areas for communications provider personnel so that recovery efforts can be expedited; and (ii) the incorporation into the NRP and state, tribal and local emergency response plans of the designation of telecommunications service providers as ''essential service providers.'' PSHSB should also encourage DHS to seek Congressional action, if necessary, to ensure that the term ''essential service provider'' includes all communications service providers.

32. *Utilization of State/Regional Coordination Bodies*. The Katrina Panel recommended that the Commission work with state and local governments and the communications industry (including wireline, wireless, WISP, satellite, cable and broadcasting) to better utilize the coordinating capabilities at regional, state and local Emergency Operations Centers (EOCs), as well as the Joint Field Office (JFO). In particular, the Panel recommended that the Commission encourage, but not require, each regional, state and local EOC and JFO to: (i) Facilitate coordination between communications infrastructure providers and state and local emergency preparedness officials (such as the state EOC) in the state or region at the EOC or JFO; (ii) develop and facilitate inclusion in state emergency preparedness plans, where appropriate, one or more clearly identified post-disaster coordination areas for communications infrastructure providers, their contracted workers, and private security teams to gather post-disaster where credentialing, security, escorts and further coordination can be

achieved; and (iii) share information and coordinate resources to facilitate repair of key communications infrastructure post-disaster.

33. Commenters generally support the recommendation that the Commission work with state and local governments and the communications industry to better facilitate coordination between emergency responders and the communications infrastructure providers. In its comments CTIA recommended that the Commission work with Federal, state and local governments to create a process to establish embarkation points for communications recovery efforts in the wake of a disaster. DHS agrees that it would be advantageous to engage the EOCs and JFOs in support of greater communications crisis preparedness and more effective response planning. DHS asserts, however, that it would be more appropriate, and consistent with mission responsibilities and existing relationships between the entities, for such activities to be coordinated jointly by NCS and DHS/FEMA in the first instance rather than by the FCC. Cingular asserts that the Commission should urge states to refrain from imposing emergency preparedness requirements on the industry. Cingular states that the adoption of state specific requirements, while well intended, hinder recovery efforts by eliminating flexibility and creating a patchwork of inconsistent requirements that carriers must follow.

34. These recommendations generally fall under the jurisdiction of the NCS which, as the coordinator and primary agency for ESF #2 (Communications) of the NRP, performs these functions. The Commission supports these efforts in its role as an ESF #2 support agency. ESF #2 coordinates Federal actions for the restoration of the telecommunications infrastructure and ensures the provision of Federal communications support to Federal, state, tribal, local and private sector response during an Incident of National Significance. NCS assists in the coordination of planning and provision of emergency preparedness communications for the Federal government under all circumstances, including crisis or emergency, attack, recovery and reconstitution. The Commission and other government agencies such as FEMA have also taken a number of steps in this area. The Commission reached out to its licensees to determine their status and needs and provided the collected information to the NCS. The Commission then helped coordinate ESF #2 response efforts to aid the Commission's licensees (*e.g.*, arranged for helicopter overflights, fuel shipments, access, curfew and airport information). The Commission is also working with DHS/NCS to encourage regional, state and local EOCs and/or JFOs to identify post-disaster coordination areas for communications providers and their contract workers and to create a process to establish embarkation points for communications recovery efforts. For example, the Commission assisted DHS with developing proposals making federal property available as a staging area for communications infrastructure providers under the Stafford Act.

35. We direct PSHSB to continue to work with DHS, state, tribal and local governments and the communications industry on these issues. However, we decline to take action to urge the states to refrain from imposing emergency preparedness requirements on the communications industry as Cingular advocates.

36. *Priority Utility Restoration for Communications Providers.* In its report, the Katrina Panel recommended that the Commission encourage, but not require, each regional, state and local EOC and JFO to facilitate electric and other utilities' maintenance of priority lists that include commercial communications providers for commercial power restoration. The Katrina Panel stated that power restoration activities should be coordinated with communications restoration. The majority of commenters support this recommendation.

37. Other agencies, such as DHS, the Department of Energy, and state agencies, have primary jurisdiction and authority over this matter. Loss of power is a critical failure that DHS/NCS is aware of and focused on. For example, NCS coordinates priority lists with the agencies responsible for NRP's Emergency Support Function #12—Energy. The communications sector is number two on the ESF #12 priority lists. NCS also has tools that can identify communication sites. The agencies responsible for ESF #12 have tools that can locate energy sites near communications providers and determine whether there have been critical failures. Coordination of these priority lists between Emergency Support Functions 2 and 12 is ongoing. We direct PSHSB to support DHS/NCS and the other agencies addressing this issue in their efforts to ensure priority power and other relevant utility restoration for commercial communications providers during and after disasters.

38. *Expanding and Publicizing Priority Communications Service Programs.* The Katrina Panel recommended that the Commission work with the NCS to promote the use of existing priority communications services, such as Telecommunications Service Priority (TSP), Government Emergency Telecommunications Service (GETS) and Wireless Priority Service (WPS), to all eligible entities, particularly eligible government, public safety, emergency medical community, and critical industry groups. Further, the Katrina Panel stated that the Commission should work with NCS to clarify whether broadcast, WISP, satellite, and cable company repair crews are currently eligible for GETS and WPS and, if so, should also promote the availability of those priority services to those entities. The Katrina Panel also recommended that the Commission work with NCS and industry to establish and promote best practices to ensure that all WPS, GETS, and TSP subscribers are properly trained in how to use these services. Finally, the Katrina Panel recommended that the Commission work with NCS to explore whether it is technically and financially feasible for WPS calls to automatically receive GETS treatment when they reach landline facilities, thus avoiding the need for a WPS caller to also enter GETS information.

39. DHS fully supports the Katrina Panel's recommendation that the Commission work with NCS to promote wider use of GETS, WPS and TSP programs among government, public safety, and critical industry groups. Broadcasters that provided comments support granting broadcasters access to GETS and WPS. Other commenters state that promotion of these programs must be coordinated with industry to ensure that providers can absorb additional demands placed on their networks through increased participation in the programs.

40. PSHSB staff members are actively engaged in priority services outreach. For example, PSHSB staff recently worked with the NCS TSP Program Office, various telecommunications carriers, and the State of New York to enroll over 2,000 circuits into the TSP program. Additionally, PSHSB staff is closely coordinating with the HHS to increase awareness among health care providers, particularly hospitals, about the benefits of enrollment and participation in federal priority service programs. This initiative includes expanded outreach in the health care sector and with state health departments to increase their understanding of TSP, GETS and WPS during and in the aftermath of a natural disaster or other emergency, such as an influenza pandemic. HHS is considering options

to better incorporate support for these federal priority service programs into their emergency preparedness funding streams. The Commission is also working with hospital associations to educate the medical community about priority communications services. In addition, PSHSB is working with NCS to enhance WPS and resolve the issue of whether it is feasible for WPS calls to automatically receive GETS treatment when they reach landline facilities.

41. We direct PSHSB to continue to work with DHS, including the NCS Committee of Principal's Priority Services Working Group (PSWG), to promote the priority communications services to all eligible entities, particularly eligible government, public safety, emergency medical community, and critical industry groups, including repair crews which could qualify under the eligibility criteria for both WPS and GETS under the category of disaster recovery. PSHSB should work with DHS to ensure that communications systems' capabilities are not overwhelmed by increased demands placed on networks by increased participation in these programs. We also direct PSHSB to support the creation and promotion of best practices to ensure proper training in how to use these services. Finally, we direct PSHSB to continue working with DHS and NCS's PSWG to enhance WPS and resolve the issue of whether it is feasible for WPS calls to automatically receive GETS treatment when they reach landline facilities.

42. *Broadening NCC to Include All Communications Infrastructure Sectors.* The Katrina Panel recommended that the Commission work with the NCS to broaden the membership of the NCC to include adequate representation of all types of communications systems, including broadcast, cable, satellite and other new technologies, as appropriate. The NCC is a government and industry organization within DHS/NCS. It functions at the operational level and assists in initiating, coordinating, restoring and reconstituting national security and emergency preparedness (NS/EP) telecommunications services or facilities under all conditions of crises and disasters.

43. In January 2000, the NCC was designated an Information Sharing and Analysis Center (ISAC) for Telecommunications in accordance with Presidential Decision Directive 63. The NCC-ISAC facilitates the exchange among government and industry participants regarding vulnerability, threat, intrusion, and anomaly information affecting the telecommunications infrastructure. Since its creation, the NCC has coordinated the restoration and provisioning of national security and emergency preparedness telecommunication services and facilities during natural disasters and armed conflicts. The NCC leverages its unique joint government/industry structure and all-hazard emergency response capabilities to coordinate the initiation, restoration, and reconstitution of United States government national security and emergency preparedness telecommunications services both nationally and internationally.

44. DHS fully supports the Katrina Panel's recommendation that the Commission work with NCS to broaden the membership of the NCC. DHS states that NCS is already working with the members of industry to explore expansion of NCC membership and would welcome the Commission's engagement in this area. Several additional commenters support this recommendation.

45. In coordination with DHS/NCS, PSHSB is currently engaged in efforts to make the NCC more of an overall communications information sharing and analysis center instead of one focused solely on telecommunications. The Commission is working with communications trade groups and broadcasters, among others, to encourage them to consider NCC membership. Recently, a fiber optic provider the Commission introduced to the NCC signed up for membership as did APCO, COMPTEL, Global Crossing, and Cox Cable. We direct PSHSB to continue its efforts in this area.

46. *Web site for Emergency Coordination.* The Katrina Panel recommended that the Commission create a Web site identifying the key state emergency management contacts, particularly for communications coordinating bodies, and post-disaster coordination areas for communications providers. Some commenters support the proposal that the Commission create a disaster response Web site for communications providers; other commenters state that this function is best suited for other agencies, such as FEMA or DHS.

47. FEMA and many states already have publicly available information identifying key state emergency management contacts. FEMA's Web site has a compilation of state emergency contacts (*http://www.fema.gov/about/contact/statedr.shtm*) and the NCC Web site (*http://www.ncs.gov/ncc*) has links to federal agencies. Accordingly, we do not believe it is necessary for the Commission to create a similar Web site.

48. To facilitate access to this information by communications companies, we direct PSHSB to coordinate with FEMA to provide updated links to the relevant state emergency contact information contained on the FEMA Web site. Specifically, PSHSB should create a link on its Web site to FEMA's listing of state emergency contact information.

49. *FCC Web site for Emergency Response Team Information.* The Katrina Panel recommended that the Commission create a Web site to publicize the Commission's emergency response team's contact information and procedures for facilitating disaster response and outage recovery. Commenters unanimously support the Katrina Panel's recommendation. Commenters contend that the Commission should maximize existing resources by developing and posting on the Commission's Web site the Commission's emergency response team's contact information and procedures.

50. We agree that a Web site providing emergency contact information, procedures for facilitating disaster response and outage recovery, and procedures for obtaining regulatory relief during emergencies would be helpful. We direct PSHSB to work with other Bureaus and Offices, as appropriate, to do so.

51. *Other Recovery Coordination Recommendations.* Commenters submitted the following suggestions for improving the recovery coordination process:

52. *Expedited Importation of Essential Communications Technology.* Iridium Satellite LLC suggests that the Commission work with other federal agencies to establish a system that facilitates the delivery of replacement infrastructure and equipment during a disaster. Additionally, Inmarsat asserts that, as part of creating redundancy, the federal government should recognize the importance of, and encourage the building of, mobile units that can be deployed as needed to any given disaster zone to assist in rapid restoration of vital communications using Mobile Satellite Service. These functions are covered by ESF #2. The Commission is already working with other agencies to support these functions and will continue to coordinate with DHS/NCS and other agencies regarding these matters. Inmarsat also asserts that the Commission should work with U.S. Customs to ensure that bottlenecks do not slow the importation of essential communications technology in the aftermath of a disaster. Inmarsat and

other satellite operators apparently experienced a sharp rise in demand after Hurricane Katrina that could not be met by the existing stock of satellite terminals in the U.S. We direct PSHSB to coordinate with DHS/NCS, U.S. Customs and other appropriate agencies to develop a systematic approach toward the importation of communications equipment needed for disaster response in the wake of disasters.

53. *Real Time Tracking of Progress and Shared Experiences.* Champaign Urbana Wireless Network, The Texas ISP Association, The Association for Community Networking, and Acorn Active Media (CUWN, et al.) suggest that the Commission provide a means by which communications responders could record their progress, share experiences in real time and avoid accidental conflicts. This function is primarily a responsibility of DHS/NCS under ESF #2 and PSHSB should continue to coordinate with DHS/NCS regarding these matters.

First Responder Communications

54. *Emergency Restoration Supply Cache and Alternative Inventory.* To facilitate the restoration of public safety communications, the Panel recommended that the Commission: (i) Support the ongoing efforts of the NCC to develop and maintain a database of state and local public safety system information, including frequency usage, to allow for more efficient spectrum sharing, rapid on-site frequency coordination, and emergency provision of supplemental equipment in the event of system failures; (ii) support the efforts of the NCC to develop an inventory of available communications assets (including local, state, federal civilian and military) that can be rapidly deployed in the event of a catastrophic event and work with the NCC and the appropriate agencies to educate key state and local emergency response personnel on the availability of these assets and how to request them; and (iii) coordinate with the NCS/NCC to assure that, immediately following any large disaster, there is an efficient means by which federal, state and local officials can identify and locate private sector communications assets that can be made rapidly available to first responders and relief organizations. The Katrina Panel noted that one means by which to identify and locate private sector communications assets would be a Web site maintained by either the FCC or NCC through which the private sector could register available assets along with product information and stated that such a Web site should be designed with a special area for registering available equipment to assist persons with disabilities in their communications needs.

55. *Support NCC Efforts to Develop a Database of State and Local Public Safety System Information.* PSHSB has already provided support for the NCC's ongoing efforts to develop and maintain a database of state and local public safety system information. With assistance from PSHSB, the NCC has developed a public safety first responder frequency sharing guide. PSHSB consulted private frequency coordinators and collected and coordinated information from them for this effort. Additionally, although it was only developed for the states affected by Hurricane Katrina, FEMA recently developed a Gulf Coast communications plan for use during emergencies that identifies all public safety equipment and spectrum currently in use.

56. *Coordinate with NCC to Facilitate the Availability of Communications Assets for First Responders Post-Disaster.* The Commission already coordinates with the NCS/NCC to assure that, following any large disaster, there is an efficient means by which federal, state and local officials can identify and locate private sector communications assets that can be made rapidly available to first responders and relief organizations. PSHSB has been providing a supporting role to FEMA on this issue. For example, per FEMA's request, PSHSB recently set up a meeting between FEMA and communications industry representatives to discuss, among other things, contingency contracts for equipment and the identification of equipment that can be airlifted through the Department of Defense. PSHSB already supports the efforts of the NCC to develop an inventory of available communications assets, in 2006 the NCS began development of an inventory database of government and industry assets. This inventory database of available government and industry communications assets developed by NCC and available to ESF #2 addresses this recommendation. Regarding a Web site, a function already exists whereby industry can report their available assets directly to the NCC.

57. We direct PSHSB to continue to work with DHS, NCS, NCC, FEMA, state governments, and industry on these issues. We also direct PSHSB to continue to work with NCC to address the Katrina Panel recommendation regarding the identification of private sector communications assets, including specifically identifying equipment available to assist persons with disabilities in their communications needs.

58. *Equipment Cache.* Another Katrina Panel recommendation intended to facilitate the restoration of public safety communications includes that the Commission encourage state and local jurisdictions to retain and maintain, including through arrangements with the private sector, a cache of equipment components that would be needed to immediately restore existing public safety communications within hours of a disaster. The Katrina Panel stated that the cache should: (i) Include the necessary equipment to quickly restore communications capabilities on all relevant mutual aid channels; (ii) be maintained as a regional or state-wide resource, and located in areas protected from disaster impacts; and (iii) be included as an element of the NRP. Further, the Katrina Panel recommended that the Commission encourage state and local jurisdictions to utilize the cache through training exercises on a regular basis.

59. In its comments, DHS stated that it has reservations about the recommendation concerning the stockpiling of equipment. DHS noted that already limited budgets do not provide funding to procure additional equipment and, in many cases, the redundant equipment for network restoration is often unavailable because the systems at issue are legacy systems that are obsolete and no longer supported by manufacturers. We agree. The Commission is reluctant to encourage state and local jurisdictions to maintain such a cache of equipment unless funding for such an effort has been specifically identified. Many local jurisdictions do not have the requisite funds for this effort. Although some states have such equipment under ''mutual aid agreements,'' most states do not have funds for equipment not in use; their funds are used for equipment intended for immediate use. Further, there are already a number of training exercises for responders. For example, there are regional annual training exercises held to demonstrate equipment in a disaster and to show options for restoration.

60. *Facilitating First Responder Communications Capabilities.* To facilitate interoperability among first responder communications, the Katrina Panel recommended that the Commission: (i) Maintain the schedule for commencing commercial spectrum auctions by January 28, 2008 to fully fund the $1 billion public safety interoperability program, consistent with recent legislation; (ii) work with NTIA and DHS to establish appropriate

criteria for the distribution of the $1 billion in a manner that best promotes interoperability with the 700 MHz band—among other things, such criteria should mandate that any radios purchased with grant monies must be capable of operating on 700 MHz and 800 MHz channels established for mutual aid and interoperability voice communications; (iii) encourage the expeditious development of regional plans for the use of 700 MHz systems and move promptly to review and approve such plans; (iv) expeditiously approve any requests by broadcasters to terminate analog service in the 700 MHz band before the end of the digital television transition in 2009 in order to allow public safety users immediate access to this spectrum; (v) work with the NTIA and DHS to develop strategies and policies to expedite allowing Federal (including the military), state and local agencies to share spectrum for emergency response purposes, particularly the Federal incident response channels and channels established for mutual aid and interoperability; and (vi) publicize interoperability successes and/or best practices by public safety entities to serve as models to further interoperability.

61. *Schedule for 700 MHz Spectrum Auction.* We agree that the Commission should, consistent with recent legislation, maintain the schedule for commencing commercial spectrum auctions in the 700 MHz bands by January 28, 2008. Accordingly, the Commission should proceed with current plans for developing auction rules and procedures, including the conclusion of a pending rulemaking addressing the commercial 700 MHz spectrum. The Commission will commence auction of this spectrum in a manner consistent with the Digital Television Transition and Public Safety Act of 2005.

62. *Criteria for the Distribution of the $1 Billion Public Safety Interoperability Program.* We direct PSHSB to offer to work with NTIA and DHS, as appropriate, to establish criteria for the distribution of the $1 billion interoperability fund in a manner that best promotes interoperability with the 700 MHz band. No commenter opposed the idea of the FCC offering to work with NTIA and DHS in this regard. Although the statute places responsibility for implementing this grant program upon NTIA and DHS, the Commission could provide helpful input. We believe, however, that such funds should not be limited to the 700 MHz and 800 MHz bands and that the PSHSB should encourage NTIA and DHS to explore ways to use IP technology to facilitate interoperability with VHF and UHF. An IP-based approach would allow legacy systems to evolve into a broadband communications system. Additionally, any action relating to the 700 MHz band should include consideration of DHS' concern that the Katrina Panel's recommendations are focused only on state and local communications with little standardization across regions and, therefore, fail to address the need to incorporate federal coordination with state and local first responders into the solution.

63. *Expeditious Development, Review and Approval of Regional Plans.* We direct PSHSB to encourage, as part of their outreach efforts, the expeditious development of regional plans for use of 700 MHz systems and to promptly review and, where possible, approve such plans when submitted. This received strong support in the record. PSHSB should initiate outreach efforts to encourage states, tribal governments and localities to participate in the regional planning processes. PSHSB can work with regional planning committees in their efforts to develop regional plans and coordinate their plans with adjacent regions.

64. *Requests by Broadcasters to Terminate Analog Service in the 700 MHz Band.* Although we understand the importance of ensuring access to this spectrum by public safety agencies as quickly as possible, we must balance this goal with the need to protect consumers who could potentially lose service if they have not yet obtained digital televisions or converters. Accordingly, although we will endeavor to process requests from broadcasters to terminate analog service as quickly as possible, we will continue to review such requests pursuant to the policies previously adopted in *Upper 700 MHz Memorandum Opinion and Order and Further Notice of Proposed Rulemaking.*

65. *Sharing of Spectrum.* We agree that implementation of the recommendation that the Commission work with NTIA and DHS to develop strategies and policies to expedite allowing Federal, state and local agencies to share spectrum for emergency response purposes would serve the public interest. We direct PSHSB, together with the Office of Engineering and Technology, to work with NTIA and DHS on this issue. There is record support for the Commission working with NTIA and DHS to allow Federal and non-Federal spectrum sharing for emergency response purposes, both in spectrum allocated for Federal and non-Federal uses. NTIA states in its comments that it and the Interdepartment Radio Advisory Committee (''IRAC'') already are considering a proposal to revise current rules to allow more flexible use by state and local governments, and to simplify the regulations governing the use of Federal interoperability channels. The Commission should assist in these ongoing efforts in the IRAC and its subcommittees and should consider other possible solutions for making spectrum available for shared use by federal, state, tribal and local agencies for emergency response purposes.

66. *Publicizing Interoperability Successes and Best Practices.* We direct PSHSB to work with other federal agencies, the public safety community and the industry, as appropriate, to develop best practices to promote interoperability. In addition, PSHSB should encourage public safety organizations to provide interoperability success stories and make this information available on its Web site.

67. *Resiliency and Restoration of E–911 Infrastructure and PSAPs.* In order to ensure a more robust 911 and E–911 service, the Katrina Panel recommended that the Commission encourage the implementation of the following three best practices issued by the Network Reliability and Interoperability Council (NRIC):

(1) Service providers and network operators should consider placing and maintaining 911 circuits over diverse interoffice transport facilities (*e.g.*, geographically diverse facility routes, automatically invoked standby routing, diverse digital cross-connect system services, self-healing fiber ring topologies, or any combination thereof).

(2) Network operators, service providers, equipment suppliers and public safety authorities should establish alternative methods of communication for critical personnel.

(3) Service providers, network operators and property managers should ensure availability of emergency/backup power (*e.g.*, batteries, generators, fuel cells) to maintain critical communications services during times of commercial power failures, including natural and manmade occurrences (*e.g.*, earthquakes, floods, fires, power brown/blackouts, terrorism). The emergency/backup power generators should be located onsite, when appropriate.

68. We agree that PSHSB should be proactive in encouraging implementation of the first two of these NRIC recommendations, for example, through additional outreach efforts which could include, *inter alia*, NRIC best practice outreach efforts, promoting industry guidelines on its Web site, and

working with FEMA to educate PSAP managers in disaster management, PSAP rerouting, and the National Incident Management System. This is consistent with the recommendations of both NRIC and the Katrina Panel that these best practices be encouraged, but not required. No commenters asserted that there is a need to make these best practices mandatory at this time. Additionally, there may be legitimate concerns that implementation of diverse 911 circuits would be cost-prohibitive in certain cases.

69. NENA recommends that ''the FCC or the state commissions, as appropriate, require all telephone central offices to have an emergency back-up power source.'' St. Tammany's Parish Communications District 1 emphasizes the need for wireline providers to have backup procedures in place. Several commenters supported this voluntary best practice and indicated that they have backup power available at their facilities. For example, AT&T agrees that it is important to have backup power to ensure the continued operation of the nation's 911 system during disasters and states that it looks forward to helping implement the Katrina Panel's recommendation that the Commission encourage the implementation of the NRIC backup power best practice. AT&T reported that all of its central offices are equipped with backup batteries and/or diesel generators. Verizon also stated that every critical component in its networks is protected by automatic power back-up systems.

70. We agree with NENA's and St. Tammany Parish's suggestion and find that adoption of this requirement serves the public interest. Accordingly, pursuant to our authority under Section 1 of the Communications Act, as amended, we will require all local exchange carriers (LECs), including incumbent LECs (ILECs) and competitive LECs (CLECs), as well as commercial mobile radio service (CMRS) providers to have an emergency back-up power source for all assets that are normally powered from local AC commercial power including those inside central offices, cell sites, remote switches and digital loop carrier system remote terminals. LECs and CMRS providers should maintain emergency back-up power for a minimum of 24 hours for assets inside central offices and eight hours for cell sites, remote switches and digital loop carrier system remote terminals that normally are powered from local AC commercial power.

71. Our expectation is that this requirement will not create an undue burden since several reported in their comments that they already maintain emergency back-up power. We realize, however, that this requirement may present a financial burden to some small carriers. Accordingly, we will not impose this requirement on LECs (including both ILECs and CLECs) that meet the definition of a Class B company as set forth in Section 32.11(b)(2) of the Commission's rules. We will also not apply this requirement to non-nationwide CMRS providers with no more than 500,000 subscribers.

72. The Commission finds that PSHSB should be proactive in encouraging implementation, by all other communications providers, of the third NRIC recommendation set forth above, which states that communications service providers, network operators and property managers should ensure the availability of emergency/backup power.

73. The Katrina Panel also recommended that the Commission encourage the implementation of an NRIC best practice that states that network operators should consider deploying dual active 911 selective router architectures to enable circuits from the caller's serving end office to be split between two selective routers in order to eliminate single points of failure. This NRIC best practice further states that diversity should also be considered on interoffice transport facilities connecting each 911 selective router to the PSAP serving end office. Some commenters asserted that selective routers represent technology whose time has passed. NENA contends that deployment of a dual selective router at this point should be done only if particular circumstances strongly favor such an approach.

74. PSHSB should neither encourage nor mandate implementation of this NRIC best practice. We agree with the many commenters who advocated that public safety communications planning, including the 911 infrastructure, instead should move to incorporate IP-based technologies. This will enable the public safety community to focus on future needs rather than requiring more from legacy systems, offer more redundancy and flexibility, and contribute greatly to improving compatibility between public safety systems that operate using different proprietary standards.

75. *Grant Eligibility.* We agree with the recommendation of the Katrina Panel that the FCC urge federal grant programs to permit state or local 911 commissions or emergency communications districts that provide 911 or public safety communications services to be eligible to apply for 911 enhancement and communications enhancement/interoperability grants. This recommendation also received strong support from APCO and NENA. We, therefore, direct PSHSB to consult with DHS and administrators of other applicable federal grant programs to explore this possibility. We caution, however, that PSHSB refrain from advocating any particular funding approach for state, tribal or local 911 commissions. Our goal is to support state, tribal and local 911 commissions in their efforts to enhance the redundancy, interoperability, and resiliency of their operations.

76. *Secondary Back-Up PSAPS.* The Katrina Panel also stated that the Commission should recommend the designation of a secondary back-up PSAP that is more than 200 miles away to answer calls when the primary and secondary PSAPs are disabled. Most commenters, including APCO and NENA, did not support this recommendation. APCO asserts that PSAPs 200 miles away would have difficulties with dispatch and that a better approach would be to have ''mirrored'' telephone central offices at remote locations. We decline to implement this Katrina Panel recommendation. Use of back-up PSAPs should be based on capabilities, common vulnerabilities and technical capabilities, not an arbitrary distance. Geographic remoteness is only one consideration; other considerations include the probability of disaster affecting both PSAPs, size of the PSAPs, the level of technology used at both PSAPs, radio interoperability, availability of operating support systems, and logistics for transporting and staffing PSAP personnel familiar with the geographic area covered by the disaster.

77. *Other Recommendations Regarding First Responder Communications.* Various commenters submitted additional recommendations for addressing first responder communications issues. We will address those issues below.

78. *Relocation of Existing Licensees on Interoperability Channels.* The Tennessee Statewide Interoperability Executive (the Tennessee SIEC) asserts that the Commission should move existing licensees on the VHF and UHF interoperability channels so that such channels are available for interoperability usage and do not have to compete with grandfathered dispatch operations or secondary telemetry, etc. The Tennessee SIEC also suggested that the Commission eliminate licensing of

the interoperability channels for any purpose other than interoperability.

79. When the Commission designated the VHF and UHF interoperability channels, it sought to balance the need for improved interoperability capabilities below 512 MHz with the need to minimize the impact on incumbent licensees. The Commission therefore ''grandfathered'' incumbent licensees on a secondary basis only to interoperability communication rather than ordering them to vacate the channels or use them exclusively for interoperability purposes. With regard to new licenses, the rules provide that these frequencies will be available primarily for interoperability-only communications. We decline to amend our rules at this time to move existing licensees on the VHF and UHF interoperability channels. Instead, we find that a prudent approach would be first to consult with public safety coordinators. Accordingly, we direct PSHSB to consult the public safety frequency coordinator community through the Public Safety Communications Council to determine the extent of the problem, if any, and whether moving grandfathered licensees at this time would be feasible, and if so, how.

80. *Use of a Standard Continuous Tone Coded Squelch System.* The Tennessee SEIC suggested that the Commission mandate the use of a standard Continuous Tone Coded Squelch System (''CTCSS'') to promote interoperability and minimize disruption at a disaster scene. We decline to initiate a rulemaking to implement Tennessee SEIC's suggestion at this time. The Commission has designated 5 VHF frequencies and 4 UHF channel pairs for interoperability use nationwide. Generally, VHF and UHF *analog* public safety radios include the CTCSS feature. Each radio ''listens'' for CTCSS tones transmitted by base stations, mobiles, or portables. If the tone is present, the user hears the communications directed to him/her, but other transmissions on the same frequency using a different CTCSS tone (or lacking a tone) are muted (squelched). Because these frequencies also have grandfathered, non-interoperable licensees, mandated use of a standard CTCSS on these channels would exclude (*i.e.*, tune out) these incumbents. Use of different tone coded squelch frequencies on the interoperability channels could prohibit units from different jurisdictions from communicating at the scene of a disaster, which undermines the purpose of interoperability. Mandating a common CTCSS tone could impose unwarranted economic burdens by requiring the purchase of additional equipment or modification of existing equipment to employ such a tone. A mandated, common CTCSS also could adversely impact grandfathered licensees operating on the VHF and UHF interoperability channels.

81. There is not enough information in the record to recommend a rulemaking at this point. However, it would be prudent to consult with the public safety frequency coordinators to ascertain the scope of the problem and determine whether Commission action is warranted. We therefore direct PSHSB to consult with public safety frequency coordinators and ask them to study this proposal and provide further input to the Commission.

82. *Statewide Channels.* The Tennessee SIEC advocates that, in order to help states keep their statewide channels clear, the Commission should allow state agencies to provide FCC designated frequency coordinators with a list of FCC designated ''Statewide'' channels for protection within 35 to 50 miles of the state border depending upon terrain protection. We direct PSHSB to consult with public safety coordinators on the problem of keeping statewide channels clear.

83. *Licensees Adjacent to Interoperability Channels.* The Tennessee SIEC also advocates that the Commission mandate that the wideband licensees adjacent to the VHF/UHF interoperability channels move to narrowband emission to minimize interference to interoperability channels. We note our rules already require that this be done. Accordingly, no further action is necessary at this time.

84. *Designation of 155.370 MHz as a Nationwide Inter-agency Channel.* The Tennessee SIEC also advocates that the Commission designate 155.370 MHz as a nationwide inter-agency channel and implement a CTCSS tone to minimize interference. We refrain, at this time, from initiating a rulemaking to amend our rules to designate 155.370 MHz as an inter-agency channel nationwide and implement a CTCSS tone to minimize interference. Designating this public safety frequency as an inter-agency channel nationwide may have a significant impact on existing incumbents on this frequency and adjacent channel incumbents. Overcoming interference concerns, particularly since VHF spectrum is traditionally congested, may prove challenging. The potential impact on existing licensees, including increased equipment costs, outweighs any benefits of designating a sixth VHF frequency for interoperability. We also note that the existing nationwide inter-agency channels were recommended by the four public safety coordinators and were adopted by the Commission partly because these were the ''least licensed.''

85. *Common Nomenclature.* The Tennessee Statewide Interoperability Executive and others recommend that the Commission mandate a common nomenclature for the designated interoperability channels and require each state to have a functional Statewide Interoperability Executive Council. These issues were raised in the 7th NPRM in WT Docket No. 96–86 and we will address them in that proceeding.

86. *Mutual Aid Channels.* The Tennessee SIEC also stated that the Commission should encourage public safety frequency coordinators to keep designated Fire mutual aid channels (*i.e.* 154.265, 154.280, 154.295 MHz) and their narrowband counterparts and the National Law Enforcement Channel (*i.e.* 155.475 MHz) for mutual aid only. We refrain from concluding that the Commission should encourage public safety frequency coordinators to keep designated mutual aid channels for aid only, until the Commission can engage the public safety frequency coordinator community further on this issue. These frequencies have special limitations that make them available for specified mutual aid purposes, but the Tennessee SIEC suggests that the public safety frequency coordinators currently approve the use of these frequencies for non-mutual aid purposes. In order to evaluate the merits of this proposal, the Commission should consult with the public safety frequency coordinator community through the Public Safety Communications Council. Accordingly, we direct PSHSB to engage in such consultation and provide a recommendation on this issue.

87. *911 Analysis.* NENA asserts that the Commission should require all 911 system service providers (SSPs) to analyze and provide detailed information on the redundancy, resiliency, and dependability of 911 networks and to provide detailed information to the Commission on areas where these issues are treated in the network and areas where there are gaps. NENA states that all 9–1–1 SSPs should be required to submit a plan to the Commission outlining this information and steps they intend to take to ensure diversity and dependability in the network, including any plans they have to migrate their network to an IP-based platform that will enable the migration from the existing 911 system to next generation 911 architecture. NENA also

argues that these plans should be made available to leading public safety organizations.

88. AT&T asserts that NENA's proposal is misdirected because it is the PSAP, not the service provider, that must determine the best way to mitigate single points of failure within its 911 network in a cost effective manner. Similarly, the United States Telecom Association (US Telecom) argues that ILECs do not own 911 networks, but merely provide inputs for them and should not, therefore, be required to report to the Commission regarding the dependability of these networks. U.S. Telecom argues that ILECs do not need to be burdened with additional reporting requirements and regulatory mandates, but rather need flexibility to create redundancies in their networks not mandates requiring them to do so where it is unnecessary. AT&T also asserts that the NENA fails to explain how the Commission could make use of such detailed information in any manner that does not duplicate how 911 service providers already interact with PSAPs and state regulatory authorities. AT&T and U.S. Telecom assert that requiring the unnecessary further dissemination of this information could have serious adverse consequences for service providers, for whom those proprietary data have substantial competitive value, and for the general public if that information is compromised and comes into possession of persons and groups with criminal intentions.

89. We agree that the Commission should require the analysis of 911 and E911 networks and the submission of reports regarding the status of these networks. Although NENA's proposal appears to be limited to 911 SSPs, which are typically incumbent local exchange carriers (ILECs), we believe that, with the exceptions described below, this requirement should apply all LECs, including ILECs and CLECs, CMRS providers required to comply with the wireless 911 rules and interconnected Voice over Internet Protocol (VoIP) service providers. It is critical that Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service. Therefore, we will require LECs, including both ILECs and CLECs, CMRS providers required to comply with the wireless 911 rules and interconnected VoIP service providers analyze and provide detailed reports on the redundancy, resiliency, and dependability of their 911 and E911 networks and systems. Where relevant, the reports should include steps the service provider intends to take to ensure diversity and dependability in the network and/or system, including any plans they have to migrate their network to a next generation IP-based E911 platform. This requirement will serve the public interest and further the Commission's statutory mandate to promote the safety of life and property through the use of wire and radio communication.

90. We are mindful that this requirement may cause a financial burden to certain small carriers. Accordingly, we will not impose this reporting requirement on LECs, including ILECs and CLECs, that meet the definition of a Class B company set forth in Section 32.11(b)(2) of the Commission's rules. We will also not impose this reporting requirement on Tier III CMRS carriers. Interconnected VoIP service providers will be exempt from this requirement if their annual revenues fall below the revenue threshold established pursuant to Section 32.11 of the Commission's rules. NENA recommends that these reports be shared with ''leading public safety organizations.'' Although we believe there is some benefit to sharing these reports with certain public safety organizations, we also understand that these reports will likely contain competitive and other information that should be accorded confidential treatment under our rules. To balance these concerns, we will share these reports with NENA, APCO, and The National Association of State 9–1–1 Administrators, the public safety organizations that previously have been provided copies of 911-related reports, but only pursuant to a protective order consistent with the model protective order previously adopted by the Commission. We delegate authority to PSHSB to issue such protective orders.

91. AT&T and U.S. Telecom argue that this should not be the duty of SSPs which are typically ILECs, suggesting that PSAPs are better situated to perform such an analysis. PSAPs know whether they have alternative facilities into their buildings and whether they have backup/alternative PSAP sites. However, carriers, not PSAPs, know about the selective routers, the routing between selective routers and the central offices from which customers may call, and the diversity in the interoffice facilities between the selective router and the central office serving the PSAP. PSAPs should know whether they ordered facility diversity, but they do not have insight regarding how, or even if, this was provisioned. U.S. Telecom also argued that ILECs should not be subject to mandates requiring them to create redundancies in their networks; however, the rule we adopt requires only an analysis and report, it does not require carriers to create additional network redundancies.

92. Accordingly, pursuant to our authority under Section 403 of the Communications Act, as amended, we will require LECs, CMRS providers required to comply with the wireless 911 rules and interconnected VoIP service providers, except those exempted above, to conduct an analysis of the resiliency and reliability of their 911 networks or systems and to submit a report to the Commission. We delegate to PSHSB the authority to implement and activate a process through which these reports will be submitted, including the authority to establish the specific data that will be required from each category of communications provider. We also direct PSHSB to make efforts to ensure that carriers subject to state regulations requiring the reporting of similar information are afforded the opportunity to meet this requirement by submitting the state report. The report will be due 120 days from the date that the Commission or its staff announces activation of the 911 network and system reporting process.

93. We also note that NRIC VII developed best practices that could address this issue. Accordingly, we direct PSHSB to continue to encourage industry to implement NRIC's best practices in this area, to continue to encourage industry to develop best practices in this area specific to their locale, and to continue to work to see that such recommendations, and any resulting adopted best practices, are made available on the Commission's Web site.

94. *Two-Way Paging Initiative.* Commenters recommended that the Commission permit the use of 900 MHz B/ILT pool of spectrum for two-way paging systems either owned by public safety users or dedicated to the provision of emergency communications. We direct PSHSB, in coordination with WTB, to consider this issue and to determine what action, if any, should be implemented.

95. *McVey Petition for Rulemaking.* In his comments, W. Lee McVey requests that the Commission initiate a rulemaking to create a new radio service in the 148–150 MHz band ''to facilitate interoperability between different first responders during and following a national emergency.'' We note that the 148–149.9 band is allocated on a primary basis for federal Fixed, Mobile and Mobile Satellite (Earth-to-Space) service and the 149–150.05 MHz segment is allocated on a co-primary basis for federal and non-federal Mobile

Satellite (Earth-to-space) and Radio navigation Satellite Services, and that the petition does not address this use nor does it explain what rules would be necessary to govern access to this spectrum. Given the potential impact of McVey's proposal to spectrum allocated for federal use, we direct PSHSB, together with OET, to seek feedback from NTIA on this petition. Upon receiving such feedback, we direct PSHSB and OET to make a determination on the appropriate action to be taken on this petition.

Emergency Communications to the Public

96. *Revitalize and Publicize the Emergency Alert System.* The Katrina Panel suggests a number of recommendations to revitalize and publicize the existing Emergency Alert System (''EAS''). To facilitate and complement the use of the existing EAS, the Katrina Panel recommends that the Commission should: (a) Educate state and local officials about EAS, its benefits, and how it can be best utilized; (b) develop a program for educating the public about the EAS and promote community awareness of potential mechanisms for accessing those alerts sent during power outages or broadcast transmission failures; (c) move expeditiously to complete its proceeding to explore the technical and financial viability of expanding the EAS to other technologies, such as wireless services and the Internet, recognizing that changes to communications networks and equipment take time to implement; (d) consistent with proposed legislation, work with Congress and other appropriate federal departments and agencies to explore the technical and financial viability of establishing a comprehensive national warning system that complements existing systems and allows local officials to increase the penetration of warnings to the public as well as target, when necessary, alerts to a particular area; (e) work with the DHS and other appropriate federal agencies on pilot programs that would allow more immediate evaluation and testing of new notification technologies; and (f) work with the Department of Commerce to expand the distribution of certain critical non-weather emergency warnings over National Oceanic and Atmospheric Administration (NOAA) weather radios to supplement the EAS.

97. We agree that we should encourage state, tribal and local governments to use EAS as a mechanism to deliver emergency alerts. Accordingly, we direct PSHSB to engage in outreach efforts to educate state, tribal and local governments about the EAS. In addition, we direct PSHSB to take steps to educate the public about EAS. We also note that PSHSB has coordinated with DHS on EAS issues, including issues related to the development of a state-of-the-art public alert and warning system. We direct PSHSB to continue those efforts.

98. Finally, on the issue of expanding the scope of EAS to include new technologies, as the Katrina Panel acknowledges, this issue is already the subject of our ongoing EAS rulemaking proceeding. In addition, pursuant to the recently enacted WARN Act, the Commission established an advisory committee—the Commercial Mobile Service Alert Advisory Committee—to develop and recommend technical standards and protocols by which commercial mobile service (CMS) providers may voluntarily transmit emergency alerts. The Committee has a diverse membership, including over forty representatives from the wireless and broadcast industries, public safety, equipment manufacturers, organizations representing people with disabilities and the elderly, FEMA and NOAA. Thus far, the Committee has held three full Committee meetings and a number of informal working group meetings. The Commission expects that the Committee will meet its statutory deadline of submitting recommendations to the Commission by October 12, 2007.

99. *Ensuring that People with Disabilities and Non-English Speaking Persons Receive Alerts.* The Katrina Panel recommended that the Commission promptly find a mechanism to resolve technical and financial hurdles in the EAS system to ensure that non-English speaking people or people with disabilities have access to public warnings, if readily achievable. The Panel also recommended that the Commission work with trade associations and the disability community to create and publicize best practices for serving persons with disabilities and non-English-speaking Americans and encourage state and local government agencies that provide emergency information to take steps to make this information accessible to persons with disabilities and non-English speaking Americans.

100. We note that the issue of making EAS alerts accessible to people with disabilities and to those who do not speak English is already the subject of the EAS rulemaking proceeding. Moreover, the Commercial Mobile Service Alert Advisory Committee will consider these issues in the context of wireless carriers' participation in emergency alerts. On the broader issue of ensuring that emergency information reaches people with disabilities and non-English speaking Americans, we direct PSHSB, along with Consumer & Government Affairs Bureau (CGB) as appropriate, to work with the industry, state, tribal and local governments and organizations representing people with disability and non-English speaking persons on these issues.

101. *Ensuring Consistent and Reliable Emergency Information Through a Consolidated and Coordinated Public Information Program.* The Katrina Panel recommended that public information functions should be coordinated and integrated across jurisdictions and across functional agencies, among federal state, local and tribal partners, and with private sector and non-governmental organizations. The Panel recommended that the Commission work with involved parties to facilitate the integration of media representatives into the development of disaster communications plans (Emergency Support Function #2). The Panel also urged the designation of a public information officer at each Emergency Operations Center to handle media and public inquiries, emergency public information and warning, and other functions. The Panel advocates the formation of a Joint Information Center (''JIC'') during large scale disasters. The JIC would collocate representatives from federal, regional, state, local and/or tribal EOCs responsible for primary incident coordination responsibilities. The JIC would provide a mechanism to integrate public information activities from various jurisdictions and organizations and would include media operations.

102. We believe this issue is thoroughly addressed by the National Response Plan under Emergency Support Function #15—External Affairs and the Public Affairs Support Annex. ESF #15 ensures that sufficient federal assets are deployed to the field during a potential or actual Incident of National Significance to provide accurate, coordinated, and timely information to government, media, the private section and the local populace. This provides the resource support and mechanisms to implement the NRP Incident Communications Emergency Policy and Procedures described in the NRP Public Affairs Support Annex. The NRP Public Support Annex describes the interagency policies and procedures used to rapidly mobilize federal assets to prepare and deliver coordinated and sustained messages to the public in response to Incidents of National

significance and other major domestic emergencies. In addition, the NRP Public Affairs Support Annex specifically addresses the formation of JICs.

103. The Katrina Panel recommended that the Commission should work with federal, state, and local agencies to ensure consistent and reliable emergency information through a consolidated and coordinated public information program. We note that state, tribal and local officials play a key role in forming messages as they are sent to the public. Nonetheless, we direct PSHSB to continue to work with DHS and state, tribal and local governments on the consolidation and coordination of public information as part of its supporting role under the NRP's ESF #15 and the Public Affairs Annex.

Other Recommendations

104. *Amateur Initiatives.* Several amateur radio operators recommended changes to part 97 of the Commission's rules which govern amateur radio. Many of the changes have already been implemented and thus require no further action. For example, the Commission recently eliminated Morse Code proficiency as a license qualification requirement, an action supported by several commenters in this proceeding. The Commission also previously decided to phase out RACES station licenses, making proposed changes to rules relevant to these licenses moot. Finally, the Commission previously clarified that part 97 does not prohibit amateur radio operators who are emergency personnel engaged in disaster relief from using their amateur radio bands while in a paid duty status. We also note that several recommendations made by amateur radio operators remain pending before the Commission and, accordingly, we take no action on those in this proceeding. We do note that the amateur radio community played an important role in the aftermath of Hurricane Katrina and other disasters. Accordingly, we order PSHSB to include the amateur radio community in its outreach efforts.

105. *Low Power Broadcast Service Initiatives.* Prometheus Radio Project and Amherst Alliance submitted a number of recommendations regarding the Low Power FM service as well as other low power broadcast services. Specifically, these commenters recommended that the Commission: (i) Remind Congress that it has previously recommended that the statutory restrictions on adjacent channel spacing of Low Power FM stations should be repealed; (ii) open a filing window for 10 watt LPFM license applications; (iii) establish 250 watt LPFM stations; and (iv) establish Low Power AM stations; and (v) resolve the LPFM rulemaking proceeding. We will refer these issues to the Media Bureau for handling as appropriate.

106. *Modification of ''Substantial Service'' Policies for NPCS Channels.* The American Association of Paging Carriers (AAPC) asserts that the Commission should ''modify its 'substantial service' policies governing part 24 NPCS channels so that licensees leasing, disaggregating or partitioning NPCS spectrum for use by two-way paging systems for emergency communications, including leasing, disaggregating or partitioning spectrum for 'back haul' channels that can be paired with traditional 929/931 MHz paging channels, also will be deemed to be providing 'substantial service' on the spectrum retained by the NPCS licensee.'' Because this issue relates to general construction policy, we will refer this issue to the Wireless Telecommunications Bureau for appropriate handling.

107. *Designation of 700 MHz Spectrum for Critical Infrastructure.* Some commenters recommend that the Commission designate a portion of the 700 MHz band for use by critical infrastructure industry use. We will address this issue in the context of our 700 MHz proceedings.

108. *CALEA Exemption for Temporary Ad Hoc Networks.* Champaign Urbana Wireless Network *et al.* asks that the Commission clarify that volunteers who build ad hoc networks in response to an emergency need not comply with CALEA. They state that, in response to Hurricane Katrina, volunteers created numerous wireless networks to provide needed Internet connectivity for Red Cross shelters and others in areas where Katrina destroyed or substantially degraded existing infrastructure. On completing construction of these ad hoc networks, the volunteers turned these networks over to local operators and move on to help others.

109. Champaign Urbana *et al* states that many of these ad hoc networks remained in operation for months and may still remain in operation today. They state that volunteers who generally did not maintain contact or provide any services for these networks once they turn them over to local operators. They state that these volunteers are not telecommunications carriers to whom CALEA generally applies and that these volunteers do not provide these services for hire. In addition, they state that these volunteers do not fall under the ''substantial replacement provision'' of the Act.

110. They request that the Commission establish a blanket waiver for *ad hoc* wireless networks created in response to a state of emergency; and that any liability that might arise for failure to comply with CALEA if the networks remain in operation after the emergency would not lie with those who created the network so long as they turned control over the network to others. To the extent the Commission determines that these volunteers are subject to CALEA, Champaign Urbana *et al* requests that the Commission provide a general waiver pursuant to its authority to exempt any ''class or category of telecommunications carrier.''

111. We do not have sufficient information in the record to justify grant of a blanket waiver as Champaign Urbana suggests. First it is not clear whether Champaign Urbana's request is for a blanket waiver of ad hoc temporary networks in all cases of emergencies, including those involving terrorist attacks. If so, such a waiver could actually impede law enforcement and thus hinder the purposes of CALEA. Moreover, we note that CALEA exemptions may only be granted after formal consultation with the U.S. Attorney General and that the Federal Bureau of Investigation (which formally has been designated by the Attorney General to handle CALEA obligations) has previously opposed granting blanket CALEA exemptions. For these reasons, we decline to issue a blanket waiver for these types of networks. Rather, we think the appropriate approach would be to review requests for exemptions of these types of networks (and the volunteers who construct them) on a case-by-case basis.

112. *Closed Captioning and Telecommunications Relay Service Issues.* Telecommunications for the Deaf and Hard of Hearing (TDI) recommends that: (i) Broadcasters establish contracts or cooperative agreements among captioning providers to ensure that broadcasts can be captioned in the event of emergencies regardless of the emergency's location; (ii) captioning services personnel should be designated as essential personnel; (iii) the Commission require all Telecommunications Relay Service (''TRS'') providers to have back-up power ready to operate for a minimum of 72 hours; (iv) the Commission should require that all TRS providers have contingency plans for transfer of calls from TRS centers that may be unable to operate due to catastrophic damage or overwhelming volume of calls from

other centers; and (v) all TRS personnel should be deemed essential personnel during emergencies.

113. We direct CGB to consider these issues in an appropriate proceeding. In this regard, we note that, on December 29, 2006, the Commission released a Public Notice that provides steps that video programming distributors may take to obtain closed captioning services quickly in the event of an emergency. With respect to TDI items (2) and (5), we note that the FCC has no jurisdiction over who is declared an ''essential service provider,'' nonetheless we will direct PSHSB to work with DHS on this issue.

114. The American Association of People with Disabilities (AAPD) suggests that the Commission consider encouraging IP Relay and Video Relay Service (VRS) providers to develop solutions for handling emergency calls through TRS. This issue was raised in the November 30, 2005 VRS 9–1–1 NPRM, has been the subject of an E9–1–1 Disability Access Summit held at the Commission on November 15, 2006, and is pending before the Commission. CGB's Disability Rights Office and PSHSB will continue to work with the disability community and Internet-based TRS providers on these issues.

I. Procedural Matters

A. Final Paperwork Reduction Act Analysis

115. This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public, the Office of Management and Budget and other Federal agencies to comment on the information collection requirements contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due September 10, 2007. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In this present document, we have assessed the effects of requiring the analysis of 911 and E911 networks and the submission of a report on the resiliency and reliability of those networks, by LECs, CMRS providers required to comply with the wireless 911 rules, and interconnected VoIP service providers. We have specifically exempt LECs that meet the definition of a Class B company set forth in Section 32.11(b)(2) of our rules, Tier III CMRS carriers, and interconnected VoIP service providers with annual revenues below the revenue threshold established pursuant to Section 32.11 of our rules from these requirements. We find that this imposes minimal regulation on small entities to the extent consistent with our goal of advancing our public safety mission.

B. Report to Congress

116. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

II. Final Regulatory Flexibility Analysis

117. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in EB Docket No. 06–119. The Commission sought written public comment on the proposals in this docket, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Rules

118. In the Order, we adopt a rule that requires local exchange carriers (LECs), other than those that meet the definition of a Class B company as set forth in Section 32.11(b)(2) of the Commission's rules, and commercial mobile radio service (CMRS) providers, other than non-nationwide CMRS providers with no more than 500,000 subscribers, to have an emergency backup power source for all assets that are normally powered from local AC commercial power, including those inside central offices, cell sites, remote switches and digital loop carrier system remote terminals. We also adopt a rule that requires the analysis of 911 and E911 networks and systems and detailed reporting to the Commission of the redundancy, resiliency and reliability of those networks and systems by: (1) LECs, including incumbent LECs (ILECs) and competitive LECs (CLECs); (2) commercial wirelesss service providers required to comply with the wireless 911 rules set forth in Section 20.18 of the Commission's rules; and (3) interconnected Voice over Internet Protocol (VoIP) service providers. LECs that meet the definition of a Class B company set forth in Section 32.11(b)(2) of the Commission's rules, non-nationwide commercial mobile radio service providers with no more than 500,000 subscribers at the end of 2001, and interconnected VoIP service providers with annual revenues below the revenue threshold established pursuant to Section 32.11 of the Commission's rules are exempt from this rule.

119. These rules, which are part of a broader initiative taken with this Order to implement several of the recommendations made by the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (Katrina Panel), will promote communications readiness and preparedness for future natural disasters and other emergencies. The measures taken today will also facilitate more effective and efficient recovery efforts in the wake of such events. These actions will advance efforts to save lives and protect property in the event of a natural disaster or other emergency.

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

120. No comments specifically addressed the IRFA.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

121. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

122. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the

United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

123. In the following paragraphs, the Commission further describes and estimates the number of small entity licensees that may be affected by the rules the Commission adopts in this Order. The rule changes affect LECs, including both incumbent LECs (ILECS) and competitive LECs (CLECs), CMRS providers, and interconnected VoIP service providers.

124. Since the Order applies to multiple services, this FRFA analyzes the number of small entities affected on a service-by-service basis. In the case of CMRS providers, when identifying small entities that could be affected by the Commission's new rules, this FRFA provides information that describes auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or a transfer of control application that involves unjust enrichment issues.

125. *Cellular Licensees.* The SBA has developed a small business size standard for small businesses in the category ''Cellular and Other Wireless Telecommunications.'' Under that SBA category, a business is small if it has 1,500 or fewer employees. For the census category of ''Cellular and Other Wireless Telecommunications,'' Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the majority of firms can be considered small.

126. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the C Block auctions. A total of 93 ''small'' and ''very small'' business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

127. *Specialized Mobile Radio.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

128. The auction of the 1,050 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed ''small business'' status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

129. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $3 million or $15 million (the special small business size standards), or have no more than 1,500 employees (the generic SBA standard for wireless entities, discussed, supra). One firm has over $15 million in revenues. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities.

130. *Advanced Wireless Services.* In the *AWS–1 Report and Order,* the Commission adopted rules that affect applicants who wish to provide service in the 1710–1755 MHz and 2110–2155 MHz bands. The *AWS–1 Report and Order* defines a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. The *AWS–1 Report and Order* also provides small businesses with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent.

131. *Incumbent Local Exchange Carriers (Incumbent LECs).* As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not

''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed rules.

132. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our proposed rules.

133. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

134. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

135. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

136. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

137. *Web Search Portals.* Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.'' The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year. Of these, 303 had annual receipts of under $5 million, and an additional 15 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

138. *911 System Information Collection.* The rules adopted in this Order require certain specified

communications providers to analyze their 911 and E911 networks and systems and provide one-time detailed reports to the Commission regarding the redundancy, resiliency and reliability of those networks and systems. The communications providers subject to this rule are: (1) LECs, including ILECs and CLECs; (2) commercial wirelesss service providers required to comply with the wireless 911 rules set forth in Section 20.18 of the Commission's rules; and (3) interconnected Voice over Internet Protocol (VoIP) service providers. The Commission has delegated to the Chief, Public Safety and Homeland Security Bureau, the authority to implement and activate a process through which these reports will be submitted, including the authority to establish the specific data that will be required.

139. The reports required by this Order will be filed one time only and are due 120 days from the date that the Commission or its staff announces activation of the 911 network and system reporting process. Since most companies can be expected to have knowledge of their network and/or system architecture, we estimate that for the great majority of entities the total time required to complete a filing with the Commission will be approximately eight to 24 hours, depending on the size and type of entity. In making our time estimate, we have taken into account that this report must be filed only once and that the report will likely be made electronically, through a ''fill in the blank'' template, thereby minimizing the burden on all reporting entities. Finally, in order to avoid imposing financial burden on small carriers, the Commission exempt the following from this rule: (1) LECs that meet the definition of a Class B company set forth in Section 32.11(b)(2) of the Commission's rules; (2) non-nationwide commercial mobile radio service providers with no more than 500,000 subscribers at the end of 2001; and (3) interconnected VoIP service providers with annual revenues below the revenue threshold established pursuant to Section 32.11 of the Commission's rules.

140. *Back-Up Power Supply.* The Order also adopts a rule that requires LECs and CMRS providers to have an emergency back-up power source for all assets that are normally powered from local AC commercial power, including those inside central offices, cell sites, remote switches and digital loop carrier system remote terminals. The rule adopted provides that LECs and CMRS providers should maintain emergency back-up power for a minimum of 24 hours for assets inside central offices and eight hours for cell sites, remote switches and digital loop carrier system remote terminals that normally are powered from local AC commercial power. Our expectation is that this requirement will not create an undue burden since several communications providers reported in their comments that they already maintain emergency back-up power. Additionally, LECs that meet the definition of a Class B company as set forth in Section 32.11(b)(2) of the Commission's rules and non-nationwide CMRS providers with no more than 500,000 subscribers are exempt from this rule.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

141. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

142. *911 System Information Collection.* In order to minimize any adverse impact of the 911 system information collection on small entities, we have exempted LECs (both ILECs and CLECs) that meet the definition of a Class B company that is set forth in Section 32.11(b)(2) of the Commission's rules. We will also not impose this reporting requirement on Tier III CMRS carriers. Finally, interconnected VoIP service providers will be exempt from this requirement if their annual revenues fall below the revenue threshold established pursuant to Section 32.11 of the Commission's rules.

143. *Back-Up Power Supply.* We recognize that the provision of a backup power supply as directed by the rule adopted in this Order may be a significant financial hardship for certain small businesses. Accordingly, we will not impose this requirement on LECs (both ILECs and CLECs) that meet the definition of a Class B company as set forth in Section 32.11(b)(2) of the Commission's rules. We will also not apply this requirement to non-nationwide CMRS providers with no more than 500,000 subscribers.

144. Report to Congress: The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this present summarized Order and FRFA is also hereby published in the **Federal Register**.

III. Ordering Clauses

145. Accordingly, it is ordered, pursuant to Sections 1, 4(i)-(k), 4(o), 5(c), 201, 214(a), 218, 219, 271, 272, 301, 303(g), 303(j), 303(r), 332, 403, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)-(k), 154(o), 155(c), 201, 214(a), 218, 219, 271, 272, 301, 303(g), 303(j), 303(r), 332, 403, 541(b)(3), and 541(d), that the Order in EB Docket No. 06–119 and WC Docket No. 06–63 is adopted and that the Commission's Rules are amended as set forth in the rule changes. The rules adopted in this Order shall become effective August 10, 2007, except that the new information collection requirement will not become effective prior to OMB approval. The reports on the redundancy, resiliency and reliability of 911 and E911 networks are due 120 days from the date that the Commission or its staff announces activation of the OMB-approved reporting process.

146. It is further ordered that the Commission's Public Safety and Homeland Security Bureau, Consumer and Governmental Affairs Bureau and Office of Engineering and Technology take action as directed in this Order. The Commission's Public Safety and Homeland Security Bureau shall report to the Commission on its efforts three months from the date of release of this Order and nine months from the date of release of this Order.

147. It is further ordered that the Special Temporary Authority and waiver of Section 272 of the Act and its implementing rules to allow AT&T, Verizon and Qwest to share non-public, Bell Operating Company (BOC) network information with their Section 272 and other affiliates, as necessary to engage in integrated disaster recovery planning, is extended to a one year period ending April 20, 2008 for AT&T and to June 9, 2008 for Verizon and Qwest, effective on the date of release of this Order.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR chapter I by adding part 12 to read as follows:

PART 12—REDUNDANCY OF COMMUNICATIONS SYSTEMS

Sec.
12.1 Purpose.
12.2 Backup power.
12.3 911 and E911 analyses and reports.

Authority: Sections 1, 4(i), 4(j), 4(o), 5(c), 218, 219, 301, 303(g), 303(j), 303(r), 332, 403, 621(b)(3), and 621(d) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 154(o), 155(c), 218, 219, 301, 303(g), 303(j), 303(r), 332, 403, 621(b)(3), and 621(d), unless otherwise noted.

§ 12.1 Purpose.

The rules in this part include requirements that will help ensure the resiliency, redundancy and reliability of communications systems, particularly 911 and E911 networks and/or systems.

§ 12.2 Backup power.

Local exchange carriers (LECs), including incumbent LECS (ILECs) and competitive LECs (CLECs), and commercial mobile radio service (CMRS) providers must have an emergency backup power source for all assets that are normally powered from local AC commercial power, including those inside central offices, cell sites, remote switches and digital loop carrier system remote terminals. LECs and CMRS providers should maintain emergency back-up power for a minimum of 24 hours for assets inside central offices and eight hours for cell sites, remote switches and digital loop carrier system remote terminals that are normally powered from local AC commercial power. LECs that meet the definition of a Class B company as set forth in § 32.11(b)(2) of the Commission's rules and non-nationwide CMRS providers with no more than 500,000 subscribers are exempt from this rule.

§ 12.3 911 and E911 analyses and reports.

The following entities must analyze their 911 and E911 networks and/or systems and provide a detailed report to the Commission on the redundancy, resiliency, and reliability of those networks and/or systems: Local exchange carriers (LECs), including incumbent LECs (ILECS) and competitive LECs (CLECs); commercial mobile radio service providers required to comply with the wireless 911 rules set forth in § 20.18 of this chapter; and interconnected Voice over Internet Protocol (VoIP) service providers. LECs that meet the definition of a Class B company set forth in § 32.11(b)(2) of this chapter, non-nationwide commercial mobile radio service providers with no more than 500,000 subscribers at the end of 2001, and interconnected VoIP service providers with annual revenues below the revenue threshold established pursuant to § 32.11 of this chapter are exempt from this rule.

(a) The Public Safety and Homeland Security Bureau (PSHSB) has the delegated authority to implement and activate a process through which these reports will be submitted, including the authority to establish the specific data that will be required. Where relevant, these reports should include descriptions of the steps the service providers intend to take to ensure diversity and dependability in their 911 and E911 networks and/or systems, including any plans they have to migrate those networks and/or systems to a next generation Internet Protocol-based E911 platform.

(b) These reports are due 120 days from the date that the Commission or its staff announces activation of the 911 network and system reporting process.

(c) Reports filed under this Part will be presumed to be confidential. These reports will be shared with The National Emergency Number Association, The Association of Public Safety Communications Officials, and The National Association of State 9–1–1 Administrators only pursuant to a protective order. PSHSB has the delegated authority to issue such protective orders. All other access to these reports must be sought pursuant to procedures set forth in 47 CFR 0.461. Notice of any requests for inspection of these reports will be provided to the filers of the reports pursuant to 47 CFR 0.461(d)(3).

[FR Doc. E7–13488 Filed 7–10–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 73

[DA 07–2544; MB Docket No. 05–112; MB Docket No. 05–151; RM–10539; RM–11374; RM–11222; RM–11258]

Radio Broadcasting Services; Converse, Flatonia, Georgetown, Goldthwaite, Ingram, Junction, Lago Vista, Lakeway, Llano, McQueeney, Nolanville, San Antonio, Waco, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The respective Counterproposals in these two proceedings set forth mutually exclusive proposals at Llano, Texas. Therefore, it was necessary to consolidate MB Docket No. 05–112 and MB Docket No. 05–151. In response to the Counterproposal filed by Munbilla Broadcasting Properties, Ltd., this document allots Channel 297A to Goldthwaite, Texas, as a first local service. The reference coordinates for the Channel 297A allotment at Goldthwaite, Texas, are 31–30–00 and 98–42–23. With this action, both MB Docket No. 05–112 and MB Docket No. 05–151 are terminated.

DATES: Effective July 30, 2007.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the consolidated *Report and Order* in MB Docket No. 05–112 and MB Docket No. 05–151, adopted June 13, 2007, and released June 15, 2007. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copying and Printing, Inc. 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202(b) [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas is amended by adding Goldwaithe, Channel 297A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–13486 Filed 7–10–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–2654; MB Docket No. 05–131; RM–11208; RM–11209; RM–11367; RM–11368; RM–11369]

Radio Broadcasting Services; Cottonwood, Redding, and Shasta Lake, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The staff grants a counterproposal filed by Michael Birdsill to allot Channel 221A to Cottonwood, California, as a first local aural service, and a counterproposal filed by Educational Media Foundation to allot Channel 224A to Shasta Lake, California, as a third local service. It denies rulemaking petitions filed by Linda Davidson and Paul Barth to allot Channel 221A to Redding, California, as a tenth local service, and a counterproposal filed by Wild Thing Broadcasters to allot Channel 221C3 at Cottonwood. With this action, the proceeding is terminated. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Effective July 30, 2007.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 05–131, adopted June 13, 2007, and released June 15, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Under the Commission's FM Allotment Priorities, a first local service at Cottonwood is preferred over a tenth aural service at Redding or a third local service at Shasta Lake because it triggers higher allotment Priority (3). The staff then considers whether to allot Channel 221A or higher class Channel 221C3 at Cottonwood. The staff decides that the public interest would be better served by allotting lower class Channel 221A at Cottonwood because this allotment will make possible the allotment of Channel 224A at Shasta Lake. *See* 70 F.R. 19399 (April 13, 2005).

The reference coordinates for Channel 221A at Cottonwood, CA, are 40–23–45 NL and 122–17–22 WL and for Channel 224A at Shasta Lake, CA, are 40–38–51 and 122–27–19. *See* 70 F.R. 17384, April 6, 2005.

Finally, the staff makes an editorial correction to 47 C.F.R. Section 73.202(b) to change the name of Shasta Lake City to Shasta Lake to reflect the correct name of the community.

The Commission will send a copy of the Report and Order in this proceeding in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding, Cottonwood, Channel 221A, and by adding Shasta Lake, Channel 224A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–13487 Filed 7–10–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 070703251–7261–01]

RIN 0648–XB28

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 3,370 nm^2 (11,559 km^2), east of Chatham, Massachusetts, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours July 13, 2007, through 2400 hours July 27, 2007.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/.*

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and

serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On June 30, 2007, an aerial survey reported three aggregations of right whales, totaling twenty-nine individuals: twenty-one whales in the proximity of 41° 13′ N latitude and 69° 05' W longitude, four whales in the proximity of 41° 21′ N latitude and 68° 49′ W longitude, and four whales in the proximity of 41° 54′ N latitude and 68° 25' W longitude. These positions lie east of Chatham, MA. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule.

The DAM Zone is bound by the following coordinates:

42° 10′ N., 68° 31′ W (NW Corner).
41° 45′ N., 68° 17′ W.
41° 45′ N., 68° 00′ W.
41° 34′ N., 68° 00′ W.
41° 34′ N., 68° 23′ W.
41° 02′ N., 68° 23′ W.
41° 02′ N., 68° 34′ W.
40° 50′ N., 68° 34′ W.
40° 50′ N., 69° 36′ W.
41° 37′ N., 69° 36′ W.
41° 37′ N., 69° 16′ W.
41° 40′ N., 69° 16′ W.
41° 40′ N., 68° 51′ W.
42° 02′ N., 68° 51′ W.
42° 10′ N., 68° 31′ W (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: A portion of this DAM zone overlaps the year-round Closure Area I for Northeast Multispecies found at 50 CFR 648.81(a). Due to this closure, sink gillnet gear is prohibited from this portion of the DAM zone.

Lobster Trap/pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area and Great South Channel Restricted Lobster Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portions of the Other Northeast Gillnet Waters Area, Great South Channel Restricted Gillnet Area, and Great South Channel Sliver Restricted Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line,

which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per string;

4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends;

5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and

6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours July 13, 2007, through 2400 hours July 27, 2007, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: July 6, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 07–3376 Filed 7–6–07; 2:39 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060314069–6069–01]

RIN 0648–XA84

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Nantucket Lightship Scallop Access Area to General Category Scallop Vessels

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the Nantucket Lightship Scallop Access Area (NLCA) will close to general category scallop vessels for the remainder of the 2007 scallop fishing year. This action is based on the determination that 394 general category scallop trips into the NLCA are projected to be taken as of 0001 hr local time, July 8, 2007. This action is being taken to prevent the allocation of general category trips in the NLCA from being exceeded during the 2007 fishing year, in accordance with the regulations implementing Framework 18 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure is effective from 0001 hours, July 8, 2007, through February 29, 2008.

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Fishery Management Specialist, (978) 281–9326, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing fishing activity in the Sea Scallop Access Areas are found at §§ 648.59 and 648.60. Regulations specifically governing general category scallop vessel operations in the NLCA are specified at § 648.59(d)(5)(ii). These regulations authorize vessels issued a valid general category scallop permit to fish in the NLCA under specific conditions, including a cap of 394 trips that may be taken by general category vessels during the 2007 fishing year. The regulations at § 648.59(d)(5)(ii) require the NLCA to be closed to general category scallop vessels once the Northeast Regional Administrator has determined that the allowed number of trips are projected to be taken.

Based on Vessel Monitoring System (VMS) trip declarations by general category scallop vessels fishing in the NLCA, and analysis of fishing effort, a projection concluded that, given current activity levels by general category scallop vessels in the area, the trip cap will be attained on July 7, 2007. Therefore, in accordance with § 648.59(d)(5)(ii), the NLCA is closed to all general category scallop vessels as of 0001 hr local time, July 8, 2007. No general category scallop vessel may declare or initiate a trip into this area. This closure is in effect for the remainder of the 2007 scallop fishing year. The NLCA is scheduled to re-open to scallop fishing, including trips for general category scallop vessels, on June 15, 2009, unless the schedule for scallop access areas is modified by the New England Fishery Management Council.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Due to the need to take immediate action to close the NLCA once the allowed number of trips have been taken, pursuant to 5 U.S.C. 553(b)(3) proposed rulemaking is waived because it would be impracticable and contrary to the public interest to allow a period for public comment. The NLCA opened for the 2007 fishing year at 0001 hours on June 15, 2007. Data indicating the general category scallop fleet has taken all of the NLCA trips have only recently become available. To allow general category scallop vessels to continue to take trips in the NLCA during the period necessary to publish and receive comments on a proposed rule would result in vessels taking much more than the allowed number of trips in the NLCA. Excessive trips and harvest from the NLCA would result in excessive fishing effort in the NLCA, where effort controls are critical, thereby undermining conservation objectives of the FMP. Should excessive effort occur in the NLCA, future management measures would need to be more restrictive. Furthermore, for the same reasons, there is good cause under 5 U.S.C 553(d)(3) to waive the 30-day delayed effectiveness period for this action.

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

Dated: July 6, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–3378 Filed 7–6–07; 2:39 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XB33

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 Pacific ocean perch total allowable catch (TAC) in the Eastern Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 6, 2007, through 2400 hrs, A.l.t., December 31, 2007.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI 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 Pacific ocean perch TAC in the Eastern Aleutian District of the BSAI is 4,598 metric tons (mt) as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2007 Pacific ocean perch TAC in the Eastern Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,298 mt, and is setting aside the remaining 300 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 ocean perch in the Eastern Aleutian District of 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 ocean perch in the Eastern Aleutian District of 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 July 5, 2007.

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

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

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

Dated: July 5, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–3375 Filed 7–6–07; 2:39 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060511126–7122–05; I.D. 050306E]

RIN 0648–AT71

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Gulf of Alaska Fishery Resources

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule for the Central Gulf of Alaska (GOA) rockfish fisheries to revise monitoring and enforcement (M&E) provisions related to catcher/processor vessels harvesting under the opt-out fishery, and to make changes to regulations governing the rockfish fisheries. This action is necessary to clarify procedures and to correct discrepancies in a November 20, 2006, final rule. This final rule is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law.

DATES: Effective on August 10, 2007.

ADDRESSES: Copies of Amendment 68; the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendment 68; and Final Regulatory Flexibility Analysis (FRFA) prepared for Amendment 68 may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, and on the NMFS Alaska Region website at *http://www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907–586–7228, or *jason.anderson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In January 2004 the U.S. Congress amended section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Public Law 108 199, section 802). As amended, the Magnuson-Stevens Act authorizes the Secretary of Commerce to establish a limited access privilege program for the Central GOA rockfish fisheries (Program), developed in coordination with the North Pacific Fishery Management Council (Council). The Council recommended Amendment 68 to the FMP for groundfish in the GOA on June 6, 2005, to make the Program effective.

NMFS published a notice of availability for Amendment 68 on May 15, 2006 (71 FR 27984). On June 7, 2006, NMFS published a proposed rule to implement Amendment 68 and the Program (71 FR 33040). The Secretary approved Amendment 68 on August 11, 2006. NMFS published a final rule to implement Amendment 68 on November 20, 2006 (71 FR 67210).

The Program provides exclusive harvesting and processing privileges for a specific set of rockfish species and associated species harvested incidentally to those rockfish in the Central GOA an area between 147° W. longitude and 159° W. longitude. A detailed overview of the Program is provided in the preamble to the proposed rule (71 FR 33040; June 7, 2006) and is not repeated here. However, a component of the Program allows holders of License Limitation Program (LLP) licenses that are assigned rockfish quota share (QS) for the catcher/processor sector to opt-out of many of the aspects of the Program (opt-out fishery). Participants in the opt-out fishery are subject to harvest limitations, called sideboard limits, during the month of July. Sideboard limits applicable to participants in the opt-out fishery include measures to limit catch of specific groundfish species to historic levels, and limits on the amount of Pacific halibut bycatch, specifically termed prohibited species catch (PSC). NMFS requires a suite of M&E provisions for participants in the opt-out fishery to ensure they do not exceed their sideboard limits.

Need for Corrections to the November 20, 2006, Final Rule

NMFS seeks to ensure that the November 20, 2006, final rule (71 FR 67210) conforms to the intent of the Program, and to provide clarification regarding the Program's regulatory requirements.

Regulatory Intent Clarification

In the proposed rule to implement Amendment 68 (71 FR 33040; June 7, 2006), NMFS detailed the M&E provisions that would apply to participants in the opt-out fishery. The proposed suite of M&E provisions applicable to the opt-out fishery included requirements that each haul must be weighed separately, all catch must be made available for sampling by a NMFS-certified observer (see proposed regulatory text at § 679.84(c)(1); 71 FR 33096), and that the vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples (see proposed regulatory text at § 679.84(c)(4); 71 FR 33096). The proposed rule would have required that all catcher/processor vessels in the opt-out fishery be subject to these M&E requirements during July. The effect of the full suite of these M&E requirements on the regulated industry and the environment was analyzed in the draft EA/RIR/IRFA prepared for the proposed rule to implement the Program.

In response to public comment received on the proposed rule, NMFS modified the M&E provisions that apply to the opt-out fishery. The modifications were detailed in the preamble to the final rule. Specifically, NMFS noted these changes in the Summary of Changes section to the preamble (71 FR 67213) and in its response to comment 90 (71 FR 67229). NMFS also analyzed the effect of the revised M&E provisions for the opt-out fishery in the final EA/RIR and FRFA prepared for the Program final rule (see **ADDRESSES**). The preamble to the final rule clearly indicated that NMFS intended to

maintain the requirement for hauls to be weighed separately, and intended to require only one operational line.

The final regulatory text applicable to the opt-out fishery omitted some of the M&E requirements for catcher/processor vessels in the opt-out fishery that were detailed in the preamble to the final rule. Specifically, the regulations at § 679.84(d) failed to include the requirements to prevent mixing of hauls and maintain only one operational line before the point where the observer samples catch. These two requirements are essential for accurately attributing species composition to a specific haul and, in particular, to provide onboard observers the ability to properly attribute halibut PSC to a specific haul. Assigning halibut PSC to a specific haul is necessary to generate halibut PSC usage rates for specific fishery targets. Mixing of hauls and using more than one operational line undermine NMFS' ability to determine accurate halibut PSC usage for specific fisheries and create the potential for improper halibut PSC accounting. Because the distribution of organisms by size and species often differs among hauls, an aggregation of hauls (i.e., mixing two or more hauls) could create errors in the calculation of total groundfish catch. For example, if a vessel were to mix hauls from two different areas or depths, species catch composition and size could be significantly different between these hauls, and a composite sample may not represent each individual haul. Any errors would be exacerbated as the composite sample is expanded to represent the total weight of the mixed hauls. Similarly, the use of more than one operational line could lead to improperly sampled catch because catch could be diverted or otherwise conveyed in a manner that would limit adequate sampling.

Improper accounting of halibut PSC increases the risk that NMFS' catch accounting system may underestimate the amount of halibut PSC in the opt-out fishery, which undermines the conservation goals of this program. Because halibut PSC sideboard limits are likely to be small relative to harvest rates, timely and accurate accounting is essential to properly constrain fishing operations and ensure adequate conservation of the halibut resource.

Additionally, halibut PSC sideboard limits are allocated to specific participants within the catcher/processor sector (i.e., halibut PSC sideboard limits are established for each catcher/processor rockfish cooperative, and a combined halibut PSC limit is established for the combined catcher/processor rockfish limited access and opt-out fisheries). Failure to properly account for halibut PSC in a timely fashion with the best available data could increase the possibility that the opt-out fishery exceeds its halibut PSC sideboard limit. This could adversely constrain other fishery participants with halibut PSC limits (e.g., participants in catcher/processor cooperatives).

Finally, certain catcher/processor operators that may choose to participate in the opt-out fishery may have an incentive to use techniques to intentionally bias halibut PSC rates if mixing of hauls and the use of more than one operational line is permitted. Recent enforcement actions document intentional presorting of catch to bias observed catch rates of halibut PSC to maximize groundfish catch relative to constraining PSC or other groundfish catch. However, NMFS expects that opportunities to bias observer samples in the opt-out fishery will be reduced with the changes established under this rule.

This action revises the regulatory text to include requirements to prevent the mixing of hauls and maintain only one operational line before the point where the observer samples catch. This action is necessary to be consistent with the intent of the final rule and provide the affected public with accurate information regarding these requirements.

Additional Changes

Regulations at § 679.80(f)(3)(iii)(F) include a grammatical error. This paragraph is revised to correct the phrase, ''are the sum of all catch history'' to read, ''is the sum of all catch history.''

Regulations at § 679.82(d)(5)(iii) describe sideboard limits applicable to catcher vessels for the Program. This paragraph includes an erroneous cross-reference to ''§ 679.65(b)(1)(i)(B).'' This cross-reference is corrected to read ''§ 679.64(b)(2)(ii).''

Regulations at § 679.82(d)(8)(ii)(B) include a misspelled word. This paragraph is revised to correct the phrase, ''percent fo the GOA'' to read, ''percent of the GOA.''

Regulations at § 679.83(a)(1)(i) describe rockfish allocations for the Program's entry level fishery. This paragraph includes an erroneous cross-reference to ''§ 679.81(ab)(2).'' This cross-reference is corrected to read ''§ 679.81(a)(2).''

The proposed rule to revise Central GOA rockfish fisheries M&E provisions related to catcher/processor vessels harvesting under the opt-out fishery and to correct regulations governing the rockfish fisheries was published in the **Federal Register** on April 16, 2007 (72 FR 18943), and the public review and comment period closed on April 30, 2007. NMFS received one letter on the proposed rule that contained two separate comments. The following summarizes and responds to these comments, which are summarized and responded to below. This final rule has not been changed from the April 16, 2006, proposed rule.

Response to Comments

Comment 1: All quotas should be reduced by 50 percent this year, and 10 percent each subsequent year.

Response: This final rule implements revisions to Central GOA rockfish fisheries M&E provisions related to catcher/processor vessels harvesting under the opt-out fishery. These revisions do not have any relationship to the establishment of harvest specifications or the assignment of quotas or allocations in the North Pacific groundfish fisheries, so this comment is outside the scope of this rulemaking.

Comment 2: Because trawl gear is environmentally destructive by nature, NMFS should ban all trawlers from this area.

Response: This final rule implements revisions to M&E provisions in a management program that was previously implemented. The Program was approved by the Secretary after undergoing rulemaking and that action was supported by an EA/RIR/IRFA. The EA/RIR/IRFA specifically analyzed the effects of fishing in the GOA, and NMFS determined that the Program would not result in any significant impacts to the human environment.

Classification

The Administrator, Alaska Region, NMFS, determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

An IRFA was prepared for the Program proposed rule, and described in the Classification section of the preamble to the proposed rule for this action. The public comment period ended on April 30, 2007. No comments were received on the IRFA or on the economic effects of the rule.

NMFS prepared a FRFA for regulations implementing the Program. The FRFA incorporates the IRFA and a summary of the analyses completed to

support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

Need for and Objective of the Rule

The FRFA prepared for the Program describes in detail the objectives, need, and legal basis for the action, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. Section 802 of the Consolidated Appropriations Act of 2004 and the Magnuson-Stevens Act provide the legal basis for the Program, namely to achieve the objective of reducing excessive fishing capacity and ending the race for fish under the current management strategy for commercial fishing vessels operating in the Central GOA rockfish fisheries. This action revises the regulatory text to include requirements to prevent the mixing of hauls and maintain only one operational line before the point where the observer samples catch. This action is necessary to be consistent with the intent of the Program and provide the affected public with accurate information regarding these requirements.

Significant Alternatives and Steps to Minimize the Economic Impacts on Small Entities

The Council considered an extensive and elaborate series of alternatives, options, and suboptions as it designed and evaluated the potential for rationalization of the Central GOA rockfish fisheries, including the ''no action'' alternative. Three alternatives for catcher vessels were considered: Status Quo/No Action (Alternative 1); rockfish cooperative management with a limited license program for processors (Alternative 2); and rockfish cooperative management with linkages between rockfish cooperatives and processors (Alternative 3). Three alternatives for catcher/processors also were considered: Status Quo/No Action (Alternative 1); rockfish cooperative management (Alternative 2); and a sector allocation (Alternative 3). Alternative 3 for catcher vessels and Alternative 2 for catcher/processors were combined to form the Council's preferred alternative the rockfish cooperative alternative. The alternatives were analyzed relative to the status quo. Because the regulatory effect for opt-out sideboard fisheries will not occur until July 1, 2007, the status quo has not changed. Therefore, the effects of these alternatives described in the Program IRFA have not changed relative to this action. These alternatives constitute the suite of ''significant alternatives'' for purposes of the Regulatory Flexibility Act (RFA).

After an extensive public process spanning several years, NMFS concluded that the Program best accomplishes the stated objectives articulated in the problem statement and applicable statutes, and minimizes to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Estimate of the Number and Description of Small Entities Affected by Final Rule

The FRFA prepared for the Program contains a description and estimate of the number of small entities to which the proposed rule would apply. The FRFA estimates that as many as 15 catcher/processor vessels are eligible to receive QS under the Program. The FRFA estimates that approximately 171 trawl vessels and 900 non-trawl vessels could participate in the entry level fishery. The number of vessels that would choose to participate in the entry level fishery component of the Program is not known; therefore, there is no estimate of the number of entities in the entry level fishery that are directly regulated under this Program.

In addition, six entities that process rockfish are estimated to be eligible rockfish processors and would be regulated under this Program. None of these eligible rockfish processors are estimated to be small entities based on the number of persons employed by these processors. Additionally, some of these eligible rockfish processors are estimated to be involved in both the harvesting and processing of seafood products and exceed the $4.0 million in revenues as a fish harvesting operation. Some processors that are not eligible rockfish processors may choose to compete for landings from the entry level fishery and would be regulated by this Program. Some of these processors may be small entities. The extent of participation by small entities in the processing segment of the entry level fishery cannot be predicted.

Of the estimated 63 entities owning vessels eligible for fishing under the Program (other than the entry-level fishery), 45 are estimated to be small entities because they generated $4.0 million or less in gross revenue based on participation in 1996 through 2002. All 15 of the entities owning eligible catcher/processor vessels are non-small entities as defined by the RFA. No catcher vessel individually exceeds the small entity threshold of $4.0 million in gross revenues. At least three catcher vessels are believed to be owned by entities whose operations exceed the small entity threshold, leaving an estimated 45 small catcher vessel entities that are directly regulated by this action. The ability to estimate the number of small entities that operate catcher vessels regulated by this action is limited due to incomplete information concerning vessel ownership.

It is likely that a substantial portion of the catcher vessel participants in the entry level fishery will be small entities. Based on data from NOAA Fisheries, there are approximately 171 LLP licenses that would be qualified to fish in the Central GOA entry level trawl fishery, and 900 LLP licenses that would qualify to fish in the entry level fixed gear fishery. As mentioned earlier, it is not possible to determine how many persons may hold these LLP licenses and may choose to participate in the entry level fishery at the time of application. However, the number of persons holding LLP licenses is likely to be less than the total number of LLP licenses that may be used to participate in the entry level fishery because a person may hold more than one LLP license at a time.

Entities that do not qualify for the Program either left the fishery, currently fish under interim LLP licenses, or do not hold an LLP license. Moreover, the vessels the FRFA considers ''non-qualified'' would not be allowed to continue fishing under the current LLP. The impacts to the small entities that would be prohibited from fishing by the LLP were analyzed in the RIR/IRFA and FRFA prepared for the LLP. Therefore, the non-qualified vessels are not considered impacted by the proposed rule and are not discussed in this FRFA.

The RIR prepared for the Program indicated that the community of Kodiak, Alaska, could be directly impacted by the Program. All of the eligible rockfish processors are located in Kodiak. The specific impacts on Kodiak cannot be determined until NMFS issues QS and eligible rockfish harvesters begin fishing under the Program. Other supporting businesses may also be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are analyzed in the RIR prepared for the Program (see **ADDRESSES**).

Projected Reporting, Recordkeeping and other Compliance Requirements

Implementation of the Program changed the overall reporting structure and recordkeeping requirements of the participants in the Central GOA rockfish fisheries. All participants are required to provide additional reporting. Each harvester is required to track harvests to avoid exceeding his or her allocation.

As in other North Pacific rationalized fisheries, processors must provide catch recording data to managers to monitor harvest of allocations. Processors are required to record deliveries and processing activities to aid in the Program administration. The specifics of changes to reporting and recordkeeping requirements can be found in the preamble to the Program proposed rule (71 FR 33040; June 2, 2006). These reporting and recordkeepig requirements affect entities subject to Program requirements. However, this final rule does not revise those requirements described in the final rule implementing the Program, and does not impose additional reporting and recordkeeping requirements.

Federal Rules Which may Duplicate, Overlap or Conflict with the Proposed Rule.

No Federal rules that may duplicate, overlap, or conflict with this proposed action have been identified.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 5, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For reasons stated in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; and Pub. L. 108–199, 118 stat.110.

■ 2. In § 679.80, revise paragraph (f)(3)(iii)(F) to read as follows:

§ 679.80 Initial allocation of rockfish QS.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(F) Determine the percentage of legal rockfish landings from the official Rockfish Program record in the qualifying years used to calculate the rockfish QS assigned to the catcher/processor sector and multiply the rockfish QS units calculated in paragraph (f)(3)(iii)(E) of this section by this percentage. This yields the rockfish QS units to be assigned to the catcher/processor sector for that LLP license and species. For each primary rockfish species, the total amount of rockfish QS units assigned to the catcher/processor sector is the sum of all catch history allocation units assigned to all eligible rockfish harvesters in the catcher/processor sector.

* * * * *

■ 3. In § 679.82, revise paragraphs (d)(5)(iii) and (d)(8)(ii)(B) to read as follows:

§ 679.82 Rockfish Program use caps and sideboard limits.

* * * * *

(d) * * *

(5) * * *

(iii) Any AFA vessel that is not exempt from GOA groundfish sideboards under the AFA as specified under § 679.64(b)(2)(ii) is exempt from the sideboard limits in this paragraph (d).

* * * * *

(8) * * *

(ii) * * *

(B) The aggregate halibut PSC used in the shallow-water complex from July 1 through July 31 in each year from 1996 through 2002 by LLP licenses assigned to that rockfish cooperative that are subject to directed fishing closures under this paragraph (d), divided by 0.54 percent of the GOA annual halibut mortality limit.

* * * * *

■ 4. In § 679.83, revise paragraph (a)(1)(i) to read as follows:

§ 679.83 Rockfish Program entry level fishery.

(a) * * *

(1) * * *

(i) *Trawl catcher vessels.* Trawl catcher vessels participating in the rockfish entry level fishery may collectively harvest, prior to September 1, an amount not greater than 50 percent of the total allocation to the rockfish entry level fishery as calculated under § 679.81(a)(2). Allocations to trawl catcher vessels shall be made first from the allocation of Pacific ocean perch available to the rockfish entry level fishery. If the amount of Pacific ocean perch available for allocation is less than the total allocation allowable for trawl catcher vessels in the rockfish entry level fishery, then northern rockfish and pelagic shelf rockfish shall be allocated to trawl catcher vessels.

* * * * *

■ 5. In § 679.84, revise paragraph (d) to read as follows:

§ 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.

* * * * *

(d) Catch monitoring requirements for catcher/processors assigned to the opt-out fishery. At all times any catcher/processor vessel assigned to the opt-out fishery has groundfish onboard that vessel that were harvested subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, the vessel owner or operator must ensure catch from an individual haul is not mixed with catch from another haul prior to sampling by a NMFS-certified observer, that all catch be made available for sampling by a NMFS-certified observer, and that the requirements in paragraphs (c)(3), (4), (5), (8), and (9) of this section are met.

* * * * *

[FR Doc. E7–13475 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 132
Wednesday, July 11, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2005–0172; FRL–8338–5]

RIN 2060–AN24

Public Hearings for National Ambient Air Quality Standards for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearings.

SUMMARY: The EPA is announcing five public hearings to be held for the proposed rule—''National Ambient Air Quality Standards for Ozone'' which is published elsewhere in this **Federal Register**. The hearings will be held concurrently in Philadelphia, Pennsylvania and Los Angeles, California on Thursday, August 30, 2007 and concurrently in Atlanta, Georgia; Chicago, Illinois; and Houston, Texas on Wednesday, September 5, 2007.

In the proposed rule, EPA proposes to make revisions to the primary and secondary national ambient air quality standards (NAAQS) for ozone to provide requisite protection of public health and welfare, respectively.

DATES: The public hearings will be held on August 30, 2007 and September 5, 2007. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the public hearings.

ADDRESSES: The hearings will be held at the following locations/dates:

1. *Philadelphia:* Thursday, August 30, 2007.

Crystal Ballroom, Radisson Plaza—Warwick Hotel Philadelphia, 1701 Locust Street, Philadelphia, PA 19103, *Telephone:* (215) 735–6000.

2. *Los Angeles:* Thursday, August 30, 2007.

Garden West Room, Wilshire Grand Los Angeles, 930 Wilshire Boulevard, Los Angeles, CA 90017, *Telephone:* (213) 688–7777.

3. *Atlanta:* Wednesday, September 5, 2007.

AFC Conference Center, 2nd Floor—Conference Room B, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303, *Telephone:* (404) 562–9077.

Note: All persons entering the Atlanta Federal Center must have a valid picture ID such as a Driver's License and go through Federal security procedures. All persons must go through a magnetometer and all personal items must go through x-ray equipment, similar to airport security procedures. After passing through the equipment, all persons must sign in at the guard station and show their picture ID.

4. *Chicago:* Wednesday, September 5, 2007.

Governor's Suite, The Westin Michigan Avenue Chicago, 909 North Michigan Avenue, Chicago, Illinois 60611, *Telephone:* (312) 943–7200.

5. *Houston:* Wednesday, September 5, 2007.

Emerald Rooms 4 & 5, Houston Marriot West Loop by the Galleria, 1750 West Loop South, Houston, Texas 77027, *Telephone:* (713) 960–0111.

Written comments on this proposed rule may also be submitted to EPA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the notice of proposed rulemaking elsewhere in this **Federal Register** for the addresses and detailed instructions for submitting written comments.

A complete set of documents related to the proposal is available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room 3334, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through the electronic docket system at *http://www.regulations.gov.*

The EPA Web site for the rulemaking, which includes the proposal and information about the public hearings, can be found at: *http://www.epa.gov/air/ozonepollution/actions.html.*

FOR FURTHER INFORMATION CONTACT: If you would like to speak at the public hearings or have questions concerning the public hearings, please contact Ms. Tricia Crabtree at the address given below under **SUPPLEMENTARY INFORMATION**.

Questions concerning the ''National Ambient Air Quality Standards for Ozone'' proposed rule should be addressed to Dr. David McKee, U.S. EPA, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, (C504–06), Research Triangle Park, NC 27711, telephone: (919) 541–5288, e-mail: *mckee.dave@epa.gov.*

SUPPLEMENTARY INFORMATION: The proposal for which EPA is holding the public hearings is published elsewhere in this **Federal Register** and is available on the following Web site: *http://www.epa.gov/air/ozonepollution/actions.html.*

The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rules. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Written comments must be postmarked by the last day of the comment period, as specified in the proposal.

The five public hearings will be held concurrently in Philadelphia, Pennsylvania and Los Angeles, California on August 30, 2007; and concurrently in Atlanta, Georgia; Chicago, Illinois; and Houston, Texas on September 5, 2007. The public hearings will begin each day at 9 a.m. and continue into the evening until 9 p.m. (local time) or later, if necessary, depending on the number of speakers wishing to participate. The EPA will make every effort to accommodate all speakers that arrive and register before 9 p.m. The EPA is scheduling lunch breaks from 12:30 p.m. until 2 p.m. and dinner breaks from 6 p.m. to 7:30 p.m. If you would like to present oral testimony at the hearings, please notify Ms. Tricia Crabtree, (C504–02) U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, e-mail (preferred method for registering): *crabtree.tricia@epa.gov; telephone:* (919) 541–5688. She will arrange a general time slot for you to speak. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearings.

Oral testimony will be limited to five (5) minutes for each commenter to address the proposal. We will not be providing equipment for commenters to

show overhead slides or make computerized slide presentations unless we receive special requests in advance. Commenters should notify Ms. Crabtree if they will need specific audiovisual (AV) equipment. Commenters should also notify Ms. Crabtree if they need specific translation services for non-English speaking commenters. The EPA encourages commenters to provide written versions of their oral testimonies either electronically on computer disk or CD ROM or in paper copy.

The hearing schedules, including lists of speakers, will be posted on EPA's Web site for the proposal at *http://www.epa.gov/air/ozonepollution/actions.html* prior to the hearings. Verbatim transcripts of the hearings and written statements will be included in the rulemaking dockets.

How Can I Get Copies of This Document and Other Related Information?

The EPA has established the official public docket for the ''National Ambient Air Quality Standards for Ozone'' under Docket Number EPA–HQ–OAR–2005–0172. The EPA has also developed a Web site for the proposal at the address given above. Please refer to the proposal, published elsewhere in this **Federal Register,** for detailed information on accessing information related to the proposal.

Dated: July 5, 2007.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. E7–13526 Filed 7–10–07; 11:37 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R03–OAR–2007–0453; FRL–8336–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Pittsburgh-Beaver Valley 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan and 2002 Base Year Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a redesignation request and a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) is requesting that the Pittsburgh-Beaver Valley, Pennsylvania ozone nonattainment area (Pittsburgh Area) be redesignated as attainment for the 8-hour ozone national ambient air quality standard (NAAQS). EPA is proposing to approve the ozone redesignation request for Pittsburgh Area. In conjunction with its redesignation request, PADEP submitted a SIP revision consisting of a maintenance plan for Pittsburgh Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after redesignation. EPA is proposing to make a determination that the Pittsburgh Area has attained the 8-hour ozone NAAQS, based upon three years of complete, quality-assured ambient air quality ozone monitoring data for 2003–2005. EPA's proposed approval of the 8-hour ozone redesignation request is based on its determination that the Pittsburgh Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA). In addition, PADEP submitted a 2002 base year inventory for the Pittsburgh Area which EPA is proposing to approve as a SIP revision. EPA is also providing information on the status of its adequacy determination for the motor vehicle emission budgets (MVEBs) that are identified in the Pittsburgh Area maintenance plan for purposes of transportation conformity, which EPA is also proposing to approve. EPA is proposing approval of the redesignation request, and the maintenance plan and the 2002 base year inventory SIP revisions in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before August 10, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0453 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: cripps.christopher@epa.gov.*

C. *Mail:* EPA–R03–OAR–2007–0453, Christopher Cripps, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R03-OAR–2007–0453. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever

''we'', ''us'', or ''our'' is used, we mean EPA.

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I. What are the Actions that EPA is Proposing To Take?

On April 26, 2007, PADEP formally submitted a request to redesignate the Pittsburgh Area from nonattainment to attainment of the 8-hour NAAQS for ozone. Concurrently, on April 26, 2007, PADEP submitted a maintenance plan for the Pittsburgh Area as a SIP revision to ensure continued attainment of the 8-hour NAAQS for at least 10 years after redesignation. PADEP also submitted a 2002 base year inventory as a SIP revision on April 26, 2007. The Pittsburgh Area is currently designated as a basic 8-hour ozone nonattainment area and is covered by a maintenance plan for the 1-hour NAAQS. EPA is proposing to determine that the Pittsburgh Area has attained the 8-hour ozone NAAQS and that it has met the requirements for redesignation pursuant to section 107(d)(3)(E) of the CAA. EPA is, therefore, proposing to approve the redesignation request to change the designation of the Pittsburgh Area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve the Pittsburgh Area maintenance plan as a SIP revision, such approval being one of the CAA criteria for redesignation to attainment status. The maintenance plan is designed to ensure continued attainment in the Pittsburgh Area for the next ten years. EPA is also proposing to approve the 2002 base year inventory for the Pittsburgh Area as a SIP revision. Additionally, EPA is announcing its action on the adequacy process for the MVEBs identified in the Pittsburgh Area maintenance plan, and proposing to approve the MVEBs identified for volatile organic compounds (VOC) and nitrogen oxides (NO_X) for transportation conformity purposes.

II. What is the Background for These Proposed Actions?

A. General

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. The air pollutants NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the attainment and maintenance of the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. EPA designated, as nonattainment, any area violating the 8-hour ozone NAAQS based on the air quality data for the three years of 2001–2003. These were the most recent three years of data at the time EPA designated 8-hour areas. The Pittsburgh Area was designated as basic 8-hour ozone nonattainment status in a **Federal Register** notice signed on April 15, 2004 and published on April 30, 2004 (69 FR 23857), based on its exceedance of the 8-hour health-based standard for ozone during the years 2001–2003. On April 30, 2004, EPA issued a final rule (69 FR 23951, 23996) to revoke the 1-hour ozone NAAQS in the Pittsburgh Area (as well as most other areas of the country) effective June 15, 2005. See 40 CFR 50.9(b); 69 FR at 23996 (April 30, 2004); and see 70 FR 44470 (August 3, 2005).

However, on December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA*, 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in *South Coast Air Quality Management Dist.* v. *EPA*, Docket No. 04–1201 (hereafter ''*South Coast*''), in response to several petitions for rehearing, the DC Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of Title I, part D of the Act as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8 decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of federal actions. The June 8 decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

Elsewhere in this document, mainly in section VI. B. ''The Pittsburgh Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA,'' EPA discusses its rationale why the decisions in *South Coast* are not an impediment to redesignating the Pittsburgh Area to attainment of the 8-hour ozone NAAQS.

The CAA, Title I, Part D, contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in the CAA for subpart 2 requirements). All other areas are covered under subpart 1, based upon their 8-hour design values. In 2004,

Pittsburgh Area was designated a basic 8-hour ozone nonattainment area based upon air quality monitoring data from 2001–2003, and therefore, is subject to the requirements of subpart 1 of Part D.

Under 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). See 69 FR 23857, (April 30, 2004) for further information. Ambient air quality monitoring data for the 3-year period must meet data completeness requirements. The data completeness requirements are met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50. Based upon ozone monitoring data for the period 2003 through 2006 (inclusive), the Pittsburgh Area has a design value of 0.084 ppm for the 3-year period 2003 through 2005 and has a design value of 0.083 ppm for the 3-year period 2004 through 2006. Therefore, the ambient ozone data for the Pittsburgh Area indicates no violations of the 8-hour ozone standard.

B. The Pittsburgh Area

The Pittsburgh Area is comprised of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland counties. Prior to its designation as an 8-hour ozone nonattainment area, the Pittsburgh Area had been designated and classified as a moderate ozone nonattainment area for the 1-hour standard. See 56 FR 56694 at 56822, November 6, 1991. On October 19, 2001 (66 FR 53094), EPA approved a request to redesignate the Pittsburgh Area to attainment of the 1-hour ozone standard and approved a maintenance plan SIP revision.

On April 26, 2007, PADEP requested that the Pittsburgh Area be redesignated to attainment for the 8-hour ozone standard. The redesignation request included 3 years of complete, quality-assured data for the period of 2003–2005, indicating that the 8-hour NAAQS for ozone had been achieved in the Pittsburgh Area. The data satisfies the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration (commonly referred to as the area's design value) is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). Under the CAA, a nonattainment area may be redesignated if sufficient complete, quality-assured data is available to determine that the area has attained the standard and the area meets the other CAA redesignation requirements set forth in section 107(d)(3)(E).

III. What are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA, allows for redesignation, providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and

(5) The State containing such area has met all requirements applicable to the area under section 110 and Part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, June 18, 1990;
- ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
- ''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
- ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993;
- ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
- ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On April 26, 2007, PADEP requested redesignation of the Pittsburgh Area to attainment for the 8-hour ozone standard. On April 26, 2007, PADEP submitted a maintenance plan for the Pittsburgh Area as a SIP revision to assure continued attainment at least 10 years after redesignation. EPA has determined that the Pittsburgh Area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E).

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the designation of the Pittsburgh Area from nonattainment to attainment for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Pennsylvania SIP a 2002 base year inventory and a maintenance plan ensuring continued attainment of the 8-hour ozone NAAQS in the Pittsburgh Area for the next 10 years. The maintenance plan includes

contingency measures to remedy any future violations of the 8-hour NAAQS (should they occur), and identifies the MVEBs for NO_X and VOC for transportation conformity purposes for the years 2009 and 2018. These MVEBs (2009 and 2018) are displayed in the following table:

TABLE 1.—MOTOR VEHICLE EMISSIONS BUDGETS

[Tons per day (rounded to two decimal places)]

Year	VOC	NO_X
2009	54.54	101.53
2018	32.91	41.15

VI. What is EPA's Analysis of the State's Request and SIP Revision?

EPA is proposing to determine that Pittsburgh Area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The following is a description of how PADEP's April 26, 2007, submittal satisfies the requirements of section 107(d)(3)(E) of the CAA.

A. The Pittsburgh Area Has Attained the Ozone NAAQS

In the Pittsburgh Area, there are currently thirteen monitors that measure air quality with respect to ozone. As part of its redesignation request, Pennsylvania submitted ozone monitoring data which included the years 2003 through 2006 (the most recent years of data available as of the time of the redesignation request) for the Pittsburgh Area. This data has been quality assured and is recorded in Air Quality System (AQS).

Based upon this data, EPA is proposing to determine that the Pittsburgh Area has attained the 8-hour ozone NAAQS. For the 8-hour ozone standard, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete and consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the design value, which is the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations, measured at each monitor within the area over each year must not exceed the ozone standard of 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Air Quality System (AQS). PADEP uses the AQS as the permanent database to maintain its data and quality assures the data transfers and content for accuracy. The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment. The fourth-high 8-hour daily maximum concentrations, along with the three-year average, are summarized in Table 2 for the four monitors with the highest 2005 and 2006 design values in the Pittsburgh area.

TABLE 2.—PITTSBURGH NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR OZONE VALUES

Year	Annual 4th High Reading (ppm)
Monitor: California & 11th, Harrison Twp, Allegheny Co., AQS ID 42–003–1005	
2003	0.081
2004	0.076
2005	0.087
2006	0.088
The average for the 3-year period 2003 through 2005 is 0.081 ppm	
The average for the 3-year period 2004 through 2006 is 0.083 ppm	
Monitor: Glade Dr. & Nolte Rd. Kittanning, Armstrong Co., AQS ID 42–005–0001	
2003	0.086
2004	0.082
2005	0.086
2006	0.080
The average for the 3-year period 2003 through 2005 is 0.084 ppm	
The average for the 3-year period 2004 through 2006 is 0.082 ppm	
Monitor: Route 168 & Tomlinson Road, Beaver Co., AQS ID 42–007–0002	
2003	0.087
2004	0.081
2005	0.086
2006	0.082
The average for the 3-year period 2003 through 2005 is 0.084 ppm	
The average for the 3-year period 2004 through 2006 is 0.083 ppm	
Monitor: Carnegie Science Center, Allegheny Rd., Pittsburgh, AQS ID 42–003–0010	
2003	0.088
2004	0.072
2005	0.092
2006	0.078
The average for the 3-year period 2003 through 2005 is 0.084 ppm	
The average for the 3-year period 2004 through 2006 is 0.080 ppm	

The air quality data show that the Pittsburgh Area has attained the standard with a design value of 0.084 ppm for 2003 through 2005 and still is attaining the standard with a design value of 0.083 ppm at the monitors with the highest design value for 2004 through 2006. The data collected at the Pittsburgh Area monitor satisfies the CAA requirement that 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. PADEP's request for redesignation for the Pittsburgh Area indicates that the data was quality assured in accordance with 40 CFR part 58. In addition, as discussed below with respect to the maintenance plan, PADEP has committed to continue monitoring in accordance with 40 CFR part 58.

B. The Pittsburgh Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA and Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that the Pittsburgh Area has met all SIP requirements applicable for purposes of this redesignation under section 110 of the CAA (General SIP Requirements) and that it meets all applicable SIP requirements under Part D of Title I of the CAA, in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained what requirements are applicable to the area, and determined that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. We note that SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) with respect to the timing of applicable requirements. Under this interpretation, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66, (March 7, 1995) (redesignation of Detroit-Ann Arbor). Applicable requirements of the CAA that come due subsequent to the area's

submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See Section 175A(c) of the CAA. See *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

This section also sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alters any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions redesignation is appropriate under the relevant redesignation provisions of the Act and longstanding policies regarding redesignation requests.

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. The general SIP elements and requirements set forth in section 110(a)(2) include, but are not limited to, the following:

- Submittal of a SIP that has been adopted by the State after reasonable public notice and hearing;
- Provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality;
- Implementation of a source permit program; provisions for the implementation of Part C requirement (Prevention of Significant Deterioration (PSD));
- Provisions for the implementation of Part D requirements for New Source Review (NSR) permit programs;
- Provisions for air pollution modeling; and
- Provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain States to establish programs to address transport of air pollutants in accordance with the 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). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification in that State. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State. Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The Pittsburgh Area will still be subject to these requirements after it is redesignated. The section 110 and Part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirement. See Reading, Pennsylvania, proposed and final rulemakings, (61 FR 53174–53176, October 10, 1996), (62 FR 24816, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR at 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR at 50399, October 19, 2001). Similarly, with respect to the NO_X SIP Call rules, EPA noted in its Phase 1 Final Rule to Implement the 8-hour Ozone NAAQS, that the NO_X SIP Call rules are not ''an 'applicable requirement' for purposes of section 110(l) because the NO_X rules apply regardless of an area's attainment or nonattainment status for the 8-hour (or the 1-hour) NAAQS.'' 69 FR 23951, 23983 (April 30, 2004).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, because, as we explain later in this notice, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request.

Because the Pennsylvania SIP satisfies all of the applicable general SIP elements and requirements set forth in section 110(a)(2), EPA concludes that Pennsylvania has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

2. Part D Nonattainment Area Requirements Under the 8-Hour Standard

Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area's nonattainment classification.

Under an April 30, 2004, final rule (69 FR 23951), EPA classified the Pittsburgh Area as a subpart 1 nonattainment area under the 8-hour ozone standard. EPA believes that no subpart 1 requirements need to be approved prior to redesignation. Of the nonattainment plan provisions due under section 172, none were due prior to submission of the complete redesignation request because EPA's November 29, 2005 final rule (70 FR 71612) set the deadline for these requirements at 3 years after resignation, which for the Pittsburgh Area is June 15, 2007.

With respect to the 8-hour standard, the Court's rulings in *South Coast* rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Pittsburgh Area was classified under subpart 1 and was obligated to meet only subpart 1

requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the Clean Air Act, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. See September 4, 1992 Calcagni memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). See also Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–12466 (March 7, 1995) (Redesignation of Detroit-Ann Arbor); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation; and 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit has recognized the inequity in such retroactive rulemaking, see *Sierra Club* v. *Whitman,* 285 F.3d 63 (DC Cir. 2002), in which the DC Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly, here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request.

With respect to subpart 2 requirements, if the Pittsburgh Area *initially* had been classified under subpart the first two-part D subpart 2 requirements applicable to the Pittsburgh Area under section 182(a) of the CAA would be: (1) A base-year inventory requirement pursuant to section 182(a)(1) of the CAA, and, (2) the emissions statement requirement pursuant to section 182(a)(3)(B) of the CAA.

As we have stated previously in this document, these requirements are not yet due for purpose of redesignation of the Pittsburgh Area, but nevertheless, Pennsylvania already has in its approved SIP an emissions statement rule for the 1-hour standard which covers all portions of the Pittsburgh Area and which EPA believes satisfies the emissions statement requirement for the 8-hour standard under section 182(a)(3)(B). This regulation is codified at Section 135.21 ''Emission statements'' in Chapter 135 of 40 CFR 52.2020(c)(1); see also 60 FR 2881, January 12, 1995. With respect to the base year inventory requirement, in this notice of proposed rulemaking, EPA is proposing to approve the 2002 base year inventory SIP concurrently with the maintenance plan as fulfilling the requirements, if necessary, of both section 182(a)(1) and section 172(c)(3) of the CAA.

With respect to the 8-hour standard, EPA proposes to determine that Pennsylvania's SIP meets all applicable SIP requirements under Part D of the CAA. In addition to the fact that Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the general conformity and NSR requirements as not requiring approval prior to redesignation.

With respect to section 176, Conformity Requirements, section 176(c) of the CAA requires States to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required EPA to promulgate. EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) since State conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. See *Wall* v. *EPA*, 265 F. 3d 426, 438–440 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (December 7, 1995).

In the case of the Pittsburgh Area, EPA has also determined that before being redesignated, the Pittsburgh Area need not comply with the requirement that a NSR program be approved prior to redesignation. EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without Part D NSR in effect. The rationale for this position is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D NSR Requirements or Areas Requesting Redesignation to Attainment.'' See rulemakings for Detroit, Michigan (60 FR at 12467–12468); Cleveland-Akron-Lorrain, Ohio (61 FR at 20458, 20469–20470); Louisville, Kentucky (66 FR 53665, 53669, October 23, 2001); Grand Rapids, Michigan (61 FR at 31831, 31834–31837, June 21, 1996). In the case of Pennsylvania, the Chapter 127 Part D NSR regulations in the Pennsylvania SIP (codified at 40 CFR 52.2020(c)(1)) explicitly apply the requirements for NSR in section 184 of the CAA to ozone attainment areas within the Ozone Transport Region (OTR). The OTR NSR requirements are more stringent than that required for a marginal area. Nevertheless, on October 19, 2001 (66 FR 53094), EPA fully approved Pennsylvania's NSR SIP revision consisting of Pennsylvania's Chapter 127 Part D NSR regulations that cover the Pittsburgh Area.

3. Part D Nonattainment Area Requirements Under the 1-Hour Standard

As stated previously in this document, on October 19, 2001 (66 FR 53094), EPA approved a request to redesignate the Pittsburgh Area to attainment of the 1-hour ozone standard and approved a maintenance plan SIP revision.

With respect to the 1-hour standard requirements, the Pittsburgh Area was an Attainment area subject to a Clean Air Act section 175A maintenance plan under the 1-hour standard. The Court's decisions in *South Coast* do not impact redesignation requests for these types of areas, except to the extent that the Court in its June 8 decision clarified that for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour motor vehicle emissions budgets (MVEBs). To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93. As discussed elsewhere in this document,

EPA is proposing to approve 8-hour MVEBs for the Pittsburgh Area. Once these 8-hour MVEBs are approved the 1-hour budgets will no longer apply under anti-backsliding.

With respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, the Pittsburgh Area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measures (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus the decision in *South Coast* should not alter any requirements that would preclude EPA from finalizing the redesignation of this area.

4. Transport Region Requirements

All areas in the Ozone Transport Region (OTR), both attainment and nonattainment, are subject to additional control requirements under section 184 for the purpose of reducing interstate transport of emissions that may contribute to downwind ozone nonattainment. The section 184 requirements include reasonably available control technology (RACT), NSR, enhanced vehicle inspection and maintenance (I/M), and Stage II vapor recovery or a comparable measure. In the case of the Pittsburgh Area, which is located in the OTR, nonattainment NSR will continue to be applicable after redesignation as discussed previously in this document.

EPA has also interpreted the section 184 OTR requirements, including NSR, as not being applicable for purposes of redesignation. See the Reading, Pennsylvania redesignation proposed and final rules, 61 FR 53174, (October 10, 1996) and 62 FR 24826 (May 7, 1997), respectively. The rationale for this is based on two considerations. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have NSR, as well as RACT, and I/M even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the area by virtue of the area's nonattainment designation and classification, and thus are properly considered not relevant to an action changing an area's designation. See 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–24832 (May 7, 1997).

5. The Pittsburgh Area Has a Fully Approved SIP for the Purposes of Redesignation

EPA has fully approved the Pennsylvania SIP for the purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F. 3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR at 25425 (May 12, 2003) and citations therein. The Pittsburgh Area was a 1-hour maintenance area which had been a moderate nonattainment area at the time of its designation as a basic 8-hour ozone nonattainment area on April 30, 2004 (69 FR 23857). No Part D submittal requirements have come due prior to the submittal of the 8-hour maintenance plan for the area. Therefore, all Part D submittal requirements have been fulfilled. Because there are no outstanding SIP submission requirements applicable for the purposes of redesignation of the Pittsburgh Area, the applicable implementation plan satisfies all pertinent SIP requirements. As indicated previously, EPA believes that the section 110 elements not connected with Part D nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that Pennsylvania has fulfilled all 8-hour Part D requirements applicable for purposes of redesignation.

C. The Air Quality Improvement in the Pittsburgh Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the Commonwealth has demonstrated that the observed air quality improvement in the Pittsburgh Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures. Emissions reductions attributable to these rules are shown in Table 3.

TABLE 3.—TOTAL VOC AND NO_X EMISSIONS FOR 2002 AND 2004

[In tons per day (tpd)]

Year	Point	Area	Nonroad	Mobile	Total
Volatile Organic Compounds (VOC)					
Year 2002	16.5	100.3	51.5	86.4	254.7
Year 2004	15.5	98.1	48.8	73.3	235.7
Diff. (02–04)	1.0	2.2	2.7	13.1	19.0
Nitrogen Oxides (NO_X)					
Year 2002	250.4	11.5	86.1	173.9	522.0
Year 2004	202.8	11.7	81.5	148.8	444.8
Diff. (02–04)	47.6	–0.2	4.6	25.1	77.2

Between 2002 and 2004, VOC emissions were reduced by 19.0 tpd, and NO_X emissions were reduced by 77.2 tpd, due to the following permanent and enforceable measures implemented in the Pittsburgh Area:

(1) Stationary Area Sources

(a) Solvent Cleaning (68 FR 2206, January 16, 2003),

(b) *Portable Fuel Containers* (69 FR 70893, December 8, 2004);

(2) Highway Vehicle Sources

(a) Federal Motor Vehicle Control Program (FMVCP), Tier 1 (56 FR 25724, June 5, 1991) and Tier 2 (65 FR 6698, February 10, 2000),

(b) Federal Heavy Duty Engines and Vehicles Standards (62 FR 54694, October 21, 1997 and 65 FR 59896, October 6, 2000),

(c) National Low Emission Vehicle (NLEV) (64 FR 72564, December 28, 1999),

(d) Vehicle Emission Inspection/Maintenance (I/M) Program (64 FR 32411, June 17, 1999 and 70 FR 58313, October 6, 2005);

(3) Nonroad Sources—Federal Nonroad Engine and Fuels (40 CFR parts 89 to 91, and 1039, 1048 and 1051); and

(4) Stationary Point Sources—Pennsylvania's Interstate Pollution Transport Reduction Regulations (66 FR 43795, August 21, 2001; 71 FR 57428, September 29, 2006) (66 FR 43795, August 21, 2001 and 71 FR 57428, September 29, 2006).

EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels and are the cause of the area achieving attainment of the 8-hour ozone standard.

D. The Pittsburgh Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Pittsburgh Area to attainment of the 8-hour ozone NAAQS, Pennsylvania submitted for approval under section 175A of the CAA the April 26, 2007, maintenance plan to fulfill section 175A(a) requirement for the 8-hour standard. Pennsylvania submitted this SIP revision to provide for maintenance of the 8-hour ozone NAAQS in the Pittsburgh Area for at least 10 years after redesignation. Once approved, the maintenance plan for the ozone NAAQS will ensure that the SIP for the Pittsburgh Area meets the requirements of the CAA regarding maintenance of the applicable ozone standards including the 8-hour standard.

1. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A(a), the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after approval of a redesignation of an area to attainment. Section 175A(b) requires that eight years after the redesignation the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the next 10-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(1) An attainment emissions inventory;

(2) A maintenance demonstration;

(3) A monitoring network;

(4) Verification of continued attainment; and

(5) A contingency plan.

2. Analysis of the Pittsburgh Area Maintenance Plan

(a) Attainment Inventory—An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. An attainment year of 2004 was used for the Pittsburgh Area since it is a reasonable year within the 3-year attainment period of 2003–2005 and accounts for reductions attributable to implementation of the CAA requirements to date.

PADEP prepared comprehensive VOC and NO_X emissions inventories for the Pittsburgh Area, including point, area, mobile on-road, and mobile non-road sources for a base year of 2002.

To develop the NO_X and VOC base year emissions inventories, PADEP used the following approaches and sources of data:

(i) Point source emissions—Pennsylvania requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Throughput data are multiplied by emission factors from Factor Information Retrieval (FIRE) Data System and EPA's publication series AP–42 and are based on Source Classification Code (SCC). Each process has at least one SCC assigned to it. If the owners and operators of facilities provide more accurate emission data based upon other factors, these emission estimates supersede those calculated using SCC codes.

(ii) Area source emissions—Area source emissions are generally estimated by multiplying an emission factor by some known indicator or collective activity for each area source category at the county level. Pennsylvania estimates emissions from area sources using emission factors and SCC codes in a method similar to that used for stationary point sources. Emission factors may also be derived from research and guidance documents if those documents are more accurate than FIRE and AP–42 factors. Throughput estimates are derived from county-level activity data, by apportioning national and statewide activity data to counties, from census numbers, and from county employee numbers. County employee numbers are based upon North American Industry Classification System (NAICS) codes to establish that those numbers are specific to the industry covered.

(iii) On-road mobile sources—PADEP employs an emissions estimation methodology that uses current EPA-approved highway vehicle emission model, MOBILE 6.2, to estimate highway vehicle emissions. The Pittsburgh Area highway vehicle emissions in 2004 were estimated using MOBILE 6.2 and PENNDOT estimates of vehicle miles traveled (VMT) by vehicle type and roadway type.

(iv) Mobile nonroad emissions—The 2002 emissions for the majority of nonroad emission source categories were estimated using the EPA NONROAD 2005 model. The NONROAD model estimates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural gas-fueled nonroad equipment types and includes growth factors. The NONROAD model does not estimate emissions from aircraft or locomotives. For 2002 locomotive emissions, PADEP projected emissions from a 1999 survey using national fuel information and EPA emission and conversion factors. Commercial aircraft operations are significant in the Pittsburgh area. Pittsburgh International Airport (PIT) accounts for all commercial operations in the Pittsburgh area. PADEP quantified the emissions at PIT with the Emissions and Dispersion Modeling System (EDMS) that is an EPA-approved model. For other 2002 aircraft emissions, PADEP estimated emissions using small aircraft operation statistics from *http://www.airnav.com,* and emission factors and operational characteristics in EDMS. For PIT, growth was estimated using estimates of future operations at PIT from the FAA APO Terminal Area Forecast Detailed Report. For other aircraft operations, growth was calculated using estimates of small airport activity from the Federal Aviation Administration (FAA)'s APO terminal area forecast detailed report.

The 2004 attainment year VOC and NO_X emissions for the Pittsburgh Area are summarized along with the 2009 and 2018 projected emissions for this area in Tables 4 and 5, which cover the demonstration of maintenance for this area. EPA has concluded that

Pennsylvania has adequately derived and documented the 2004 attainment year VOC and NO_X emissions for this area.

(b) Maintenance Demonstration—On April 26, 2007, PADEP submitted a SIP revision to supplement its April 26, 2007, redesignation request. The submittal by PADEP consists of the maintenance plan as required by section 175A of the CAA. The Pittsburgh Area plan shows maintenance of the 8-hour ozone NAAQS by demonstrating that current and future emissions of VOC and NO_X remain at or below the attainment year 2004 emissions levels throughout the Pittsburgh Area through the year 2018. The Pittsburgh Area maintenance demonstration need not be based on modeling. See *Wall* v. *EPA, supra; Sierra Club* v. *EPA, supra.* See also, 66 FR at 53099–53100; 68 FR at 25430–25432.

Tables 4 and 5 specify the VOC and NO_X emissions for the Pittsburgh Area for 2004, 2009, and 2018. PADEP chose 2009 as an interim year in the 10-year maintenance demonstration period to demonstrate that the VOC and NO_X emissions are not projected to increase above the 2004 attainment level during the time of the 10-year maintenance period.

TABLE 4.—TOTAL VOC EMISSIONS FOR 2004–2018 (TPD)

Source category	2004 VOC emissions	2009 VOC emissions	2018 VOC emissions
Mobile*	73.3	54.54	32.91
Nonroad	48.8	39.1	34.6
Area	98.1	92.4	96.1
Point	15.5	16.4	20.3
Total	235.7	202.44	183.91

* Includes safety margin for 2009 and 2018 identified in the motor vehicle emission budgets for transportation conformity.

TABLE 5.—TOTAL NO_X EMISSIONS 2004–2018 (TPD)

Source category	2004 NO_X emissions	2009 NO_X emissions	2018 NO_X emissions
Mobile*	148.8	101.53	41.15
Nonroad	81.5	70.5	55.6
Area	11.7	12.1	12.2
Point	202.8	255.2	273.6
Total	444.8	439.33	382.55

* Includes safety margin for 2009 and 2018 identified in the motor vehicle emission budgets for transportation conformity.

The following are permanent and enforceable control measures to ensure emissions during the maintenance period and are equal to or less than the emissions in the attainment year:

(1) Pennsylvania's Portable Fuel Containers (December 8, 2004, 69 FR 70893);

(2) Pennsylvania's Consumer Products (December 8, 2004, 69 FR 70895);

(3) Pennsylvania's Architectural and Industrial Maintenance (AIM) Coatings (November 23, 2004, 69 FR 68080); and

(4) Pennsylvania's Interstate Pollution Transport Reduction Regulations (66 FR 43795, August 21, 2001; 71 FR 57428, September 29, 2006).

Additionally, the following mobile programs are either effective or due to become effective and will further contribute to the maintenance demonstration of the 8-hour ozone NAAQS:

(1) FMVCP for passenger vehicles and light-duty trucks and cleaner gasoline (2009 and 2018 fleet)—Tier 1 and Tier 2;

(2) NLEV Program, which includes the Pennsylvania's Clean Vehicle Program for passenger vehicles and light-duty trucks (69 FR 72564, December 28, 1999);

(3) Heavy duty diesel on-road (2004/2007) and low-sulfur on-road (2006) (66 FR 5002, January 18, 2001);

(4) Non-road emissions standards (2008) and off-road diesel fuel (2007/2010) (69 FR 38958, June 29, 2004); and

(5) Pennsylvania's vehicle emission inspection/maintenance program (October 6, 2005, 70 FR 58313).

In addition to the permanent and enforceable measures, the Clean Air Interstate Rule (CAIR), promulgated May 12, 2005 (70 FR 25162) should have positive impacts on Pennsylvania's air quality. CAIR, which will be implemented in the eastern portion of the country in two phases (2009 and 2015) should reduce long range transport of ozone precursors and will have a beneficial effect on the air quality in the Pittsburgh Area.

Pennsylvania and other nearby states are required to adopt a regulation implementing the requirements of CAIR or an equivalent program. On April 28, 2006 (71 FR 25328), EPA promulgated Federal Implementation Plans (FIPs) to reduce the interstate transport of NO_X and sulfur dioxides that contribute significantly to nonattainment and maintenance 8-hour ozone and PM2.5 NAAQS. If Pennsylvania has not adopted its own CAIR requirements and obtained EPA's approval of the required SIP revision by September 2007, the FIP will impose the Federal program upon CAIR-affected electric generating units in Pennsylvania. The Pittsburgh Area does have several sources which are subject to regulation under CAIR. For the maintenance demonstration, Pennsylvania did not rely upon any reductions from CAIR from these facilities. However, the quality of air transported from upwind sources into the county would be improved.

Based upon the comparison of the projected emissions and the attainment year emissions along with the additional measures, EPA concludes that PADEP has successfully demonstrated that the 8-hour ozone standard should be maintained in the Pittsburgh Area.

(c) Monitoring Network—Currently there are thirteen monitors measuring ozone in the Pittsburgh Area. Pennsylvania will continue to operate

an air quality monitoring network in accordance with 40 CFR part 58.

(d) Verification of Continued Attainment—The Commonwealth will track the attainment status of the ozone NAAQS in the Pittsburgh Area by reviewing air quality and emissions during the maintenance period. The Commonwealth will perform an annual evaluation of two key factors, VMT data and emissions reported from stationary sources, and compare them to the assumptions about these factors used in the maintenance plan. The Commonwealth will also evaluate the periodic (every three years) emission inventories prepared under EPA's Consolidated Emission Reporting Regulation (40 CFR part 51, subpart A) to see if the area exceed the attainment year inventory (2004) by more than 10 percent. Based on these evaluations, the Commonwealth will consider whether any further emission control measures should be implemented.

(e) The Maintenance Plan's Contingency Measures—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to ensure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency measure(s), the contingency measure(s) that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the measure(s).

The ability of the Pittsburgh Area to stay in compliance with the 8-hour ozone standard after redesignation depends upon VOC and NO_X emissions in the area remaining at or below 2004 levels. The Commonwealth's maintenance plan projects VOC and NO_X emissions to decrease and stay below 2004 levels through the year 2018. The Commonwealth's maintenance plan outlines the procedures for the adoption and implementation of contingency measures to further reduce emissions should a violation occur.

Contingency measures will be considered if for two consecutive years the fourth highest eight-hour ozone concentrations at the Pittsburgh Area design monitor are above 84 ppb. If this trigger point occurs, the Commonwealth will evaluate whether additional local emission control measures should be implemented in order to prevent a violation of the air quality standard. PADEP will analyze the conditions leading to the excessive ozone levels and evaluate what measures might be most effective in correcting the excessive ozone levels. PADEP will also analyze the potential emissions effect of Federal, state and local measure that have been adopted but no yet implemented at the time of excessive ozone levels occurred. PADEP will then begin the process of implementing any selected measures.

Contingency measures will be adopted in the event that a violation of the 8-hour ozone standard occurs in the Pittsburgh Area. In the event of a violation of the 8-hour ozone standard, contingency measures will be adopted in order to return the area to attainment with the standard. Contingency measures to be considered for the Pittsburgh Area will include, but not limited to the following:

Regulatory measures:

—Additional controls on consumer products

—Additional control on portable fuel containers

Non-regulatory measures:

—Voluntary diesel engine ''chip reflash'' '' installation software to correct the defeat device option on certain heavy duty diesel engines.

—Diesel retrofit, including replacement, repowering or alternative fuel use, for public or private local onroad or offroad fleets.

—Idling reduction technology for Class 2 yard locomotives.

—Idling reduction technologies or strategies for truck stops, warehouses and other freight-handling facilities.

—Accelerated turnover of lawn and garden equipment, especially commercial equipment, including promotion of electric equipment.

• Additional promotion of alternative fuel (e.g., biodiesel) for home heating and agricultural use.

The following schedule applies to the implementation of the regulatory contingency measures:

—Within 1 month of the trigger, submit request to begin regulatory development process.

—Within 3 months of the trigger, review of regulation by Air Quality Technical Advisory Committee (AQTAC), Citizens Advisory Council (CAC) and other advisory committees as appropriate.

—Within 6 months of the trigger, Environmental Quality Board (EQB) meeting/action.

—Within 8 months of the trigger, publish in the Pennsylvania Bulletin for comment as proposed rulemaking.

—Within 10 months of the trigger, public hearing takes place and comment period on proposed rule closes.

—Within 11 months of the trigger, House and Senate Standing Committees and Independent Regulatory Review Commission (IRRC) comment on proposed rule.

—Within 13 months of the trigger, AQTAC, CAC and other committees review responses to comments and draft final rulemaking.

—Within 16 months of the trigger, EQB meeting/action.

—Within 17 months of the trigger, IRRC action on rulemaking.

—Within 18 months of the trigger, Attorney General's review/action.

—Within 19 months of the trigger, publication in the Pennsylvania Bulletin as a final rulemaking and submit to EPA as a SIP revision. The regulation would become effective upon publication in the Pennsylvania Bulletin.

The following schedule applies to the implementation of non-regulatory contingency measures:

—Within 2 months of the trigger: Identify stakeholders for potential non-regulatory measures.

—Within 3 months of the trigger, if funding is necessary, identify potential sources of funding and the timeframe under which funds would be available. In addition to non-Title V Clean Air funds, the following program may be able to provide funding: for transportation projects, the Federal Highway Administration, as allocated to the two municipal planning organizations in the Pittsburgh Area; for projects which will also have an energy efficient co-benefit, the Pennsylvania Energy Harvest program; for projects which would be undertaken by small business and are pollution prevention projects, the Small Business Advantage Grant and Small Business Pollution Prevention Loan programs; for projects which will involve alternative fuels for vehicles/refueling operations, the Alternative Fuel Incentive Grant program; for projects involving diesel emissions, Federal Energy Policy Act diesel reduction funds allocated to Pennsylvania or for which Pennsylvania or project sponsors may apply under a competitive process.

—Within 6 months of the trigger, work with the area planning commissions to identify land use planning

strategies and projects with quantifiable and timely emission benefits. Work with the Pennsylvania Department of Community and Economic Development and other State agencies to assist in these measures.

—Within 9 months of the trigger, enter into agreements with implementing organizations if state loans or grants are involved. Quantify projected emission benefits.

—Within 12 months of the trigger, submit a revised SIP to EPA.

—Within 12–24 months of the trigger, implement strategies and projects.

(g) Summary of EPA's Evaluation of the Maintenance Plan

EPA concludes that the April 26, 2007 maintenance plan meets the requirements of section 175A of the CAA.

VII. Does the Maintenance Plan Establish and Identify Adequate and Approvable Motor Vehicle Emissions Budgets for the Pittsburgh Area?

A. What Are the Motor Vehicle Emissions Budgets?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (i.e., RFP SIPs and attainment demonstration SIPs) and maintenance plans identify and establish MVEBs for certain criteria pollutants and/or their precursors to address pollution from on-road mobile sources. Pursuant to 40 CFR part 93 and 51.112, MVEBs must be established in an ozone maintenance plan. A MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. A MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish and revise the MVEBs in control strategy SIPs and maintenance plans.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of or reasonable progress towards the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein ''adequate'' for use in determining transportation conformity. After EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by State and Federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining ''adequacy'' of a MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The MVEBs for the Pittsburgh Area are listed in Table 1 of this document for the 2009, and 2018 years and are the projected emissions for the on-road mobile sources plus any portion of the safety margin allocated to the MVEBs. These emission budgets, when approved by EPA, must be used for transportation conformity determinations.

B. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The following example is for the 2018 safety margin: The Pittsburgh Area first attained the 8-hour ozone NAAQS during the 2002 to 2004 time period. The Commonwealth used 2004 as the year to determine attainment levels of emissions for the Pittsburgh Area.

The total emissions from point, area, mobile on-road, and mobile non-road sources in 2004 were 235.7 tpd of VOC and 444.8 tpd of NO_X. PADEP projected emissions out to the year 2018 and obtained totals of 183.91 tpd of VOC and 382.55 tpd of NO_X from all sources in the Pittsburgh Area. The safety margin for the Pittsburgh Area for 2018 would be the difference between these amounts. This difference is 51.79 tpd of VOC and 62.25 tpd of NO_X. The emissions up to the level of the attainment year including the safety margins are projected to maintain the area's air quality consistent with the 8-hour ozone NAAQS. The safety margin is the extra emissions reduction below the attainment levels that can be allocated for emissions by various sources as long as the total emission levels are maintained at or below the attainment levels. Table 6 shows the safety margins for the 2009 and 2018 years.

TABLE 6.—2009 AND 2018 SAFETY MARGINS FOR THE PITTSBURGH AREA

Inventory year	VOC emissions (tpd)	NO_X emissions (tpd)
2004 Attainment	235.7	444.8
2009 Interim	202.44	439.33
2009 Safety Margin	33.26	5.47
2004 Attainment	235.7	444.8
2018 Final	183.91	382.55
2018 Safety Margin	51.79	62.25

PADEP allocated 3.58 tpd VOC to the 2009 interim VOC on-road mobile source emissions projection and 3.06 tpd NO_X to the 2009 interim NO_X on-road mobile source emissions projection to arrive at the 2009 MVEBs. For the 2018 MVEBs the PADEP allocated 4.60 tpd VOC and 3.32 tpd NO_X from the 2018 safety margins to the 2018 on-road mobile source emissions projections to arrive at the 2018 MVEBs. Once allocated to the mobile source budgets these portions of the safety margins are no longer available, and may no longer be allocated to any other source category. Table 7 shows the final 2009 and 2018 MVEBS for the Pittsburgh Area.

TABLE 7.—2009 AND 2018 FINAL MVEBS FOR THE PITTSBURGH AREA TONS PER DAY

[Rounded to nearest 0.1 tpd]

Inventory year	VOC emissions	NO_X emissions
2009 on-road mobile source projected emissions	50.96	98.47
2009 Safety Margin Allocated to MVEBs	3.58	3.06
2009 MVEBs	54.54	101.53
2018 on-road mobile source projected emissions	28.31	37.83
2018 Safety Margin Allocated to MVEBs	4.60	3.32
2018 MVEBs	32.91	41.15

C. Why Are the MVEBs Approvable?

The 2009 and 2018 MVEBs for the Pittsburgh Area are approvable because the MVEBs for NO_X and VOC, including the allocated safety margins, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

D. What Is the Adequacy and Approval Process for the MVEBs in the Pittsburgh Area Maintenance Plan?

The MVEBs for the Pittsburgh Area maintenance plan are being posted to EPA's conformity Web site concurrent with this proposal. The public comment period will end at the same time as the public comment period for this proposed rule. In this case, EPA is concurrently processing the action on the maintenance plan and the adequacy process for the MVEBs contained therein. In this proposed rule, EPA is proposing to find the MVEBs adequate and also proposing to approve the MVEBs as part of the maintenance plan. The MVEBs cannot be used for transportation conformity until the maintenance plan update and associated MVEBs are approved in a final **Federal Register** notice, or EPA otherwise finds the budgets adequate in a separate action following the comment period.

If EPA receives adverse written comments with respect to the proposed approval of the Pittsburgh Area MVEBs, or any other aspect of our proposed approval of this updated maintenance plan, we will respond to the comments on the MVEBs in our final action or proceed with the adequacy process as a separate action. Our action on the Pittsburgh Area MVEBs will also be announced on EPA's conformity Web site: *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

VIII. Proposed Actions

EPA is proposing to determine that the Pittsburgh Area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the Commonwealth's April 26, 2007, request for the Pittsburgh Area to be designated to attainment of the 8-hour NAAQS for ozone. EPA has evaluated Pennsylvania's redesignation request 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 the area has attained the 8-hour ozone standard. The final approval of this redesignation request would change the designation of the Pittsburgh Area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the associated maintenance plan and the 2002 base year inventory for Pittsburgh Area, submitted on April 26, 2007, as revisions to the Pennsylvania SIP. EPA is proposing to approve the maintenance plan for the Pittsburgh Area because it meets the requirements of section 175A of the CAA as described previously in this notice. EPA is also proposing to approve the MVEBs submitted by Pennsylvania for the Pittsburgh Area in conjunction with its redesignation request. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR28355 (May 22, 2001)). This action merely proposes to approve 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. 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 proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allows 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 proposed 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 proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order.

This rule proposing to approve the redesignation of the Pittsburgh Area to attainment for the 8-hour ozone NAAQS, the associated maintenance plan, the 2002 base year inventory, and the MVEBs identified in the maintenance plan, does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: June 28, 2007.

W.C. Early,

Acting Regional Administrator.

[FR Doc. 07–3325 Filed 7–10–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List 12 Penguin Species as Threatened or Endangered under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list 12 penguin species: emperor penguin (*Aptenodytes forsteri*), southern rockhopper penguin (*Eudyptes chrysocome*), northern rockhopper penguin (*Eudyptes moseleyi* (*E. chrysocome moseleyi*)), fiordland crested penguin (*Eudyptes pachyrhynchus*), snares crested penguin (*Eudyptes robustus*), erect-crested penguin (*Eudyptes sclateri*), macaroni penguin (*Eudyptes chrysolophus*), royal penguin (*Eudyptes schlegeli*), white-flippered penguin (*Eudyptula albosignata* (*E. minor albosignata*)), yellow-eyed penguin (*Megadyptes antipodes*), African penguin (*Spheniscus demersus*), and Humboldt penguin (*Spheniscus humboldti*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing 10 species of penguins may be warranted. We, therefore, are initiating a status review of 10 species of penguins to determine if listing under the Act is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding these species. We find the petition does not provide substantial scientific or commercial information indicating that listing of two species may be warranted: snares crested penguin and royal penguin. Therefore, we will not be initiating a status review for these two species in response to this petition. However, we ask the public to submit to us any new information that becomes available concerning the status of these two species or threats to them or their habitat at any time.

DATES: We must receive your comments on or before September 10, 2007.

ADDRESSES: Submit any comments, information, and questions by any one of the following methods: By mail to the Special Assistant to the Deputy Assistant Director, International Affairs, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 760, Arlington, VA 22203; by fax to 703–358–2276; by e-mail to *DSApenguins@fws.gov;* or through the Federal eRulemaking Portal at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Peter O. Thomas at the above address, or by telephone, 703–358–1708; or e-mail, *DSApenguins@fws.gov.*

SUPPLEMENTARY INFORMATION: If you submit information or comments, please include ''Attn: Penguins'' in the beginning of your message. Electronic attachments in standard formats (such as .pdf or .doc) are acceptable, but please name the software necessary to open any attachments in formats other than those given above. Also, please include your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described above.

Public Comments Solicited

We intend that any final action resulting from this status review will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, concerned governmental agencies, the scientific community, industry, or any other interested party. We are opening a 60-day public comment period to allow all interested parties an opportunity to provide information on the statuses of 10 species of penguins: emperor penguin (*Aptenodytes forsteri*), southern rockhopper penguin (*Eudyptes chrysocome*), northern rockhopper penguin (*Eudyptes moseleyi* (*E. chrysocome moseleyi*)), fiordland crested penguin (*Eudyptes pachyrhynchus*), erect-crested penguin (*Eudyptes sclateri*), macaroni penguin (*Eudyptes chrysolophus*), white-flippered penguin (*Eudyptula albosignata* (*E. minor albosignata*)), yellow-eyed penguin (*Megadyptes antipodes*), African penguin (*Spheniscus demersus*), and Humboldt penguin (*Spheniscus humboldti*) throughout their range, including:

(1) Information on taxonomy, distribution, habitat selection and trends (especially breeding and foraging habitats), diet, and population abundance and trends (especially current recruitment data) on these species;

(2) Information on the effects of climate change and changing ocean or land or sea ice conditions on the distribution and abundance of these species and their principal prey species over the short and long term (especially information on known prey substitutions, and what their effects would be on these species);

(3) Information on the effects of other potential threat factors, including commercial fishing activities, contaminants, habitat loss, harvest, predation by other animals, and diseases of these species or their

principal prey over the short and long term;

(4) Information on management programs for penguin conservation, including mitigation measures related to conservation programs, fisheries management, and any other private, tribal, or governmental conservation programs which benefit these species; and

(5) Information relevant to whether any populations of the species may qualify as distinct population segments.

We will base our finding on a review of the best scientific and commercial information available, including all information received during the public comment period.

Public Availability of Comments

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

All comments and supporting information will be available for public inspection, by appointment, Monday through Friday from 8 a.m. to 4 p.m. (see **ADDRESSES**).

Background

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

In making this finding we relied on information provided by the petitioner and evaluated that information in accordance with 50 CFR 424.14(b). Our process of making a 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold.

On November 29, 2006, the Service received a petition dated November 28, 2006, from the Center for Biological Diversity to list 12 penguin species under the Act. The 12 penguin species range from Antarctica, Argentina, Australian Territory Islands, Chile, French Territory Islands, Namibia, New Zealand, Peru, South Africa, and United Kingdom Territory Islands. The petition, which was clearly identified as such, contains detailed information on the natural history, biology, status, and distribution of each of the 12 species. It also contains information on what the petitioner reported as potential threats to the species from climate change and changes to the marine environment, commercial fishing activities, contaminants and pollution, guano extraction, habitat loss, hunting, nonnative predator species, and other factors. The petition also discusses existing regulatory mechanisms and the perceived inadequacies to protect these species.

We have determined that the petition presents substantial scientific or commercial information to indicate that listing 10 species of penguins as endangered or threatened may be warranted: emperor penguin, southern rockhopper penguin, northern rockhopper penguin, fiordland crested penguin, erect-crested penguin, macaroni penguin, white-flippered penguin, yellow-eyed penguin, African penguin, and Humboldt penguin. Therefore, we are initiating a status review to determine if listing each of the 10 species is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding these 10 species. Under section 4(b)(3)(B) of the Act, we are required to make a finding as to whether listing each of the 10 species of penguins is warranted, not warranted, or warranted but precluded by pending listing proposals by November 29, 2007.

Furthermore, we have also determined that the petition does not provide substantial scientific or commercial information indicating that listing the snares crested penguin and the royal penguin as threatened or endangered may be warranted at this time.

The snares crested penguin is endemic to Snares Island, New Zealand. The petition states that the population of snares crested penguin was ''estimated at 23,250 breeding pairs in 1995–1986.'' No current population data were provided. The Department of Conservation of New Zealand in its Action Plan for Seabird Conservation in New Zealand (Taylor 2000) cited by the petitioner, ranks snares crested penguins as a third priority species for conservation action. In contrast, other New Zealand endemic penguins included in the petition are ranked within the New Zealand Action Plan as second priority threatened species. This lower priority conservation status for the snares crested penguin reflects the statement in the Action Plan that ''possibly the population is stable or has increased slightly since the 1960s.'' As quoted in the petition, the action plan cites no human disturbance of colonies and no records of snares crested penguins being caught in trawl nets, as well as the absence of introduced mammalian predators on the Snares Islands. Unlike some of the other penguin species included in the petition, competition with fisheries for prey species has not been documented for this species. The petitioner reports that the greatest threat to this species is reduced prey availability due to changing ocean conditions; however, specific data to support this are not provided. Citations in the petition on possible specific or general impacts of climate change on penguins at various Antarctic and sub-Antarctic latitudes do not mention the snares crested penguin, yet the petitioners assert the species will be affected on the basis of inferred similarity with other species for which the petitioner cites such impacts. We note that the petitioners do not include all penguin species in the petition. This indicates a conclusion by the petitioners that not all penguin species are equally under threat from the cited climate change factors and reduces confidence in the extrapolation of information, whether general, or directly tied to other specific locations or other species, to species included in the petition for which no specific information on these factors is provided. On the basis of the information provided on population data, trends, and threats, we find that the petitioner does not present substantial scientific or commercial information to indicate that listing the snares crested penguin may be warranted at this time.

The petitioners present information on the distribution and abundance of the royal penguin. The royal penguin is endemic to Macquarie Island, Australia. This information indicates that population levels are stable for this species which has recovered from heavy exploitation for their oil in the 19th and early 20th Centuries to a stable population of approximately 850,000 pairs, located in 57 colonies ranging from 60 to 160,000 pairs primarily on Macquarie Island and a few nearby islands. The petitioners cite a number of general references describing possible threats to the species. Unlike other species included in the petition, substantial evidence of current or recent population declines or of large scale or significant local impacts on this species from the possible threat factors cited in the petition are not presented. With

respect to the threat of nest predation by introduced predators which is documented as a serious threat by the petitioner in citations for other endemic species, the IUCN Red List of Threatened Species citation for this species, based on a 2005 assessment, states for the royal penguin that ''rats take some eggs and young'' but goes on to state that ''feral cats have now been eliminated from Macquarie Island.'' This suggests that conservation actions related to removing introduced predators prescribed in the Penguin Conservation Assessment and Management Plan for the royal penguin cited by the petitioner (Ellis 1999) are being successfully implemented. In fact, this recommendation regarding removing introduced predators is not included in the 2005 update of the IUCN Red List citation (Birdlife International 2006). Similarly, according to this cited source, the threat of human disturbance is being managed; ''tourists on breeding islands are managed to prevent disturbance.'' Citations in the petition on possible specific or general impacts of climate change on penguins at various Antarctic and sub-Antarctic latitudes do not mention the royal penguin, yet the petitioners assert the species will be affected on the basis of inferred similarity with other species for which the petitioner cites such impacts. We note that the petitioners do not include all penguin species in the petition. This indicates a conclusion by the petitioners that not all penguin species are equally under threat from the cited climate change factors and reduces confidence in the extrapolation of information, whether general, or directly tied to other specific locations or other species, to species included in the petition for which no specific information on these factors is provided. Because the petitioner provided no information indicating population declines or documenting specific threats to the species supported by scientific data or studies, we find that the petitioner does not present substantial scientific or commercial information to indicate that listing the royal penguin as threatened or endangered may be warranted at this time.

Finding

We have determined that the petition presents substantial scientific or commercial information to indicate that listing 10 species of penguins as endangered or threatened may be warranted. We find the petition does not present substantial scientific or commercial information to indicate that listing the snares crested penguin and the royal penguin as threatened or endangered may be warranted at this time.

References Cited

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Ellis, S. 1999. The Penguin Conservation Assessment and Management Plan: a Description of the Process. Marine Ornithology 27:163–169.

Author

The primary author of this notice is Pat Ford, Division of Scientific Authority, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 3, 2007.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. 07–3355 Filed 7–6–07; 11:47 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[I.D. 021607C]

Endangered and Threatened Species; Proposed Endangered Status for the Cook Inlet Beluga Whale; Public Hearing

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

ACTION: Notice of public hearing.

SUMMARY: On April 20, 2007, NMFS proposed the listing of the Cook Inlet beluga whale as an endangered species under the Endangered Species Act of 1973 (ESA), as amended. As part of that proposal, NMFS announced a public comment period to end on June 19, 2007, and then extended the comment period to August 3, 2007. NMFS has received requests for public hearings on this issue. In response, NMFS announced two public hearings to be held in Alaska and one public hearing to be held in Maryland in two previous **Federal Register** notices. In addition, NMFS is announcing a separate hearing in this notice that will be held in Soldotna, Alaska, in order to provide greater opportunity for public comment.

DATES: The hearing will be held on July 27, 2007, from 6 to 9 p.m. in Soldotna, AK. Written comments must be received by August 3, 2007.

ADDRESSES: The July 27, 2007, hearing will be held at the Kenai Peninsula Borough Assembly chambers, 144 North Binkley Street, Soldotna, AK.

Written comments can be sent to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- E-mail: *CIB-ESA-Endangered@noaa.gov*. Include in the subject line the following document identifier: Cook Inlet Beluga Whale PR. E-mail comments, with or without attachments, are limited to 5 megabytes.
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.
- Mail: P. O Box 21668, Juneau, AK 99802.
- Hand delivery to the Federal Building: 709 W. 9th Street, Juneau, AK.
- Fax: (907) 586–7557.

FOR FURTHER INFORMATION CONTACT: Brad Smith, NMFS, 222 West 7th Avenue, Anchorage, AK 99517, telephone (907) 271–5006; Kaja Brix, NMFS, (907) 586–7235; or Marta Nammack, NMFS, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2007, NMFS published a proposed rule to list the Cook Inlet beluga whale as an endangered species under the Endangered Species Act of 1973 (ESA), as amended (72 FR 19854). This action followed completion of the Cook Inlet beluga whale status review, which found this population to be at risk of extinction within the next 100 years and described NMFS= determination that this population constitutes a ''species'', or distinct population segment under the ESA.

Following the publication of the proposed rule to list the Cook Inlet beluga whale as endangered, NMFS received requests to schedule public hearings on this issue. In response to these requests, NMFS published two separate notices in the **Federal Register** announcing public hearings in Alaska (72 FR 32605; June 13, 2007) and Maryland (72 FR 34661; June 25, 2007). Following these announcements, NMFS received an additional request for a public hearing to be held in Soldotna, AK. NMFS has decided to honor the request in order to provide additional opportunities for public comment.

Public Hearings

Joint Commerce-Interior ESA implementing regulations state that the Secretary shall promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to list a species or to designate critical habitat (see 50 CFR 424.16(c)(3)). In past ESA rule-making NMFS has conducted traditional public hearings, consisting of recorded oral testimony from interested individuals. This format, although providing a means for public input, does not provide opportunities for dialogue and information exchange. NMFS believes that the traditional public hearing format can be improved upon by also including a brief presentation on the results of the Cook Inlet beluga Status Review and other topics of interest.

The preferred means for providing public comment to the official record is via written testimony prepared in advance of the meeting which may also be presented orally. Blank ''comment sheets'' will be provided at the meetings for those without prepared written comments, and opportunity will also be provided for additional oral testimony. There is no need to register for these hearings.

In scheduling these public hearings, NMFS has anticipated that many affected stakeholders and members of the public may prefer to discuss the proposed listing directly with staff during the public comment period. These public meetings are not the only opportunity for the public to provide input on this proposal. The public and stakeholders are encouraged to continue to comment and provide input to NMFS on the proposal (via correspondence, e-mail, and the Internet; see **ADDRESSES**, above) up until the scheduled close of the comment period on August 3, 2007.

References

The proposed rule, status review, maps, a list of the references cited in this document, and other materials relating to the proposed listing can be found on the NMFS Alaska Region website *http://www.fakr.noaa.gov/*.

Dated: July 6, 2007.

James H. Lecky,

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

[FR Doc. E7–13481 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 72, No. 132
Wednesday, July 11, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0520.
Form Number: AID 1420–17.
Title: Contract Employee Biographical Data Sheet.
Type of Submission: Reinstatement.
Purpose: The U.S. Agency for International Development (USAID) is authorized to make contracts with any corporation, international organization, or other body of persons in or outside of the United States in furtherance of the purposes and within limitations of the Foreign Assistance Act (FAA). The information collections requirements placed on the public are published in 48 CFR chapter 7, and include such items as the Contractor Employee Biographical Data Sheet and Performance and Progress Reports (AIDAR 752.7026). These are all USAID unique procurement requirements. The pre-award requirements are based on a need for prudent management in the determination that an offeror either has or can obtain the ability to competently manage development assistance programs utilizing public funds. The requirements for information collection requirements during the post-award period are based on the need to administer public funds prudently.
Annual Reporting Burden:
Respondents: 14,939.
Total annual responses: 41,573.
Total annual hours requested: 63,152 hours.

Dated: July 2, 2007.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 07–3352 Filed 7–10–07; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–New.
Form Number: N/A.
Title: Invoice/Payment Request, contractor's Release Statement, and subcontractor Payment Information–Invoice/Payment Request Attachment.
Type of Submission: New.
Purpose: These documents are to be used by construction company prime contractors and sub-contractors during the performance of a duly executable contract. A duly executable contract arrangement may be in the form of a contract, task order, modification, letter contract, and written or oral orders. The information provided will be evaluated by USAID, cognizant technical officer, agency finance personnel, or an authorized contracting officer's representative for contract progress payments during proper execution of construction projects. The information provided may also be used by a surety, insurance, or bonding company for progress payment purposes when the prime construction contractor fails in the performance of a contract, task order, modification, letter contract, or written and oral orders. The information provided in the Invoice/Payment Request form, Contractor's Release Statement, and Subcontractor Payment Information-Invoice/Payment Request Attachment may also be used by a third party construction company for progress payments when the prime construction contractor fails to execute or fails in the performance of a construction contract, task order, modification, letter contract, and written or oral orders.
Annual Reporting Burden:
Respondents: 1,000.
Total annual responses: 1,000.
Total annual hours requested: 600.

Dated: July 2, 2007.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 07–3353 Filed 7–10–07; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 6, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs,

Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: General Administrative Regulations; Subpart V-Submission of Policies, Provisions of Policies, and Rates of Premium.

OMB Control Number: 0563-0064.

Summary of Collections: The Federal Crop Insurance Corporation (FCIC) amends the procedures for the submission of policies, plans of insurance, or other rates or premium by insurance companies, entities or other persons. Public Law 96–365 provided for nationwide expansion of a comprehensive crop insurance program. The Federal Crop Insurance Act, as amended, expanded the role of the crop insurance to be the principal tool for risk management by producers of farm products and required that the crop insurance program operate on an actuarially sound basis. It provides for independent reviews of insurance products by persons experienced as actuaries and in underwriting.

Need and Use of the Information: The Board will review an applicant's submissions to determine, if the interests of agricultural producers and taxpayers are protected; the submission is actuarially appropriate; appropriate insurance principles are followed; the requirements of the Act are met; and that sound, reasonable and appropriate underwriting principals are followed. If the information is incomplete, the submission will be disapproved.

Description of Respondents: Business or other-for-profit.

Number of Respondents: 210.

Frequency of Responses: Recordkeeping: Reporting; Other.

Total Burden Hours: 57,000.

Charlene Parker,

Departmental Information Clearance Officer.

[FR Doc. E7–13427 Filed 7–10–07; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 6, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: 7 CFR 3570–B, Community Facilities Grant Program.

OMB Control Number: 0575–0173.

Summary of Collection: The Consolidated Farm and Rural Development Act (7 U.S.C. 1926) authorizes Rural Housing Service (RHS) to make grants to public agencies, nonprofit corporations, and Indian tribes to develop essential community facilities and services for public use in rural areas. These facilities include schools, libraries, childcare, hospitals, clinics, assisted-living facilities, fire and rescuer stations, police stations, community centers, public buildings, and transportation. The Department of Agriculture through its Community Programs strives to ensure that facilities are readily available to all rural communities.

Need and Use of the Information: Rural Development field offices will collect information from applicant/borrowers and consultants. This information is used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan and grant funds for authorized purposes. Failure to collect the information could result in improper determinations of eligibility, improper use of funds, and or unsound loans.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 895.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 5,759.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–13428 Filed 7–10–07; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 4290.

DATES: Comments on this notice must be received by September 10, 2007 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Michael Foore, Program Advisor, Rural Development, Business and Cooperative Programs, 1400 Independence Ave.,

SW., Stop 3201, Washington, DC 20250–3201, Telephone: (202) 690–4730.

SUPPLEMENTARY INFORMATION:

Title: ''Rural Business Investment Program''.

OMB Number: 0570–0051.

Expiration Date of Approval: December 31, 2007.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Business Investment Program ''RBIP'') is a Developmental Venture Capital program for the purpose of promoting economic development and the creation of wealth and job opportunities in Rural Areas and among individuals living in such areas through the licensing of Rural Business Investment Companies (''RBICs'').

The information USDA seeks to collect is critical to the integrity of the process for selecting RBICs for participation in the RBIP and to the accomplishment of the objectives of the RBIP. Without this collection of information, USDA would be unable to meet the requirements of the Act and effectively administer the RBIP, ensuring safety and soundness.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 hours per respondent.

Respondents: Newly established, for-profit entities applying for RBIC licensure) and licensed RBICs (venture capital companies approved by USDA to participate in the RBIP).

Estimated Number of Respondents: 108.

Estimated Number of Responses per Respondent: 6.

Estimated Number of Responses: 612.

Estimated Total Annual Burden on Respondents: 6,689.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of USDA, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments on this information collection may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 3, 2007.

Ben Anderson,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. E7–13394 Filed 7–10–07; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2008 Census Coverage Measurement, Initial Housing Unit Followup Operation.

Form Number(s): DX–1303.

Agency Approval Number: None.

Type of Request: New collection.

Burden Hours: 880.

Number of Respondents: 16,000.

Average Hours Per Response: 3 minutes.

Needs and Uses: In preparation for the 2010 Census, the U.S. Census Bureau requests authorization to conduct the Census Coverage Measurement (CCM) Initial Housing Unit Followup Interview as part of the 2008 Census Dress Rehearsal. The CCM program for the dress rehearsal is a dry run to ensure that all planned coverage measurement operations are working as expected, integrated internally, and coordinated with the appropriate census operations.

The 2008 Census Dress Rehearsal will be conducted in two sites, one urban, and the other, a mix of urban and suburban. San Joaquin County, California is the urban site. South Central North Carolina has been selected as the urban/suburban mix test site. This area consists of Fayetteville and nine surrounding counties (Chatham, Cumberland, Harnett, Hoke, Lee, Montgomery, Moore, Richmond, and Scotland).

The 2008 CCM Dress Rehearsal will be comprised of two samples selected to measure census coverage of housing units and the household population: The population sample (P sample) and the enumeration sample (E sample). The P sample is a sample of housing units and persons obtained independently from the census for a sample of block clusters. The E sample is a sample of census housing units and enumerations in the same block cluster as the P sample. The independent roster of housing units is obtained during the CCM Independent Listing, the results of which will be matched to census housing units in the sample block clusters and surrounding blocks. Discrepancies between the CCM Independent Listing and census housing unit matching are followed up in Initial Housing Unit Followup. A separate OMB package was submitted for the CCM Independent Listing field operation, and additional OMB packages will be submitted for subsequent CCM field operations.

The CCM operations planned for the dress rehearsal, to the extent possible, will mirror those that will be conducted for the 2010 Census to provide estimates of net coverage error and components of coverage error (omissions and erroneous enumerations) for housing units and persons in housing units. The data collection and matching methodologies for previous coverage measurement programs were designed only to measure net coverage error, which reflects the difference between omissions and erroneous inclusions.

During CCM Initial Housing Unit Followup, interviewers collect additional information for addresses unresolved after the matching operations. The CCM Initial Housing Unit Followup operation attempts to collect additional information that might allow a resolution of match codes for any differences between the independent listing results and the

census address list and also to resolve potential duplicates. The Initial Housing Unit Followup operation will also determine the housing unit/group quarters status for living quarters flagged during the CCM Independent Listing operation. The Initial Housing Unit Followup data collection form will be created via Docuprint technology. The questions included for each followup case will vary depending upon the reason the address is being sent to followup. There will be one Initial Housing Unit Followup Form, DX–1303, that contains preprinted questions to ask respondents dependent upon the reason the address is being sent to followup. Interviewers will contact a member of each housing unit (or proxy, as a last resort) to answer the questions identified for a given address. When applicable, they will also update the location of an address on the CCM block cluster map created during the CCM Independent Listing operation.

Completed Initial Housing Unit Followup Forms are subject to Quality Control (QC) wherein QC interviewers return to the field to check a sample of housing units in each block cluster to ensure the work performed is of acceptable quality. If the cluster fails the QC, then the QC interviewer reworks the entire block cluster.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141 and 193.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: July 5, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–13362 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Deemed Export Advisory Committee; Notice to Solicit Meeting Speakers and Presentations

The Deemed Export Advisory Committee (DEAC), which advises the Secretary of Commerce on deemed export licensing policy, will meet on Monday, July 30, 2007 from approximately 8:30 a.m. to 5:30 p.m. for a public session. The DEAC is a Federal Advisory Committee that was established under the auspices of the Federal Advisory Committee Act, as amended, 5 U.S.C. app. 2. The meeting location will be Chicago, IL, with exact details to be announced in a subsequent **Federal Register** Notice. At this time, the Department of Commerce, Bureau of Industry and Security (BIS), would like to solicit stakeholders from industry, academia and other backgrounds to address the DEAC members on July 30 in an open session on issues related to deemed exports and, in particular, their organizations' perspectives and concerns related to U.S. deemed export control policies. Stakeholders are those individuals or organizations who have some experience in or knowledge of export control regulations and policies, who must apply these rules in the course of normal business or whose operations are directly impacted by those export regulations and policies mandated by the U.S. government. BIS seeks to have an equal number of presenters from industry, academia, and other backgrounds. There may be up to three presenters from each group and speaking time may be limited to 10 minutes or less per speaker depending on the number of interested parties. Speakers may be selected on the basis of one or more of the following criteria (not in any order of importance); (1) Demonstrated experience in and knowledge of export control regulations; (2) demonstrated ability to provide DEAC members with relevant information related to deemed export policies and issues; (3) the degree to which the organization is impacted by the U.S. Government's export policies and regulations; and (4) industry area or academic type of institution represented. BIS reserves the right to limit the number of participants based on time considerations. For planning purposes, BIS requests that (1) That interested parties inform BIS of their commitment, via e-mail or telephone call, to address the DEAC no later than 5 p.m. EST July 13, 2007, as well as provide a brief outline of the topics to be discussed by this same deadline; and, (2) that once interested parties receive confirmation of their participation at the meeting, they provide either an electronic or paper copy of any prepared remarks/presentations no later than 5 p.m. EST July 23, 2007. Interested parties may contact Ms. Yvette Springer at *Yspringer@bis.doc.gov* or (202) 482–2813. The purpose of this solicitation is only to accept speakers for the July 30, 2007 DEAC meeting. However, all members of the public may submit written comments to BIS at any time for the DEAC's consideration.

Dated: July 2, 2007.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 07–3347 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804]

Ball Bearings and Parts Thereof from Japan: Amended Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On January 27, 2005, the United States Court of International Trade (CIT) sustained the United States Department of Commerce's (the Department's) redetermination on remand of the final results of the administrative review of the antidumping duty order on ball bearings and parts thereof from Japan for the period May 1, 2000, through April 30, 2001. One party appealed a portion of the CIT's decision to the United States Court of Appeals for the Federal Circuit (CAFC). On March 7, 2007, the CAFC affirmed the CIT's decision. Because all litigation has concluded, the Department is now issuing these amended final results of review reflecting the CIT's decision.

EFFECTIVE DATE: July 11, 2007.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1757 or (202) 482–4477, respectively.

SUPPLEMENTAL INFORMATION:

Background

On August 30, 2002, the Department published the final results of

administrative reviews of the antidumping duty order on ball bearings and parts thereof from Japan for the period May 1, 2000, through April 30, 2001. See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 67 FR 55780 (August 30, 2002). On October 15, 2002, the Department amended the final results. See *Ball Bearings and Parts Thereof From Japan; Amended Final Results of Antidumping Duty Administrative Review*, 67 FR 63608 (October 15, 2002). NTN Corp., NTN Bearing Corp. of America, American NTN Bearing Manufacturing Corp., NTN Driveshaft, and NTN–BCA Corp. (collectively NTN), filed a lawsuit challenging the final results. NSK Ltd., NSK Corp., NSK Bearings Europe, MPB Corp., Asahi Seiko Co., and Isuzu Motors, Ltd., were parties to this litigation but their dumping margins did not change as a result of the litigation. On August 20, 2004, the CIT affirmed the Department's final results in part and remanded the review to the Department in part to correct certain ministerial errors concerning the treatment of NTN's freight and warehouse expenses. See *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312 (CIT 2004) (*NSK Ltd.*). Specifically, the CIT directed the Department to exclude NTN's export–price sales from the calculation of NTN's U.S. freight and warehouse expenses. In accordance with the CIT's remand order in *NSK Ltd.*, the Department filed its remand results on October 19, 2004. In those remand results, the Department excluded export–price sales from the calculation of U.S. freight and warehouse expenses and recalculated NTN's margin accordingly.

On January 27, 2005, the CIT sustained the Department's final results of remand redetermination. See *NSK Ltd. v. United States*, 358 F. Supp. 2d 1313 (CIT 2005). NTN appealed the portion of the CIT's decision in which it sustained the Department's use of ''facts otherwise available'' and ''adverse inferences'' when determining NTN's antidumping duty margin. NTN did not appeal the CIT's remand order. On March 7, 2007, the CAFC affirmed the CIT's decision. See *NSK Ltd. v. United States*, 481 F.3d 1355 (Fed. Cir. 2007). On May 3, 2007, the CAFC denied a rehearing request. No further appeals were made. Therefore, the CIT's decision is now final and conclusive.

Amendment to Final Results

We are now amending the final results of this review to reflect the final and conclusive decision of the CIT. Our revised calculations for NTN changed the weighted–average margin for ball bearings from 9.34 percent to 9.30 percent for the period of review. The Department will instruct U.S. Customs and Border Protection to liquidate entries of ball bearings from Japan from NTN during the review period in accordance with these amended final results of review.

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

Dated: July 2, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–13478 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–866)

Folding Gift Boxes from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: July 11, 2007.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, AD/CVD Operations, Office 8, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6412.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2007, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on folding gift boxes from the People's Republic of China (''PRC''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 72 FR 99 (January 3, 2007). On January 31, 2007, the Petitioner[1] and Red Point Paper Products Factory (Dongguan Shilong), Red Point Paper Products Co. Ltd., and Silver Team Trading Ltd. (''Red Point'') requested that the Department conduct an administrative review of Red Point. The Department published a notice of initiation of the antidumping duty administrative review of Folding Gift Boxes from the PRC for the period January 1, 2006 through December 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 8969 (February 28, 2007).

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On May 29, 2007, Red Point and the Petitioner withdrew their requests for an administrative review within 90 days of the publication of the notice of initiation of this review. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with its practice, the Department hereby rescinds the administrative review of folding gift boxes from the People's Republic of China for the period January 1, 2006 through December 31, 2006. The Department intends to issue assessment instructions to U.S. Customs and Border Protection 15 days after the publication of this notice of rescission of administrative review.

This notice is in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 3, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–13479 Filed 7–10–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–868]

Folding Metal Tables and Chairs from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on folding metal tables and chairs (''FMTCs'') from the People's Republic of China (''PRC'') covering the period June 1, 2005, through May 31, 2006. We have preliminarily determined that sales have not been made below normal value (''NV'') by Feili Furniture Development Limited Quanzhou City, Feili Furniture

[1] Harvard Folding Box Company, Inc.

Development Co., Ltd., Feili Group (Fujian) Co., Ltd., and Feili (Fujian) Co., Ltd. (collectively ''Feili''), or by New–Tec Integration (Xiamen) Co. Ltd. (''New–Tec''). If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the period of review (''POR'').

Interested parties are invited to comment on these preliminary results. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act'').

EFFECTIVE DATE: July 11, 2007.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Matthew Quigley, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4243 or (202) 482–4551, respectively.

SUPPLEMENTARY INFORMATION: On June 27, 2002, the Department published the antidumping duty order on FMTCs from the PRC. *See Antidumping Duty Order: Folding Metal Tables and Chairs From the People's Republic of China*, 67 FR 43277 (June 27, 2002). On June 2, 2006, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 32032 (June 2, 2006). In accordance with 19 CFR 351.213(b)(1), the following requests were made: (1) on June 13, 2006, Feili, a producer/exporter of subject merchandise, requested that the Department conduct an administrative review of its sales;[1] (2) on June 27, 2006, Meco Corporation (''Meco''), a domestic interested party, requested that the Department review Feili's and New–Tec's sales and entries during the POR; (3) on June 28, 2006, Cosco Home & Office Products (''Cosco''), a U.S. importer of subject merchandise, requested that the Department review Feili's and New–Tec's sales and entries during the POR;[2] (4) on June 30, 2006, New–Tec, a producer/exporter of subject merchandise, requested that the Department conduct an administrative review of its sales;[3] and (5) on June 30, 2006, Dongguan Shichang Metals Factory Ltd. and Maxchief Investments Ltd. (collectively ''Shichang''), a producer/exporter of subject merchandise, requested that the Department conduct an administrative review of its sales.

On July 27, 2006, the Department initiated this administrative review with respect to Feili, New–Tec, and Shichang. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 42626 (July 27, 2006). On July 28, 2006, Shichang withdrew its request for an administrative review.

The Department issued antidumping duty questionnaires to Feili and New–Tec on September 12, 2006. On September 27, 2006, the Department published a partial rescission of the instant administrative review with respect to Shichang. *See Folding Metal Tables and Chairs: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 56473 (September 27, 2006). On October 6, 2006, Meco, a petitioner in the original investigation, requested that the Department verify the factual information submitted by Feili and New–Tec. On October 13, 2006, New–Tec and Feili submitted Section A questionnaire responses (''AQRs''), and on November 3, 2006, New–Tec and Feili submitted Section C and D questionnaire responses (''CQRs'' and ''DQRs,'' respectively). On December 13, 2006, the Department issued its first supplemental questionnaires to New–Tec and Feili.

On December 19, 2006, the Department requested the Office of Policy to provide a list of surrogate countries for this review. See Memorandum to Ron Lorentzen, Acting Director, Office of Policy, through Wendy Frankel, Director, Office 8, AD/CVD Operations, from Matthew Quigley, International Trade Compliance Analyst, ''Certain Folding Metal Tables and Chairs from the People's Republic of China: Request for Surrogate Country Selection'' (December 19, 2006). On December 21, 2006, the Office of Policy issued its list of surrogate countries. *See* Memorandum from Ron Lorentzen, Director, Office of Policy, to Wendy Frankel, Director, Office 8, AD/CVD Operations, ''Administrative Review of Certain Folding Metal Tables and Chairs (''Tables and Chairs'') from the People's Republic of China (PRC): Request for a List of Surrogate Countries'' (December 21, 2006) (''Surrogate Country Memorandum'').

On January 10 and 12, 2007, respectively, Feili and New–Tec submitted their first supplemental questionnaire responses. On February 12, 2007, the Department requested interested parties to submit surrogate value information and to provide surrogate country selection comments. Meco provided comments on publicly available information to value the factors of production (''FOP'') on February 26, 2007. None of the interested parties provided comments on the selection of a surrogate country.

On March 2, 2007, Meco submitted comments on both New–Tec's and Feili's first supplemental questionnaire responses. On March 7, 2007, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until May 31, 2007. *See Folding Metal Tables and Chairs from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 72 FR 10141 (March 7, 2007). On March 20 and 26, 2007, respectively, the Department issued its second supplemental questionnaire to Feili and New–Tec. On March 30 and April 16, 2007, respectively, Feili and New–Tec submitted their second supplemental questionnaire responses. On May 4, 2007, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until July 2, 2007. *See Folding Metal Tables and Chairs from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 72 FR 25244 (May 4, 2007).

Verification of Responses

As provided in section 782(i) of the Act, we verified information provided by Feili and New–Tec. We used standard verification procedures, including on–site inspection of the manufacturers' and exporters' facilities, and examination of relevant sales and financial records. The Department conducted the sales and FOP verification at Feili's facilities in Quanzhou, Fujian Province from May 21 to 25, 2007, and New–Tec's facilities in Xiamen, Fujian Province from May 28 to June 1, 2007. Our verification results are outlined in the verification reports for Feili and New–Tec. *See* ''Verification of the Sales and Factors Response of Feili in the Antidumping

[1] Feili's request for administrative review did not include a request for revocation.

[2] Although Cosco requested revocation on behalf of Feili and New-Tec, section 351.222(e) of the Department's regulations only permits an exporter or a producer to request revocation. Thus, Cosco cannot request revocation because it is not an exporter or a producer.

[3] New-Tec's request for administrative review did not include a request for revocation.

Review of Folding Metal Tables and Chairs from the People's Republic of China'' (July 2, 2007) (''Feili Verification Report''), and ''Verification of the Sales and Factors Response of New–Tec in the Antidumping Review of Folding Metal Tables and Chairs from the People's Republic of China'' (July 2, 2007) (''New Tec Verification Report'').

Period of Review

The POR is June 1, 2005, through May 31, 2006.

Scope of the Order

The products covered by this order consist of assembled and unassembled folding tables and folding chairs made primarily or exclusively from steel or other metal, as described below:

1) Assembled and unassembled folding tables made primarily or exclusively from steel or other metal (folding metal tables). Folding metal tables include square, round, rectangular, and any other shapes with legs affixed with rivets, welds, or any other type of fastener, and which are made most commonly, but not exclusively, with a hardboard top covered with vinyl or fabric. Folding metal tables have legs that mechanically fold independently of one another, and not as a set. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal tables are the following:

a. Lawn furniture;
b. Trays commonly referred to as ''TV trays'';
c. Side tables;
d. Child–sized tables;
e. Portable counter sets consisting of rectangular tables 36'' high and matching stools; and,
f. Banquet tables. A banquet table is a rectangular table with a plastic or laminated wood table top approximately 28'' to 36'' wide by 48'' to 96'' long and with a set of folding legs at each end of the table. One set of legs is composed of two individual legs that are affixed together by one or more cross–braces using welds or fastening hardware. In contrast, folding metal tables have legs that mechanically fold independently of one another, and not as a set.

2) Assembled and unassembled folding chairs made primarily or exclusively from steel or other metal (folding metal chairs). Folding metal chairs include chairs with one or more cross–braces, regardless of shape or size, affixed to the front and/or rear legs with rivets, welds or any other type of fastener. Folding metal chairs include: those that are made solely of steel or other metal; those that have a back pad, a seat pad, or both a back pad and a seat pad; and those that have seats or backs made of plastic or other materials. The subject merchandise is commonly, but not exclusively, packed singly, in multiple packs of the same item, or in five piece sets consisting of four chairs and one table. Specifically excluded from the scope of the order regarding folding metal chairs are the following:

a. Folding metal chairs with a wooden back or seat, or both;
b. Lawn furniture;
c. Stools;
d. Chairs with arms; and
e. Child–sized chairs.

The subject merchandise is currently classifiable under subheadings 9401.71.0010, 9401.71.0030, 9401.79.0045, 9401.79.0050, 9403.20.0015, 9403.20.0030, 9403.70.8010, 9403.70.8020, and 9403.70.8030 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[4] Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Based on a request by RPA International Pty., Ltd. and RPS, LLC, the Department ruled on January 13, 2003, that poly–fold metal folding chairs are within the scope of the order.

On May 5, 2003, in response to a request by Staples, the Office Superstore Inc. (''Staples''), the Department issued a scope ruling that the chair component of Staples' ''Complete Office–To-Go,'' a folding chair with a tubular steel frame and a seat and back of plastic, with measurements of: height: 32.5 inches; width: 18.5 inches; and depth: 21.5 inches, is covered by the scope of the order.

On September 7, 2004, the Department found that table styles 4600 and 4606 produced by Lifetime Plastic Products Ltd. are within the scope of the order.

On July 13, 2005, the Department issued a scope ruling determining that ''butterfly'' chairs are excluded from the scope of the antidumping duty order. Butterfly chairs are described as consisting of a collapsible metal rod frame and a cover, such that when the chair frame is spread open, the pockets of the cover are slipped over the upper ends of the frame and the cover provides both the seating surface and back of the chair. The frame consists of eight s–shaped pieces (with the ends offset at almost a 90–degree angle) made from metal rods that are connected by hinges. In order to collapse the frame, the chair cover must be removed. The frame is collapsed by moving the four legs inward until they meet in the center, similar to the folding mechanism of a pocket umbrella.

On July 13, 2005, the Department issued a scope ruling determining that folding metal chairs, with wooden seats that have been padded with foam and covered with fabric or polyvinyl chloride and attached to the tubular steel seat frame with screws, are within the scope of the antidumping duty order.

On May 1, 2006, the Department issued a scope ruling determining that ''moon chairs'' are not included within the scope of the antidumping duty order. Moon chairs are described as containing circular, fabric–padded, concave cushions that envelop the user at approximately a 105–degree reclining angle. The fabric cushion is ringed and supported by two curved 16–mm steel tubes. The cushion is attached to this ring by nylon fabric. The cushion is supported by a 16–mm steel tube four–sided rectangular cross–brace mechanism that constitutes the moon chair's legs. This mechanism supports and attaches to the encircling tubing and enables the moon chair to be folded. To fold the chair, the user pulls on a fabric handle in the center of the seat cushion of the chair.

Non–Market Economy Country Status

Neither Feili nor New–Tec contested the Department's treatment of the PRC as a non–market economy (''NME''), and the Department has treated the PRC as an NME country in all past antidumping duty investigations and administrative reviews and continues to do so in this case. *See, e.g., Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 27074, 27075 (May 14, 2007). No interested party in this case has argued that we should do otherwise. Designation as an NME country remains in effect until it is revoked by the Department. See Section 771(18)(C)(i) of the Act.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's FOPs, valued in a surrogate market–economy country or countries

[4] Originally the scope included 9403.20.0010 but, effective July 1, 2003, 9403.20.0010 (metal household furniture) was eliminated from the HTS code. 9403.20.0011 (ironing boards) and 9403.20.0015 (other) were added in its place. 9403.20.0015 contains merchandise in 9403.20.0010 except for ironing boards.

considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more market–economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the ''Normal Value'' section below and in the Memorandum from Laurel LaCivita and Matthew Quigley, International Trade Compliance Analysts, through Charles Riggle, Program Manager, to Wendy Frankel, Director, AD/CVD Operations, Office 8, ''Preliminary Results of the 2005–2006 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Surrogate Value Memorandum'' (July 2, 2007) (''Surrogate Value Memorandum'').

The Department has previously determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development. *See* Surrogate Country Memorandum. Customarily, we select an appropriate surrogate country from the Surrogate Country Memorandum based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise. *See* Memorandum from Laurel LaCivita and Matthew Quigley, International Trade Compliance Analysts, through Charles Riggle Program Manager, to Wendy Frankel, Director, AD/CVD Operations, Office 8, ''Antidumping Administrative Review of Folding Metal Tables and Chairs: Selection of a Surrogate Country'' (July 2, 2007) (''Surrogate Country Selection Memorandum'').

The Department used India as the primary surrogate country and, accordingly, has calculated NV using Indian prices to value the PRC producers' FOPs, when available and appropriate. *See* Surrogate Country Selection Memorandum and Surrogate Value Memorandum. We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping administrative review, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results of review.

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 subject merchandise subject to review in an NME country a single rate unless an exporter can demonstrate that it is sufficiently independent of government control to be entitled to a separate rate. *See, e.g., Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 70949, 70952 (December 7, 2006) (unchanged in the final results).

We have considered whether each reviewed company based in the PRC is eligible for a separate rate. The Department's separate–rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Certain Cut–to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61757 (November 19, 1997); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of select criteria, discussed below. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''); and *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994). Under this test, exporters in NME countries are entitled to separate, company–specific margins when they can demonstrate an absence of government control over exports, both in law (''*de jure*'') and in fact (''*de facto*'').

Feili and New–Tec each provided company–specific separate–rate information and stated that each met the standards for the assignment of separate rates. Feili reported that it is wholly owned by market–economy entities. *See* Feili's AQR, at 2 and Exhibit A–3. Therefore, consistent with the Department's practice, a separate–rates analysis is not necessary to determine whether Feili's export activities are independent from government control. *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104 (December 20, 1999); and *Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). For New–Tec, a separate–rates analysis is necessary to determine whether its export activities are independent from government control.

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. *See, e.g., Sparklers*, 56 FR 20588.

New–Tec reported that it is a joint venture. Until April 2006, it was owned by New–Tec International Inc., a South Korean company, and Xiamen Integration Co., Ltd., a PRC company. In April 2006, New–Tec International Inc. transferred its shares to Mr. Lee Ki Cheon, a South Korean national. New–Tec has placed documents on the record to demonstrate the absence of *de jure* control including its list of shareholders, business license, and the Company Law of the PRC, as revised on October 27, 2005 (''Company Law''). Other than limiting New–Tec to activities referenced in the business license, we found no restrictive stipulations associated with the license. In addition, in previous cases the Department has analyzed the Company Law and found that it establishes an absence of de jure control, lacking record evidence to the contrary. *See, e.g., Certain Non–Frozen Apple Juice Concentrate from the People's Republic of China: Final Results, Partial Rescission and Termination of a Partial Deferral of the 2002–2003 Administrative Review*, 69 FR 65148, 65150 (November 10, 2004). We have no information in this segment of the proceeding that would cause us to reconsider this determination. Therefore, based on the foregoing, we

have preliminarily found an absence of *de jure* control for New–Tec.

B. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544 (May 8, 1995) (''*Furfuryl Alcohol*''). Therefore, an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control that would preclude the Department from assigning separate rates. The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See, e.g., Furfuryl Alcohol*, 60 FR 22545.

With regard to *de facto* control, New–Tec reported that: (1) it independently set prices for sales to the United States through negotiations with customers and these prices are not subject to review by any governmental organization; (2) it did not coordinate with other exporters or producers to set the price or to determine to which market the companies will sell subject merchandise; (3) the PRC Chamber of Commerce did not coordinate the export activities of New–Tec; (4) its general manager has the authority to contractually bind it to sell subject merchandise; (5) its board of directors appoints its general manager; (6) there is no restriction on its use of export revenues; (7) its shareholders ultimately determine the disposition of respective profits, and New–Tec has not had a loss in the last two years; and (8) none of New–Tec's board members or managers is a government official. Additionally, New–Tec's questionnaire responses did not suggest that pricing is coordinated among exporters. Furthermore, our analysis of New–Tec's questionnaire responses reveals no other information indicating government control of its export activities. Therefore, based on the information on the record, we preliminarily determine that there is an absence of *de facto* government control with respect tor New–Tec's export functions and that New–Tec has met the criteria for the application of a separate rate.

Date of Sale

19 CFR 351.401(i) states that:

> In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

See also, Allied Tube and Conduit Corp. v. United States, 132 F. Supp. 2d 1087, 1090–1092 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale). After examining the questionnaire responses and the sales documentation placed on the record by Feili and New–Tec, we preliminarily determine that invoice date is the most appropriate date of sale for each respondent. We made this determination based on statements on the record that indicate that Feili's and New–Tec's invoices establish the material terms of sale to the extent required by our regulations. *See* Feili CQR at C–10 and New–Tec CQR at C–12. Nothing on the record rebuts the presumption that invoice date should be the date of sale.

Normal Value Comparisons

To determine whether sales of FMTCs to the United States by Feili and New–Tec were made at less than NV, we compared export price (''EP'') to NV, as described in the ''Export Price,'' and ''Normal Value'' sections of this notice, pursuant to section 771(35) of the Act.

Export Price

Because Feili and New–Tec sold subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States, and use of a constructed–export-price methodology is not otherwise indicated, we have used EP in accordance with section 772(a) of the Act.

We calculated EP based on the free–on-board or delivered price to unaffiliated purchasers for Feili and New–Tec. From this price, we deducted amounts for foreign inland freight, brokerage and handling and, where applicable, air freight, pursuant to section 772(c)(2)(A) of the Act. See Memorandum to the File from Laurel LaCivita, Senior International Trade Compliance Analyst, through Charles Riggle, Program Manager, AD/CVD Operations, Office 8, ''Analysis for the Preliminary Results of the 2005–2006 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: Feili Furniture Development Limited Quanzhou City, Feili Furniture Development Co., Ltd., Feili Group (Fujian) Co., Ltd., Feili (Fujian) Co., Ltd. (collectively, 'Feili')'' (July 2, 2007) (''Feili Preliminary Analysis Memorandum''); and Memorandum to the File from Matthew Quigley, International Trade Compliance Analyst, through Charles Riggle, Program Manager, AD/CVD Operations, Office 8, ''Analysis for the Preliminary Results of the 2005–2006 Administrative Review of Folding Metal Tables and Chairs from the People's Republic of China: New–Tec Integration (Xiamen) Co. Ltd. (''New–Tec'')'' (July 2, 2007) (''New–Tec Preliminary Analysis Memorandum'').

Consistent with the Department's practice, we used two sources to calculate a surrogate value for domestic brokerage expenses. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19704 (April 17, 2006) (utilizing these same data, unchanged for the final determination). The Department averaged December 2003–November 2004 data contained in the February 28, 2005, public version of Essar Steel's response submitted in the antidumping duty administrative review of hot–rolled carbon steel flat products from India. *See Certain Hot–Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006) (unchanged in the final results). These data were averaged with the February 2004–January 2005 data contained in the May 24, 2005, public version of Agro Dutch Industries Limited's (''Agro Dutch'') response submitted in the administrative review of the antidumping duty order on certain preserved mushrooms from

India. *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005). The brokerage expense data reported by Essar Steel and Agro Dutch in their public versions are ranged data. The Department first derived an average per–unit amount from each source. Then the Department adjusted each average rate for inflation. Finally, the Department averaged the two per–unit amounts to derive an overall average rate for the POR. *See* Surrogate Value Memorandum at 8 and Attachment XV.

To value truck freight, we used the freight rates published by Indian Freight Exchange, available at *http://www.infreight.com*. The truck freight rates are contemporaneous with the POR; therefore, we made no adjustments for inflation. Where applicable, we valued air freight using the rates published on the UPS website: *http://www.ups.com*. The air freight rates are contemporaneous with the POR; therefore, we made no adjustments for inflation. See Surrogate Value Memorandum at 9 and Attachment XVI.

Zero–Priced Transactions

During the course of this review, both Feili and New–Tec reported a significant number of zero–priced transactions to their U.S. customers. *See* Feili's CQR at C–2; and New–Tec's CQR at Exhibit 5. An analysis of the Section C databases provided by each company reveals that both companies made a significant number of zero–priced transactions with customers that had previously purchased the same merchandise in commercial quantities. *See* Feili Preliminary Analysis Memorandum at Attachment I; and New–Tec Preliminary Analysis Memorandum at Attachment 9.

In the final results of the 2003–2004 and the 2004–2005 administrative reviews of FMTCs, we included New–Tec's zero–priced transactions in the margin calculation stating that the record demonstrated that: (1) New–Tec provided many pieces of the same product, indicating that these ''samples'' did not primarily serve for evaluation or testing of the merchandise; (2) New–Tec provided significant numbers of the same product to its U.S. customer while that customer was purchasing that same product; (3) New–Tec provided ''samples'' to the same customers to whom it was selling the same products in commercial quantities; and (4) New–Tec acknowledged that it gave these products at zero price to its U.S. customers (already purchasing the same items) to sell to their own customers. *Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006), and accompanying Issues and Decision Memorandum, at Comment 4; *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum, at Comment 4. As a result, we concluded that these transactions were not what we consider to be samples because New–Tec was not providing product to entice its U.S. customers to buy the product. *Ibid*.

The Federal Circuit has not required the Department to exclude zero–priced or de minimis sales from its analysis but, rather, has defined a sale as requiring ''both a transfer of ownership to an unrelated party and consideration.'' *See NSK Ltd. v. United States*, 115 F.3d 965, 975 (Fed. Cir. 1997). The CIT in *NSK Ltd. v. United States* stated that it saw ''little reason in supplying and re–supplying and yet re–supplying the same product to the same customer in order to solicit sales if the supplies are made in reasonably short periods of time,'' and that ''it would be even less logical to supply a sample to a client that has made a recent bulk purchase of the very item being sampled by the client.'' *NSK Ltd v. United States*, 217 F. Supp. 2d 1291, 1311–1312 (CIT 2002). Furthermore, the Courts have consistently ruled that the burden rests with a respondent to demonstrate that it received no consideration in return for its provision of purported samples. *See, e.g., Zenith Electronics Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993) (explaining that the burden of evidentiary production belongs ''to the party in possession of the necessary information''). *See also Tianjin Machinery Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992) (''The burden of creating an adequate record lies with respondents and not with {the Department}.'') (citation omitted). Moreover, even where the Department does not ask a respondent for specific information to demonstrate that a transaction is a sample, the respondent has the burden of presenting the information in the first place to demonstrate that its transactions qualify for exclusion. *See NTN Bearing Corp. of America. v. United States*, 997 F.2d 1453, 1458 (Fed. Cir. 1993).

An analysis of Feili's and New–Tec's Section C computer sales listings reveals that both companies provided zero–priced merchandise to the same customers to whom they were selling or had sold the same products in commercial quantities. *See* Feili Preliminary Analysis Memorandum at Attachment I, and New–Tec Preliminary Analysis Memorandum at Attachment 9. Consequently, based on the facts cited above, the guidance of past court decisions, and our previous decisions, for the preliminary results of this review, we have not excluded these transactions from the margin calculation for either Feili or New–Tec.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department will base NV on FOP because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOP in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

The FOPs include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by respondents for materials, energy, labor, by–products, and packing.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources a meaningful amount of an input from a market–economy country and pays for it in market–economy currency, the Department will normally value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Lasko Metal Products v. United States*, 43 F.3d 1442, 1445–1446 (Fed. Cir. 1994) (affirming the Department's use of market–based prices to value certain FOPs). Further, the Department disregards prices it has reason to suspect may be dumped or subsidized. *See, e.g., China National Machinery Import & Export Corp. v. United States*, 293 F. Supp. 2d 1334 (CIT 2003) (aff'd, 104 Fed. Appx. 183 (Fed. Cir. 2004)).

Feili and New–Tec each reported that a significant portion of its purchases of raw material and/or packing inputs was sourced from market–economy countries and paid for in market–economy currencies. *See* Feili's DQR at

D–3 and New–Tec's DQR at 44. Therefore, pursuant to 19 CFR 351.408(c)(1), we used the actual price paid by respondents for inputs purchased from market–economy suppliers during the POR and paid for in a market–economy currency.

With regard to both the Indian import–based surrogate values and the market–economy input values, we disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from India, Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non–industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China*, 68 FR 10685 (March 6, 2003), and accompanying Issues and Decisions Memorandum at Comment 8 (declining to use market–economy input prices from South Korea or India); *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges*, 68 FR 53347 (September 10, 2003), and accompanying Issues and Decisions Memorandum at Comment 2 (declining to use market–economy input prices from India); *Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review*, 69 FR 61790 (October 21, 2004), and accompanying Issues and Decision Memorandum at Comment 5 (declining to use input prices from Indonesia, South Korea and Thailand). This practice is also consistent with the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. 100–576 at 590 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24. Rather, the Department bases its decision on information that is available to it at the time it is making its determination. Therefore, we have not used prices from these countries either in calculating the Indian import–based surrogate values or in calculating market–economy input values. In instances where a market–economy input was obtained solely from suppliers located in these countries, we used Indian import–based surrogate values to value the input. *See* Feili Preliminary Analysis Memorandum and New–Tec Preliminary Analysis Memorandum. Further, we did not use any market–economy purchases of raw materials sourced in countries against which the PRC has an outstanding antidumping duty order. *See* World Trade Organization's Committee on Anti–Dumping Practices Semi–Annual Report Under Article 16.4 of the Agreement, G/ADP/N/CHN, for the period 1 July - 31 December 2005, available at www.wto.org. and included in Attachment XIX of the Surrogate Value Memorandum. *See* New–Tec Preliminary Analysis Memorandum at 6 and Attachment 10. In addition, consistent with the Department's practice, we did not use prices paid by respondents for inputs purchased from market–economy suppliers prior to the POR.[5] *See* Feili Verification Report at 23 and Exhibit 14; Feili Preliminary Analysis Memorandum at 8 and Attachments II and III; New–Tec Verification Report at 25 and Exhibit 7; and New–Tec Preliminary Analysis Memorandum at 6 and Attachments 2 and 11.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by respondents for the POR. To calculate NV, we multiplied the reported per–unit factor quantities by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate (*i.e.*, where the sales terms for the market–economy inputs were not delivered to the factory). This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). For a detailed description of all surrogate values used for respondents, see the Surrogate Value Memorandum at Attachment I.

Except as noted below, we valued raw material inputs using the weighted–average unit import values derived from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India in the World Trade Atlas, available at *http://www.gtis.com/wta.htm* (''WTA''). The WTA data are reported in rupees and are contemporaneous with the POR. *See also* Surrogate Value Memorandum at Attachment V. Where we could not obtain publicly available information contemporaneous with the POR with which to value FOPs, we adjusted the SVs using, where appropriate, the Indian Wholesale Price Index (''WPI'') as published in the *International Financial Statistics* of the International Monetary Fund. *See* Surrogate Value Memorandum at 2 and Attachments II and III. We further adjusted these prices to account for freight costs incurred between the suppler and respondent. We used the freight rates published by Indian Freight Exchange available at *http://www.infreight.com*, to value truck freight. The truck freight rates are contemporaneous with the POR. Therefore, we made no adjustments for inflation. For a complete description of the factor values we used, see the Surrogate Value Memorandum at 8 and Attachment XIV.

Feili and/or New–Tec reported that they made market–economy purchases representing a meaningful portion of the total purchases of cold–rolled steel, hot–rolled steel, powder coating, polypropylene plastic resin, polyethylene resin, fiberboard, polyvinyl chloride sheet, vinyl sheet, polyester fabric, washers, rivets, gasket, screws, cardboard, carton, corrugate paper and fiberboard. See Feili Preliminary Analysis Memorandum at 8 and New–Tec Preliminary Analysis Memorandum at 5. Therefore, we valued these inputs using their respective per–kilogram market–economy purchase prices. Where applicable, we also adjusted these values to account for freight costs incurred between the supplier and respondent. *See* Surrogate Value Memorandum at 3–4, Feili Preliminary Analysis Memorandum, and New–Tec Preliminary Analysis Memorandum.

To value hydrochloric acid used in the production of FMTCs, we used per–kilogram domestic values obtained from *Chemical Weekly*. We adjusted this

[5] *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005), and accompanying Issues and Decision Memorandum at Comment 3. *See also Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002), and accompanying Issues and Decision Memorandum at Comment 33, where the Department stated that it would not use ''market-economy inputs if they are insignificant or purchased outside of the period of investigation.''

value for taxes and to account for freight costs incurred between the supplier and each respondent, respectively. We used per–kilogram import values obtained from the WTA for all other material inputs used in the production of FMTCs.

To value diesel oil, we used per–kilogram values obtained from Bharat Petroleum, published December 1, 2005. See Surrogate Value Memorandum at Attachment VIII. We made adjustments to account for inflation and freight costs incurred between the supplier and respondents. *See* Surrogate Value Memorandum at 6 and Attachments VIII - IX.

To value liquid petroleum gas, we used per–kilogram values obtained from Bharat Petroleum, published on October 3, 2005. We made adjustments to account for inflation and freight costs incurred between the supplier and respondents. *See* Surrogate Value Memorandum at 6 and Attachment X.

To value electricity, we used the 2000 electricity price data from International Energy Agency, Energy Prices and Taxes - Quarterly Statistics (First Quarter 2003), available at *http://www.eia.doe.gov/emeu/international/elecprii.html*, adjusted for inflation. *See* Surrogate Value Memorandum at 5 and Attachment VII.

To value water, we used the Revised Maharashtra Industrial Development Corporation water rates for June 1, 2003, available at *http://www.midcindia.com/water–supply*, adjusted for inflation. *See* Surrogate Value Memorandum at 6 and Attachment XI.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on the Import Administration's home page. *See* Expected Wages of Selected NME Countries (revised November 2005) (available at *http://ia.ita.doc.gov/wages*). The source of these wage rate data on the Import Administration's web site is the *Yearbook of Labour Statistics 2003*, ILO, (Geneva: 2003), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 1998 to 2003. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by each respondent. *See* Surrogate Value Memorandum at 7 and Attachment XII.

For factory overhead, selling, general, and administrative expenses (''SG&A''), and profit values, we used information from Godrej and Boyce Manufacturing Co. Ltd. for the year ending March 31, 2005. From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor and energy (''ML&E'') costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A. *See* Surrogate Value Memorandum at 7 and Attachment XIII for a full discussion of the calculation of these ratios.

For packing materials, we used the per–kilogram values obtained from the WTA and made adjustments to account for freight costs incurred between the PRC supplier and respondent. See Surrogate Value Memorandum at 3–4 and Attachment V.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following weighted–average dumping margins exist:

Manufacturer/Exporter	Margin (Percent)
Feili	0.10*
New–Tec	0.23*

* *de minimis*

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the date on which the case briefs are due. *See* 19 CFR 351.309(d). Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the deadline for submission of the rebuttal briefs. *See* 19 CFR 351.310(d). The Department requests that parties submitting written comments also provide the Department with an additional copy of those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. In this review, if these preliminary results are adopted in our final results of review, we will direct CBP to assess the resulting rate against the entered customs value for the subject merchandise on each importer's/customer's entries during the POR, as appropriate.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the above–listed respondents, which have a separate rate, the cash deposit rate will be the company–specific rate established in the final results of review (except, if the rate is zero or *de minimis*, no cash deposit will be required); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 70.71 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 2, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–13382 Filed 7–10–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Preliminary Results of Antidumping Duty Changed–Circumstances Review: Gray Portland Cement and Clinker From Mexico

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

SUMMARY: In response to a request from an interested party and pursuant to Section II. B.6 of the Agreement between the Office of the United States Trade Representative, the United States Department of Commerce, and Secretaria de Economia on Trade in Mexican Cement (the Agreement) dated March 6, 2006, the Department of Commerce is conducting a changed-circumstances review of the antidumping duty order on gray portland cement and clinker from Mexico. The changed–circumstances review covers exports of subject merchandise to the United States during the period October 1, 2006, through December 31, 2006, from one firm, Holcim Apasco, S.A. de C.V. We have preliminarily determined that sales were made below normal value during the changed–circumstances period of review.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issues, and (2) a brief summary of the argument.

EFFECTIVE DATE: July 11, 2007.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3477 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2007, the Department of Commerce (the Department) initiated a changed–circumstances review of the antidumping duty order on gray portland cement and clinker (cement) from Mexico. See *Gray Portland Cement and Clinker From Mexico: Initiation of an Antidumping Duty Changed–Circumstances Review*, 72 FR 328 (January 4, 2007). According to the Agreement, upon request, the Department shall conduct an expedited changed–circumstances review to establish a new estimated duty deposit rate for any Mexican Cement exporter (and its affiliated parties) that meet the following criteria: (a) Had an estimated duty deposit rate under the order on cement; (b) did not receive the new estimated duty deposit rate of three U.S. dollars ($3.00) per metric ton referenced in Section II.A.4.b of the Agreement; and (c) exported Mexican cement to the United States in the year preceding the effective date or exports Mexican cement to the United States while the Agreement remains in force.

On December 14, 2006, pursuant to section II.B.6 of the Agreement, Holcim Apasco, S.A. de C.V. (Apasco), requested that the Department conduct a changed–circumstances review of certain export sales of the subject merchandise to the United States made by Apasco during the period October through December 2006.

Scope of the Order

The products subject to the order include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) item number 2523.29, and cement clinker is currently classifiable under HTSUS item number 2523.10. Gray portland cement has also been entered under HTSUS item number 2523.90 as ''other hydraulic cements.'' Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended, (the Act), we will verify certain information submitted by Apasco using standard verification procedures, including an examination of relevant sales and financial records and the selection of original documentation containing relevant information. Upon completion of verification, we will place on the record a copy of our verification report in the Central Records Unit (CRU), Room B–099 of the main Department building. Verification is currently scheduled to begin July 23, 2007.

Export Price

Apasco reported export–price (EP) sales. We calculated EP based on the packed, delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

Normal Value

A. Comparisons

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value, we compared the respondent's volume of home–market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home–market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we have based normal value on home–market sales.

During the period October through December 2006, the respondent sold Type II LA cement in the United States. The statute expresses a preference for matching U.S. sales to identical merchandise in the home market. See section 771(16) of the Act. The respondent sold cement produced as Type II, Type II/III/V, and Type III cement in the home market. We have attempted to match the subject merchandise to identical merchandise sold in the home market. In situations where identical product types cannot be matched, we have attempted to match the subject merchandise to sales of similar merchandise in the home market. See sections 773(a)(1)(B) and 771(16) of the Act.

We were able to find home–market sales of identical and similar merchandise to which we could match sales of Type II LA cement sold in the U.S. market.

We have reviewed the information on the record and have determined that Type II cement produced and sold in the home market is the identical match

to Type II LA cement sold in the United States during this review period. If we could not find an identical match to the cement types sold in the United States in the same month in which the U.S. sale was made or during the contemporaneous period, we based normal value on sales of similar merchandise.

Further, in accordance with section 771(16)(B) of the Act, we find that both bulk and bagged cement are produced in the same country and by the same producer as the types sold in the United States, both bulk and bagged cement are like the types sold in the United States in component materials and in the purposes for which used, and both bulk and bagged cement are approximately equal in commercial value to the types sold in the United States. The questionnaire responses submitted by the respondent indicate that, with the exception of packaging, sales of cement in bulk and sales of cement in bags are physically identical and both are used in the production of concrete. Also, because there is no difference in the cost of production between cement sold in bulk or in bagged form, both are approximately equal in commercial value. See Apasco's responses to the Department's original and supplemental questionnaires dated January 4, 2007, April 4, 2007, and May 30, 2007. Therefore, we find that matching the U.S. merchandise which is sold in both bulk and bag to the foreign like product sold in either bulk or bag is appropriate.

B. Arm's–Length Sales

To test whether home–market sales to affiliated customers were made at arm's length, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. See *Modification Concerning Affiliated Party Sales in the Comparison Market*, 67 FR 69186 (November 15, 2002). Consistent with 19 CFR 351.403, we only included in our margin analysis those sales to affiliated parties that were made at arm's length.

C. Cost of Production

The petitioner, the Southern Tier Cement Committee (STCC), alleged on March 26, 2007, that the respondent sold cement in the home market at prices below the cost of production (COP). After examining the allegation, we determined that the petitioner had provided a reasonable basis to believe or suspect that Apasco sold cement in Mexico at prices below the COP. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation to determine whether Apasco made home–market sales of cement during the review period at below–cost prices. See the memorandum from Minoo Hatten to Laurie Parkhill entitled ''Gray Portland Cement and Clinker from Mexico: Request to Initiate Cost Investigation in the Changed–Circumstances Review,'' dated April 18, 2007.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing cement plus amounts for home–market selling, general, and administrative (SG&A) expenses. We used the home–market sales data and COP information provided by Apasco in its questionnaire responses.

After calculating the weighted–average COP and in accordance with section 773(b)(3) of the Act, we tested whether Apasco's home–market sales were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted recovery of all costs within a reasonable period of time. We compared the COP appropriate to the home–market prices less any applicable direct selling expenses, movement charges, discounts and rebates, and indirect selling expenses.

Pursuant to section 773(b)(2)(C) of the Act, if less than 20 percent of a respondent's sales of a product were at prices less than the COP, we do not disregard any below–cost sales of that product because the below–cost sales were not made in substantial quantities within an extended period of time. If 20 percent or more of a respondent's sales of a product during the period were at prices less than the COP, such below–cost sales were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act.

Based on comparisons of home–market prices to the appropriate weighted–average COP for the changed–circumstances review, we determined that below–cost sales were not made in substantial quantities within an extended period of time, and, therefore, we did not disregard any below–cost sales.

D. Adjustments to Normal Value

Where appropriate, we adjusted home–market prices for discounts, rebates, packing, and freight surcharge to the invoice price. In addition, we adjusted the starting price for inland freight, inland insurance, and warehousing expenses. We also made circumstance–of-sale adjustments by deducting comparison–market direct selling expenses from normal value and adding U.S. direct selling expenses to normal value.

Section 773(a)(6)(C)(ii) of the Act directs us to make an adjustment to normal value to account for differences in the physical characteristics of merchandise where similar products are compared. The regulations at 19 CFR 351.411(b) direct us to consider differences in variable costs associated with the physical differences in the merchandise. Where we matched U.S. sales of subject merchandise to similar models in the home market, we adjusted for differences in merchandise.

E. Level of Trade

We determined that all comparison–market sales by Apasco were made at the same level of trade as the EP customer. To determine whether comparison–market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Apasco did not report any significant differences in selling functions between different channels of distribution or customer type in either the comparison or U.S. markets. Therefore, we determined that all comparison–market and EP sales were made at the same level of trade.

Currency Conversion

Pursuant to section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our changed–circumstances review, we preliminarily determine the dumping margin for Apasco for the period October 1, 2006, through December 31, 2006, to be 29.77 percent.

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than one week after the issuance of the Department's verification report in this changed–circumstances review. Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs are due no later than five days after the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should

accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. In accordance with 19 CFR 351.310, we will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If we receive a request for a hearing, we plan to hold the hearing three days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, no later than 21 days after the date of publication of the preliminary results of this changed–circumstances review in the **Federal Register**. Requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 351.221(b)(5) the Department will issue the final results of this changed–circumstances review, including the results of its analysis of issues raised in any case or rebuttal briefs, by October 25, 2007.

Assessment Rates

Upon completion of this review, the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer–specific assessment rate for merchandise subject to this review. Because Apasco reported the entered value for its EP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for importer of record. If these preliminary results are adopted in the final results of review, we will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on the importer's entries during the changed–circumstances review period. We will issue instructions to CBP 41 days after publication of the final results of this changed–circumstances review.

Cash–Deposit Requirements

As provided by section 751(a)(1) of the Act, the cash–deposit rate for all shipments from Apasco of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of changed–circumstances review will be the rate established in the final results of changed–circumstances review. The deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this changed–circumstances review. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: July 2, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–13483 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Final Results and Rescission, In Part, of Antidumping Duty New Shipper Reviews

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

SUMMARY: On January 3, 2007, the U.S. Department of Commerce (the Department) published its preliminary results of the new shipper reviews of the antidumping order on honey from the People's Republic of China (PRC). *See Honey from the People's Republic of China: Intent to Rescind and Preliminary Results of Antidumping Duty New Shipper Reviews*, 72 FR 111 (January 3, 2007) (*Preliminary Results*). These reviews cover three producers/exporters, Inner Mongolia Altin Bee–Keeping Co., Ltd. (IMA), Qinhuangdao Municipal Dafeng Industrial Co., Ltd. (QMD), and Dongtai Peak Honey Industry Co., Ltd. (Dongtai Peak) (collectively, respondents). 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 have made changes to our calculations. The final dumping margins for these reviews are listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: July 11, 2007.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Judy Lao, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8029 or (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2007, the Department published the preliminary results of these reviews in the **Federal Register**. *See Preliminary Results*. We invited parties to comment on the *Preliminary Results*. On January 9, 2007, in response to a request from respondents, we extended the time limit for submitting further information to value the factors of production until February 6, 2007, and comments on these submission until February 16, 2007. The Department simultaneously extended the time limit for parties to submit case and rebuttal briefs to the Department's *Preliminary Results* until February 23, 2007, and March 2, 2007, respectively. On February 5, 2007, the Department denied an additional request by respondents for a further ten-day extension of the time limit for submitting information to value the factors of production due to time constraints and the Department's statutory timing requirements in this case. Also on February 5, 2007, the Department notified parties of its adoption of a new 2004 wage rate and invited comments on the issue in the context of parties' case briefs. On February 6, 2007, we received a surrogate value submission commenting on the Department's *Preliminary Results* from respondents.

We received case briefs from the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) and respondents on February 23, 2007, respectively.[1] On March 2, 2007, we received rebuttal briefs from petitioners and respondent Dongtai Peak,

[1] On February 22, 2007, we received a courtesy copy case brief from respondents which we subsequently rejected as containing new information. On February 23, 2007, respondents re-filed their brief, per the Department's instructions, without the new information.

respectively. None of the parties requested a public hearing. On April 12, 2007, the Department extended the deadline for the final results to July 2, 2007. *See Honey from the People's Republic of China: Notice of Extension of Time Limit for Final Results of Fourth Antidumping Duty Administrative Review and the Eighth New Shipper Review*, 72 FR 18461 (April 12, 2007).

Scope of the Antidumping Duty Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Analysis of Comments Received

All issues raised in the briefs are addressed in the ''Memorandum to the Assistant Secretary: Issues and Decision Memorandum for the Final Results of the Eighth New Shipper Review of Honey from the People's Republic of China,'' dated July 2, 2007 (Issues & Decision Memorandum), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B–099 of the Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://www.trade.gov/ia/*. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Separate Rates

IMA and Dongtai Peak have requested separate, company–specific antidumping duty rates. In our preliminary results, we found that IMA and Dongtai Peak had met the criteria for the application of a separate antidumping duty rate. *See Preliminary Results*, 72 FR at 114. We have not received any information since the *Preliminary Results* which would warrant reconsideration of our separate–rates determinations with respect to IMA and Dongtai Peak. Therefore, for these final results, we will continue to calculate company–specific separate rates for these respondents.

Partial Rescission of New Shipper Review

In our preliminary results, the Department stated its intention to rescind the new shipper review for QMD, as the Department found QMD's subject new shipper sale to be atypical of its normal business practice and, also, that the average–unit value of the company's sales was aberrational, *i.e.*, *non–bona fide*. *See Preliminary Results*, 72 FR at 113; *see also*, ''Memorandum to Richard Weible: Eighth Antidumping New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China: Bona Fide Analysis of Qinhuangdao Municipal Dafeng Industrial, Co., Ltd.,'' dated December 21, 2006. Interested parties filed comments on the intended rescission of the new shipper review of QMD in their case and rebuttal briefs.

As discussed in the Issues & Decision Memorandum at Comment 4, because the Department finds QMD's single POR sale to be *non–bona fide*, QMD does not qualify for new shipper status and its sales are not subject to review. Therefore, the Department is rescinding this review with regard to QMD, because QMD had no reviewable sales during the POR. *See* 19 CFR 351.213(d)(3); *see also*, *Tianjin Tiancheng Pharmaceutical Co., Ltd.* v. *United States*, 366 F. Supp. 2d 1246, 1249 (CIT 2005) (CIT affirmed that Commerce may exclude sales from the export price calculation where it finds the sales are not bona fide). In the case of new shipper reviews, exclusion of the single new shipper sale as being *non–bona fide* must necessarily end the review. *Id.*

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we have made changes to the margin calculations for IMA and Dongtai Peak. For the final results, we have updated the surrogate values for paint, cartons, brokerage and handling, and financial ratios. We also used the revised NME wage rate, as posted on the Department's website on February 2, 2007. For a discussion of these changes, *see* the Issues and Decision Memorandum at Comment 2. For a discussion of the changes to the margin calculations for IMA and Dongtai Peak, please *see* ''Memorandum to the File: Eighth Antidumping Duty New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China for Inner Mongolia Altin Bee–Keeping Co., Ltd. (IMA),'' dated July 2, 2007 (IMA Analysis Memo); *see also*, ''Memorandum to the File: Eighth Antidumping Duty New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China for Dongtai Peak Honey Industry Co., Ltd. (Dongtai Peak),'' dated July 2, 2007 (Dongtai Peak Analysis Memo). A public version of these memoranda are on file in the CRU.

Final Results of Review

We determine that the following antidumping duty margins exists:

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Inner Mongolia Altin Bee–Keeping Co., Ltd.	130.11
Dongtai Peak Honey Industry Co., Ltd.	28.75

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. For assessment purposes, where possible, we calculated importer–specific assessment rates for honey from the PRC on a per–unit basis. Specifically, we divided the total dumping margins (calculated as the difference between normal value and export price or constructed export price) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per–unit assessment amount. We will direct CBP to levy importer–specific assessment rates based on the resulting per–unit (*i.e.*, per–kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

Cash Deposits

The following cash–deposit requirement will be effective upon publication of these final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act). For subject merchandise produced and

exported by IMA and Dongtai Peak, we will establish a per–kilogram cash deposit rate that is equivalent to the company–specific cash deposit established in this review (noted above). These deposit requirements shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

These new shipper reviews and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: July 2, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

I. General Issues

Comment 1: Raw Honey Surrogate Value Methodology

II. Company–Specific Issues

A. Inner Mongolia Altin Bee–Keeping Co., Ltd.

Comment 2: Rejection of Beekeeping Factors of Production

B. Qinhuangdao Municipal Dafeng Industrial Co., Ltd.

Comment 3: Whether the NSR for QMD Should Be Rescinded

C. Dongtai Peak Honey Industry Co., Ltd.

Comment 4: Whether the NSR for Dongtai Peak Should Be Rescinded

Comment 5: Surrogate Value for Cartons

[FR Doc. E7–13385 Filed 7–10–07; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review

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

SUMMARY: On January 3, 2007, the U.S. Department of Commerce (the Department) published its preliminary results of the administrative review of the antidumping order on honey from the People's Republic of China (PRC). *See Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 102 (January 3, 2007) (*Preliminary Results*). This review covers five producers/exporters, Jiangsu Kanghong Natural Healthfoods Co., Ltd. (Jiangsu), Wuhan Shino–Food Trade Co., Ltd. (Shino–Food), Cheng Du Wai Yuan Bee Products Co., Ltd. (Chengdu), Kunshan Xin'an Trade Co., Ltd. (Kunshan Xin'an), and Anhui Honghui Foodstuff (Group) Co., Ltd. (Anhui Honghui) (collectively, respondents). 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 have made changes to our calculations. The final dumping margins for this review are listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: July 11, 2007.

FOR FURTHER INFORMATION CONTACT: Judy Lao or Patrick Edwards, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–7924 or (202) 482–8029, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2007, the Department published the preliminary results of this review in the **Federal Register**. *See Preliminary Results*. On January 9, 2007, in response to a request from Anhui Honghui, we extended the time limit for submitting further information to value the factors of production until February 6, 2007, and comments on these submission until February 16, 2007. The Department simultaneously extended the time limit for parties to submit case and rebuttal briefs to the Department's *Preliminary Results* until February 23, 2007, and March 2, 2007, respectively. On February 5, 2007, the Department notified parties of its adoption of a new 2004 PRC wage rate and invited comments on the issue in the context of parties' case briefs. We received Anhui Honghui's second submission regarding surrogate value information on February 6, 2007.

On February 6, 2007, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) filed a request for the Department to expedite the final results for Chengdu, one of the respondents in this administrative review, claiming that Chengdu is not actively participating in this review and is misusing its low cash deposit rate to enter significant quantities of PRC honey into the United States. On February 28, 2007, the Department issued a Decision Memorandum expediting the final results of review for Chengdu and extending the deadline for case briefs for all parties in this review until March 14, 2007, and for rebuttal briefs until March 21, 2007. *See* Memorandum to David M. Spooner, Assistant Secretary for Import Administration, from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, Expedited Final Results of Administrative Review for Chengdu Waiyuan Bee Products Co., Ltd. (February 28, 2007). No comments with respect to the expedited final results for Chengdu were filed. Accordingly, on April 2, 2007, the Department published its expedited final results of review with respect to Chengdu. *See Honey from the People's Republic of China: Expedited Partial Final Results of Antidumping Duty Administrative Review*, 72 FR 15655 (April 2, 2007) (*Expedited Review for Chengdu*).

We received a case brief from Anhui Honghui on March 14, 2007, and a rebuttal brief from petitioners on March 22, 2007. On April 12, 2007, the Department extended the deadline for the final results to July 2, 2007. *See Honey from the People's Republic of China: Extension of Time Limit for Final Results of Fourth Antidumping Duty Administrative Review and the Eighth New Shipper Review*, 72 FR 18461 (April 12, 2007).

Scope of the Antidumping Duty Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise

includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Analysis of Comments Received

All issues raised in the briefs are addressed in the ''Memorandum to the Assistant Secretary: Issues and Decision Memorandum for the Final Results of the Fourth Administrative Review of Honey from the People's Republic of China,'' dated July 2, 2007 (Issues & Decision Memorandum), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B–099 of the Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://www.trade.gov/ia/* . The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we have made changes to the margin calculation for Anhui Honghui. For the final results, we have updated the surrogate values for paint, and brokerage and handling. We also used the revised non–market economy (NME) wage rate, as posted on the Department's website on February 2, 2007. Additionally, we have updated and corrected a clerical error with respect to our application of the surrogate financial ratios. For a discussion of these changes, see the Issues and Decision Memorandum at Comment 6. For a discussion of the changes to the margin calculation for Anhui Honghui, *see* Memorandum to the File: Fourth Antidumping Duty Administrative Review of the Antidumping Duty Order on Honey from the People's Republic of China for Anhui Honghui Foodstuff (Group) Co., Ltd. (Anhui Honghui), dated July 2, 2007 (Anhui Honghui Analysis Memo). A public version of these memoranda are on file in the CRU.

The PRC–wide rate has also changed for the final results, from 212.39 percent to 221.02 percent. This rate represents the calculated rate for Anhui Honghui in these final results and is the highest rate determined in the instant or any previous segment of this proceeding. We will apply the new PRC–wide rate of 221.02 percent to the PRC–wide entity (including Jiangsu, Shino–Food, and Kunshan Xin'an) for the final results. *See* ''The PRC–Wide Rate and Application of Facts Otherwise Available'' section below. Corroboration of the new PRC–wide rate is not required because this rate is based on, and calculated from, information submitted by Anhui Honghui in the course of this administrative review, *i.e.*, it is not secondary information. *See* 19 CFR 351.308(c) and (d) and section 776(c) of the Tariff Act of 1930, as amended (the Act).

Separate Rates

Anhui Honghui requested a separate, company–specific antidumping duty rate. In our preliminary results, we found that Anhui Honghui had met the criteria for the application of a separate antidumping duty rate. *See Preliminary Results*. We have not received any information since the *Preliminary Results* which would warrant reconsideration of our separate–rates determination with respect to Anhui Honghui. Therefore, for these final results, we will continue to calculate a company–specific separate rate for this respondent.

Use of Adverse Facts Available

For the reasons outlined below, we have applied total adverse facts available to Jiangsu, Shino–Food, and Kunshan Xin'an. Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(d) of the Act provides that when the Department finds that a respondent has not complied with a request for information, the Department shall inform the respondent of the deficiency and allow them an opportunity to remedy or explain the deficiency. If the Department finds that the subsequent response of the respondent is deficient or is not filed within the applicable time limits, the Department may, subject to subsection (e) disregard all or part of the original and subsequent responses. Moreover, section 782(e) states that the Department shall not decline to consider information by a respondent if: (1) the information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing information and meeting the requirements established by the Department with respect to the information; and (5) the information can be used without undue difficulties.

In the *Preliminary Results*, the Department determined that Jiangsu, Shino–Food, and Kunshan Xin'an did not cooperate to the best of their ability because these companies failed to respond to the Department's requests for information and that necessary information either was not provided, or the information provided could not be verified and is not sufficiently complete to enable the Department to rely on such information in reaching a determination in the instant review. *See* 72 FR at 105–108. Because Jiangsu, Shino–Food, and Kunshan Xin'an did not cooperate to the best of their ability in this proceeding, the Department found it necessary, pursuant to sections 776(a)(2)(A)-(D) and 776(b) of the Act, to use adverse facts available as the basis for our preliminary results of reviews for these companies. *See Id*. Because these companies failed to cooperate to the best of their ability in this review, we determined that Jiangsu, Shino–Food, and Kunshan Xin'an were not entitled to separate rates. For these reasons, we considered Jiangsu, Shino–Food, and Kunshan Xin'an as part of the PRC–wide entity.

At the *Preliminary Results*, the Department found that the PRC–wide entity (including Jiangsu, Shino–Food, and Kunshan Xin'an) did not respond to our requests for information and, therefore, applied adverse facts available to the PRC–wide entity pursuant to sections 776(a)(2)(A)-(D) and 776(b) of the Act. *Id*. For the final results, since no new information has been placed on the record regarding the PRC–wide entity, we continue to apply adverse facts available (AFA).

Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) the final determination, (3) a previous administrative review, or (4) other information placed on the record. Because information from prior proceedings constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total AFA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin (*see Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review* (60 FR 49567)), where the Department disregarded the highest margin in that case as adverse best information available (BIA) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). For this review, we have used the highest rate on the record of any segment of the proceeding, *i.e.*, the final calculated rate for Anhui Honghui in this proceeding. *See, e.g.*, *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003). As there is no information on the record of this review that demonstrates that this rate is not appropriately used as AFA, we determine that this rate has relevance and is reliable.

As this rate is based on the experience of a producer/exporter of the subject merchandise, we find that it has probative value. As a result, the Department determines that the final margin calculated in the instant review for Anhui Honghui, *i.e.*, 221.02 percent, is corroborated for the purposes of this administrative review and may reasonably be applied to the PRC–wide entity. Partial Rescission of Administrative Reviews

In the *Preliminary Results*, the Department issued a notice of intent to rescind this administrative review with respect to nineteen producers/exporters of honey from the PRC, which were party to this proceeding following the initiation of this administrative review.[1] The Department issued its preliminary intent to rescind as four of these companies were found to have made no entries of subject merchandise during the POR, and the requests for review were timely withdrawn for the remaining fifteen. *See Preliminary Results*, 72 FR at 104. The Department received no comments on this issue and has no evidence to challenge this finding. Therefore, the Department is rescinding this administrative review with respect to these nineteen producers/exporters of honey.

Final Results of Review

We determine that the following antidumping duty margins exist for the period December 1, 2004, through November 30, 2005:

Manufacturer/Exporter	Weighted–Average Margin (Percent)
Anhui Honghui Foodstuff (Group) Co., Ltd.	221.02
PRC–wide Rate (including Jiangsu, Shino–Food, and Kunshan Xin'an)	221.02

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. For assessment purposes, where possible, we calculated importer–specific assessment rates for honey from the PRC on a per–unit basis. Specifically, we divided the total dumping margins (calculated as the difference between normal value and export price or constructed export price) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per–unit assessment amount. We will direct CBP to levy importer–specific assessment rates based on the resulting per–unit (*i.e.*, per–kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

Cash Deposits

The following cash–deposit requirements will be effective upon publication of these final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(2)(C) of the Act: (1) for subject merchandise exported by Anhui Honghui, we will establish a per–kilogram cash deposit rate which will be equivalent to the company–specific cash deposit established in this review; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding (except for Jiangsu, Shino–Food and Kunshan Xin'an, whose cash–deposit rate has changed in this review to the PRC–wide entity rate, noted below); (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC–wide rate of 221.02 percent; and (4) for all non–PRC exporters of subject merchandise, the cash–deposit

[1] Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import & Export Corp. a.k.a. Inner Mongolia Autonomous Region Native Produce and Animal By-Products; Shanghai Xiuwei International Trading Co., Ltd.; Kunshan Foreign Trading Company; Zhejiang Native Produce and Animal By-Products Import & Export Corp. a.k.a. Zhejiang Native Produce and Animal By-Products Import & Export Group Corp.; High Hope International Group Jiangsu Foodstuffs Import & Export Corp.; Shanghai Eswell Enterprise Co., Ltd.; Anhui Native Produce Import & Export Corp.; Henan Native Produce Import & Export Corp.; Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd.; Wuhan Bee Healthy Company, Ltd.; Jinfu Trading Co., Ltd.; Shanghai Shinomiel International Trade Corporation; Eurasia Bee's Products Co., Ltd.; Foodworld International Club, Ltd.; Inner Mongolia Youth Trade Development Co., Ltd.; Apiarist Co.; Shanghai Taiside Trading Co., Ltd.; Wuhu Qinshi Tangye; and Zhejiang Willing Foreign Trading Co., Ltd.

rate will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and in the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: July 2, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

Comment 1: Surrogate Value for Raw Honey
Comment 2: The Use of MHPC Financial Statements
Comment 3: Calculation of Surrogate Financial Ratios
Comment 4: Calculation of NME Wage Rate
Comment 5: Surrogate Value for Brokerage and Handling
Comment 6: Clerical Errors

[FR Doc. E7–13480 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–821]

Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part

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

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene retail carrier bags from Thailand. The review covers 17 exporters/producers. The period of review is August 1, 2005, through July 31, 2006.

We have preliminarily determined that sales have been made at prices below normal value by various companies subject to this review. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument (1) A statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 11, 2007.

FOR FURTHER INFORMATION CONTACT: Kristin Case or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3174 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2004, the Department published in the **Federal Register** the antidumping duty order on polyethylene retail carrier bags from Thailand. See *Antidumping Duty Order: Polyethylene Retail Carrier Bags from Thailand*, 69 FR 48204 (August 9, 2004). In accordance with 19 CFR 351.213(b), we received requests for an administrative review for 17 companies. In accordance with 19 CFR 351.213(g) and 19 CFR 351.221(b), we published a notice of initiation of an administrative review of these companies. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465, 57466 (September 29, 2006) (*Initiation Notice*).[1]

Due to the large number of firms requested for this administrative review and the resulting administrative burden to review each company for which a request has been made, the Department is exercising its authority to limit the number of respondents selected for review. Where it is not practicable to examine all known exporters/producers of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act), permits the Department to limit its examination to either a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection or exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can be examined reasonably. Accordingly, on October 10, 2006, we requested information concerning the quantity and value of sales to the United States from the 17 exporters/producers listed in the *Initiation Notice*. We received responses from all of the exporters/producers. We also examined import data from CBP concerning unliquidated entries of merchandise subject to the antidumping duty order. Based on our analysis of the responses and import data obtained from CBP, we determined that Advance Polybag Inc., Alpine Plastics Inc., API Enterprises Inc., and Universal Polybag Co., Ltd. (collectively UPC/API), CP Packaging Industry Co., Ltd. (CP Packaging), King Pak Ind. Co., Ltd. (King Pak), and Thai Plastic Bags Industries Co., Ltd., APEC Film Ltd., and Winner's Pack Co., Ltd. (collectively TPBG), were the four largest exporters/producers during the period of review (POR). Specifically, we determined that these exporters/producers accounted for 90.8 percent of the total reported quantity of imports of the subject merchandise from the requested companies to the United States during the POR and 83.4 percent of the total quantity from the requested companies reported in the CBP data. Accordingly, we chose to examine these four companies. See Memorandum to Laurie Parkhill entitled ''Polyethylene Retail Carrier Bags from Thailand - Respondent Selection'' dated November 9, 2006. For the companies under review which we did not select as mandatory respondents, we have calculated a weighted average of the weighted–average margins we have established for the four mandatory respondents excluding *de minimis* rates and rates based on adverse facts available (AFA).

Since initiation of the review, we extended the due date for completion of these preliminary results from May 2, 2007, to July 2, 2007. See *Notice of*

[1] We stated that the review covers the following companies: Advance Polybag Inc., Alpine Plastics Inc., APEC Film Ltd., API Enterprises Inc., Apple Film Co., Ltd., CP Packaging Industry Co., Ltd., King Pak Ind. Co. Ltd., Multibax Public Co., Ltd., Naraipak Co., Ltd., Polyplast (Thailand) Co., Ltd., Sahachit Watana Plastic Ind. Co., Ltd., Thai Plastic Bags Industries Co., Ltd., Thantawan Industry Public Co., Ltd., U. Yong Ltd., Part., U Yong Industry Co., Ltd., Universal Polybag Co., Ltd., and Winner's Pack Co., Ltd. *Id.*

Extension of Deadline for the Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Retail Carrier Bags from Thailand, 72 FR 16766 (April 5, 2007). We have conducted this review in accordance with section 751(a) of the Act.

Scope of the Order

The merchandise subject to the antidumping duty order is polyethylene retail carrier bags (PRCBs) which may be referred to as t–shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non–sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.*, grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end–uses other than packaging and carrying merchandise from retail establishments, *e.g.*, garbage bags, lawn bags, trash–can liners.

As a result of recent changes to the *Harmonized Tariff Schedule of the United States* (HTSUS), imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the HTSUS. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Intent to Rescind Review in Part

In an October 24, 2006, submission, Multibax Public Co., Ltd. (Multibax), indicated that it had no shipments of subject merchandise to the United States during the POR. Our review of information from CBP supports Multibax's claim that there were no entries of its merchandise subject to the order into the United States during the POR. See Memorandum to the File, ''U.S. Customs and Border Protection Data,'' dated November 8, 2006. Because we preliminarily find that there were no imports from Multibax during the POR, we intend to rescind the administrative review with respect to this company. If we continue to find at the time of our final results of administrative review that there were no imports of polyethylene retail carrier bags from Thailand from Multibax, we will rescind our review of Multibax.

Duty Absorption

On October 30, 2006, the petitioners [2] requested that the Department determine whether antidumping duties had been absorbed during the POR by the respondents. Section 751(a)(4) of the Act provides for the Department to determine, if requested, during an administrative review initiated two or four years after the publication of the order whether antidumping duties have been absorbed by a foreign producer or exporter if the subject merchandise is sold in the United States through an affiliated importer. Because UPC/API is the sole respondent which sold to unaffiliated customers in the United States through itself as the importer of record and because this review was initiated two years after the publication of the order, we have made a duty–absorption determination concerning UPC/API in this segment of the proceeding in accordance with section 751(a)(4) of the Act.

In determining whether the antidumping duties have been absorbed by the respondent during the POR, we presume the duties will be absorbed for those sales that have been made at less than normal value. This presumption can be rebutted with evidence (*e.g.*, an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. *See, e.g.*, *Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind*, 70 FR 39735, 39737 (July 11, 2005). On May 22, 2007, the Department requested evidence from UPC/API to demonstrate that its U.S. purchasers will pay any antidumping duties ultimately assessed on entries during the POR. UPC/API did not provide any such evidence. Because UPC/API did not rebut the duty–absorption presumption with evidence that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise, we preliminarily find that antidumping duties have been absorbed by UPC/API on all U.S. sales made through its importer of record.

Verification

As provided in section 782(i) of the Act, we have verified information provided by UPC/API using standard verification procedures, including on–site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report dated June 12, 2007, which is on file in the Central Records Unit, room B–099.

Use of Adverse Facts Available

Section 776(a) of the Act provides that, if necessary information is not available on the record or if an interested party: (1) withholds information that has been requested by the Department; (2) fails to provide such information by the deadlines established, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes the proceeding; or (4) provides such information, but the information cannot be verified, the Department shall use, subject to section 782(d) of the Act, the facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if that information is necessary to the determination but does not meet all of the requirements established by the Department, provided that all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall provide that person, to the extent practicable, with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the administrative review.

[2] The petitioners are the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. The purpose of the adverse call, as explained in the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), is ''to ensure that the party does not obtain a more favorable result by failing to cooperate {to the best of its ability} than if it had cooperated fully.'' See SAA at 870. Further, as explained in the SAA, in employing adverse inferences the Department will consider ''the extent to which a party may benefit from its own lack of cooperation.'' *Id.*

On November 9, 2006, we sent a questionnaire to King Pak, one of the companies for which the petitioners requested an administrative review, seeking information related to King Pak's corporate structure and its production and sales of PRCBs. King Pak did not respond to the questionnaire. Because King Pak did not respond, on December 21, 2006, we sent a letter to King Pak requesting that it respond to our November 9, 2006, questionnaire, thus providing King Pak a second opportunity to respond to the questionnaire. The information requested in the questionnaire is necessary for us to complete the administrative review. King Pak has not responded to our November 9, 2006, questionnaire or to our December 21, 2006, letter. Because King Pak has failed to provide the information requested and thus has significantly impeded this proceeding, we must use facts available. See section 776(a) of the Act. Furthermore, because King Pak could have provided correct and verifiable data about its corporate structure, production, and sales but did not do so, we determine that King Pak has failed to cooperate by not acting to the best of its ability. Therefore, we conclude that the use of an adverse inference is warranted. See section 776(b) of the Act and Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003).

As total AFA, we have preliminarily assigned King Pak the highest rate found in the less–than-fair–value investigation, which was 122.88 percent. See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from Thailand*, 69 FR 34122, 34125 (June 18, 2004) (Final LTFV). We applied this rate to Zippac Co., Ltd. (Zippac) during the less–than-fair–value investigation. *Id.* 69 FR at 34123. We also applied this rate to King Pak, which we collapsed with Zippac, in the preceding administrative review. See *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982, 1982–83 (January 17, 2007), *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405, 53406 (September 11, 2006) (collapsing King Pak, Dpac Industrial Co., Ltd., Zippac, and King Bag Co.). The rate has not yet induced King Pak's compliance, cooperation, and participation in the administrative–review process.

When a respondent is not cooperative, like King Pak here, the Department has the discretion to presume that the highest prior margin reflects the current margins. If this were not the case, the party would have produced current information showing the margin to be less. See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990)). Further, by using the highest prior antidumping duty rate we offer the assurance that the exporter will not benefit from refusing to provide information and we apply an antidumping duty rate that bears some relationship to past practices by this company as it is part of the industry in question. See *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (citing *D&L Supply Co. v. United States*, 113 F.3d 1220, 1223 (Fed. Cir. 1997)).

Section 776(c) of the Act requires that, to the extent practicable, the Department corroborate secondary information from independent sources that are reasonably at its disposal. Secondary information is defined as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' See SAA at 870. As clarified in the SAA, ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. See SAA at 870. To corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information. See 19 CFR 351.308(d) and *F.Lii de Cecco di Filippo Fara S. Martino, S.p.A. v. United States*, 216 F.3d 1027, 1030 (2000). As emphasized in the SAA, however, the Department need not prove that the selected facts available are the best alternative information. See SAA at 869. Further, independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See 19 CFR 351.308(d) and SAA at 870.

With respect to the reliability aspect of corroboration, the Department found the rate of 122.88 percent to be reliable in the investigation. See *Final LTFV*, 69 FR at 34123–24. There, the Department pointed out that the rate was calculated from source documents included with the petition, namely, a price quotation for various sizes of PRCBs commonly produced in Thailand, import statistics, and affidavits from company officials, all from a different Thai producer of subject merchandise. Because the information is supported by source documents, we preliminarily determine that the information is still reliable. See Memorandum to the File entitled ''Polyethylene Retail Carrier Bags from Thailand: Inclusion of Memorandum, dated August 31, 2006, to the record of this administrative review'' dated July 2, 2007.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. In the investigation, the Department determined that, because the price quote reflected commercial practices of the particular industry during the period of investigation, the information was relevant to mandatory respondents which refused to participate in the investigation. See *Final LTFV*, 69 FR at 34123–24. No party, including Zippac, contested the application of that rate in the investigation. *Id.* Furthermore, the rate of 122.88 percent is King Pak's current rate and has been applied to Zippac since the less–than-fair–value investigation. Therefore, we find this rate to continue to have relevance.

Export Price and Constructed Export Price

For the price to the United States, we used export price (EP) or constructed export price (CEP) as defined in sections 772(a) and (b) of the Act, as appropriate. We calculated EP and CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. See section 772(c) of the Act. We made deductions, as appropriate, for discounts and rebates. See section 772(d) of the Act. We also made deductions for any movement expenses

in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the SAA, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes commissions, direct selling expenses, and U.S. repacking expenses. In accordance with section 772(d)(1) of the Act, we also deducted those indirect selling expenses associated with economic activities occurring in the United States and the profit allocated to expenses deducted under section 772(d)(1) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on the total revenues realized on sales in both the U.S. and comparison markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity based on the ratio of total U.S. expenses to total expenses for both the U.S. and comparison markets.

Comparison–Market Sales

Based on a comparison of the aggregate quantity of comparison–market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, with the exception of UPC/API, we determined that the quantity of foreign like product sold by all respondents in Thailand was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. With the exception of UPC/API, each company's quantity of sales in Thailand was greater than five percent of its sales to the U.S. market. See section 773(a)(1)(c) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, with the exception of UPC/API, we based normal value on the prices at which the foreign like product was first sold for consumption in Thailand in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the EP or CEP sales.

Although UPC/API did not have a viable home market within the meaning of section 773(a)(1)(B)(ii)(II) of the Act, Canada was a viable third–country market for UPC/API under section 773(a)(1)(C) of the Act. Therefore, we based normal value for UPC/API's U.S. sales on the prices at which the foreign like product was first sold for consumption in Canada in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the CEP sales. See section 773(a)(1)(C) of the Act.

Cost of Production

In accordance with section 773(b) of the Act, we disregarded below–cost sales in the less–than-fair–value investigation of PRCBs from Thailand sold by TPBG. See *Final LFTV*, 69 FR at 34124. Therefore, we have reasonable grounds to believe or suspect that TPBG's sales of the foreign like product under consideration for the determination of normal value in this review may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, in this review we have conducted a COP investigation of TPBG's sales in the comparison market.

The petitioners in this proceeding filed allegations that UPC/API and CP Packaging made sales below COP in their respective comparison markets. Based on the information in the allegations, we found that we had reasonable grounds to believe or suspect that sales of the foreign like product were made by UPC/API and CP Packaging at prices that are less than the COP of the product. See Memorandum to Laurie Parkhill entitled ''Polyethylene Retail Carrier Bags from Thailand - Request to Initiate Cost Investigation for Universal Polybag Co., Ltd., Advance Polybag Inc., API Enterprises Inc., and Alpine Plastics, Inc.,'' dated January 24, 2007; Memorandum to Laurie Parkhill entitled ''Polyethylene Retail Carrier Bags from Thailand - Request to Initiate Cost Investigation for CP Packaging Industry Co., Ltd.,'' dated January 26, 2007. Therefore, pursuant to section 773(b)(1) of the Act, we conducted COP investigations of sales by these firms in their respective comparison markets.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general, and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the comparison–market sales and COP information provided by each respondent in its questionnaire responses.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether comparison–market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. See section 773(b)(2) of the Act. We compared model–specific COPs to the reported comparison–market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because the below–cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below–cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted–average COPs for the POR, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. See the Department's analysis memoranda for TPBG, UPC/API, and CP Packaging dated July 2, 2007. Based on this test, we disregarded below–cost sales with respect to TPBG, UPC/API, and CP Packaging.

Model–Match Methodology

We compared U.S. sales with sales of the foreign like product in the comparison market. Specifically, in making our comparisons, we used the following methodology. If an identical comparison–market model was reported, we made comparisons to weighted–average comparison–market prices that were based on all sales which passed the COP test of the identical product during the relevant or contemporary month. We calculated the weighted–average comparison–market prices on a level of trade–specific basis. If there were no contemporaneous sales of an identical model, we identified the most similar comparison–market model. To determine the most similar model, we matched the foreign like product based on the physical characteristics reported by the respondents in the following order of importance: (1) quality; (2) bag type; (3) length; (4) width; (5) gusset; (6) thickness; (7) percentage of high–density resin; (8) percentage of low–density resin; (9) percentage of linear low–density resin; (10) percentage of color concentrate; (11) percentage of ink coverage; (12) number of ink colors; and (13) number of sides printed.

Normal Value

Comparison–market prices were based on the packed, ex–factory, or delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411 and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance–of-sale adjustments by deducting comparison–market direct selling expenses from and adding U.S. direct selling expenses to normal value. For comparisons to CEP, we made circumstance–of-sale adjustments by deducting comparison–market direct selling expenses from normal value. We also made adjustments, when applicable, for comparison–market indirect selling expenses to offset U.S. commissions in EP and CEP calculations and for U.S. indirect selling expenses to offset comparison–market commissions.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value, to the extent practicable, on sales at the same level of trade as the EP or CEP. If normal value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7)(A) of the Act. See the *Level of Trade* section below.

The Department may calculate normal value based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's–length prices. See 19 CFR 351.403(c). Where affiliated–party sales were reported, we excluded from our analysis sales to affiliated customers for consumption in the comparison market that we determined not to be at arm's–length prices. To test whether these sales were made at arm's–length prices, the Department compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's–length prices. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (explaining the Department's practice). We included in our calculations of normal value those sales to affiliated parties that were made at arm's–length prices.

Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value when there were no usable sales of the foreign like product in the comparison market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, U.S. packing expenses, and profit in the calculation of constructed value. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act, 19 CFR 351.410, and 19 CFR 351.412 for circumstance–of-sale differences and level–of-trade differences. For comparisons to EP, we made circumstance–of-sale adjustments by deducting comparison–market direct selling expenses from and adding U.S. direct selling expenses to constructed value. For comparisons to CEP, we made circumstance–of-sale adjustments by deducting comparison–market direct selling expenses from constructed value. We also made adjustments, when applicable, for comparison–market indirect selling expenses to offset U.S. commissions in EP and CEP comparisons.

When possible, we calculated constructed value at the same level of trade as the EP or CEP. If constructed value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and (8) of the Act.

Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales (either EP or CEP). When there were no sales at the same level of trade, we compared U.S. sales to comparison–market sales at a different level of trade. The normal–value level of trade is that of the starting–price sales in the comparison market. When normal value is based on constructed value, the level of trade is that of the sales from which we derived SG&A and profit.

To determine whether comparison–market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

No company reported any significant differences in selling functions between different channels of distribution or customer type in either the comparison or U.S. markets. Therefore, for each respondent, we determined that all comparison–market sales were made at one level of trade. Moreover, for each respondent that had EP sales, we determined that all comparison–market sales were made at the same level of trade as the EP customer.

UPC/API was the only respondent with CEP sales. We found that the comparison–market level of trade was equivalent to the CEP level of trade.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted–average dumping margins on PRCBs from Thailand exist for the period August 1, 2005, through July 31, 2006:

Producer/Exporter	Percent Margin
TPBG	0.87
UPC/API	1.52
CP Packaging	0.74
King Pak	122.88
Review–Specific Average Rate Applicable to the Following Companies:[3].	

[3]The petitioners are the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC, and Superbag Corporation.

Producer/Exporter	Percent Margin
Apple Film Co., Ltd.	1.13
Naraipak Co., Ltd.	1.13
Polyplast (Thailand) Co., Ltd.	1.13
Sahachit Watana Plastic Ind. Co., Ltd.	1.13
Thantawan Industry Public Co., Ltd.	1.13
U. Yong Ltd., Part.	1.13
U. Yong Industry Co., Ltd.	1.13

Comments

We will disclose the calculations used in our analysis to parties to this review

within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. See 19 CFR 351.310. Interested parties who wish to request a hearing or to participate in a hearing if a hearing is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain the following: (1) the party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. See 19 CFR 351.310(c). Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice of preliminary results of review. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. See 19 CFR 351.309(d)(1) and 19 CFR 351.310(c). If requested, any hearing will be held two days after the scheduled date for submission of rebuttal briefs. See 19 CFR 351.310(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages, and a table of statutes, regulations, and cases cited. See 19 CFR 351.309(c)(2). The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice. See section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for merchandise subject to this review.

For the responsive companies which were not selected for individual review, we have calculated an assessment rate based on the weighted average of the weighted–average margins we calculated for the companies selected for individual review, excluding any which are *de minimis* or determined entirely on AFA.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Assessment of Antidumping Duties*. We will issue liquidation instructions to CBP 15 days after publication of the final results of review.

Export–Price Sales

With respect to EP sales, for these preliminary results, we divided the total dumping margins (calculated as the difference between normal value and EP) for each exporter's importer or customer by the total number of units the exporter sold to that importer or customer. We will direct CBP to assess the resulting per–unit dollar amount against each unit of merchandise in each of that importer's/customer's entries during the review period.

Constructed Export–Price Sales

For CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries during the review period. See 19 CFR 351.212(b).

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of polyethylene retail carrier bags from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash–deposit rates for the reviewed companies will be the rates established in the final results of this review except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash–deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash–deposit rate will be 2.80 percent, the ''all others'' rate for this proceeding. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importer

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 2, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–13381 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–826]

Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil; Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from V&M do Brasil, S.A. (VMB), the respondent, and United States Steel Corporation (U.S. Steel), the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain small diameter seamless carbon and alloy steel standard, line and pressure pipe (seamless pipe) from Brazil. This

administrative review covers imports of subject merchandise from VMB. The period of review is August 1, 2005, through July 16, 2006.

We preliminarily determine that sales of seamless pipe by VMB have not been made at less than normal value (NV). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate appropriate entries without regard to antidumping duties. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit: 1) a statement of the issues, 2) a brief summary of the argument, and 3) a table of authorities.

EFFECTIVE DATE: July 11, 2007.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or Stephen Bailey, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3362 or (202) 482–0193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1995, the Department published the antidumping duty order on seamless pipe from Brazil. *See Notice of Antidumping Duty Order and Amended Final Determination: Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil*, 60 FR 39707 (August 3, 1995). On August 1, 2006, the Department published the opportunity to request administrative review of, inter alia, seamless pipe from Brazil for the period August 1, 2005, through July 31, 2006. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 43441 (August 1, 2006).

In accordance with section 351.213(b)(1) of the Department's regulations, on August 31, 2006, the respondent VMB and the petitioner U.S. Steel requested that we conduct an administrative review of VMB's sales of seamless pipe. On September 29, 2006, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period August 1, 2005, through July 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006).

On October 10, 2006, the Department issued its antidumping duty questionnaire to VMB. VMB submitted its response to section A of the questionnaire (section A response) on November 6, 2006, its responses to sections B and C (section B response and section C response) on November 28, 2006, and its response to section D of the questionnaire (section D response) on December 5, 2007. The Department issued a supplemental questionnaire for all four responses on January 25, 2007, and received VMB's response on February 20, 2007 (first supplemental questionnaire response).[1] On April 18, 2007, the Department issued a second supplemental questionnaire to VMB pertaining to VMB's February 20, 2004, supplemental response for sections A through D, and received VMB's response on May 10, 2007. On May 25, 2007, the Department issued a third supplemental questionnaire to VMB pertaining to VMB's May 10, 2007, supplemental response for section D, and received VMB's response on June 8, 2007.

On May 2, 2007, the International Trade Commission determined revocation of the antidumping duty orders on seamless pipe from Argentina and Brazil would not likely lead to continuation or recurrence of material injury to an industry in the United States. *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Argentina, Brazil, and Germany*, 72 FR 26153 (May 8, 2007), and *ITC Publication* 3918 (May 2007), Investigation No. 731–TA–707–709 (Second Review). Thus, the Department revoked the antidumping duty orders on seamless line pipe from Argentina and Brazil, pursuant to sections 751(c) and 751(d) of the Act. *See Revocation Pursuant to Second Five–Year (''Sunset'') Reviews of Antidumping Duty Orders: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Argentina and Brazil*, 72 FR 28027 (May 18, 2007) (*Revocation of Seamless Pipe from Argentina and Brazil*). The Department stated in the *Revocation of Seamless Pipe from Argentina and Brazil* that it will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is July 16, 2006. As a result, the Department is completing the instant review of seamless pipe from Brazil. Accordingly, the period of review for this proceeding is from August 1, 2005, to July 16, 2006.

Period of Review

The period of review (POR) is August 1, 2005, through July 16, 2006.

Scope of the Antidumping Duty Review

The products covered by this antidumping duty review are seamless pipes produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this review also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification.

For purposes of this review, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross–section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot–finished or cold–drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non–standard wall thickness are commonly referred to as tubes.

The seamless pipes subject to this antidumping duty review are currently classifiable under subheadings 7304.19.10.20, 7304.19.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS). The following information further defines the scope of this order, which covers pipes meeting the physical parameters described above:

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM standard A–106 may be used in

[1] VMB provided a quantity and value reconciliation, as required under section A of the Department's antidumping question, in its first supplemental questionnaire response, dated February 20, 2007.

temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (''ASME'') code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard.

Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipelines. Seamless line pipes are produced to the API 5L specification.

Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent ASTM A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple–certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple–certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical–fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non–covered specification. Standard, line and pressure applications and the above–listed specifications are defining characteristics of the scope of this order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–335, ASTM A–106, ASTM A–53, or API 5L standards shall be covered if used in a standard, line or pressure application.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this order.

Specifically excluded from this review are boiler tubing and mechanical tubing, if such products are not produced to ASTM A–335, ASTM A–106, ASTM A–53 or API 5L specifications and are not used in standard, line or pressure applications. In addition, finished and unfinished oil country tubular goods (OCTG) are excluded from the scope of this review, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications. Finally, also excluded from this review are redraw hollows for cold–drawing when used in the production of cold–drawn pipe or tube.

Excluded from this order are shipments of seamless carbon and alloy (other than stainless) steel pipes, of circular cross–section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness or manufacturing process (hot–finished or cold–drawn) that 1) has been cut into lengths of six to 120 inches, 2) has had the inside bore ground to a smooth surface, 3) has had multiple layers of specially formulated corrosion resistant glass permanently baked on at temperatures of 1,440 to 1,700 degrees Fahrenheit in thicknesses from 0.032 to 0.085 inch (40 to 80 mils), and 4) has flanges or other forged stub ends welded on both ends of the pipe. The special corrosion resistant glass referred to in this definition may be glass containing by weight 1) 70 to 80 percent of an oxide of silicone, zirconium, titanium or cerium (Oxide Group RO_2), 2) 10 to 15 percent of an oxide of sodium, potassium, or lithium (Oxide Group RO), 3) from a trace amount to five percent of an oxide of either aluminum, cobalt, iron, vanadium, or boron (Oxide Group R_2O_3), or 4) from a trace amount to five percent of a fluorine compound in which fluorine replaces the oxygen in any one of the previously listed oxide groups. These glass–lined pressure pipes are commonly manufactured for use in glass–lined equipment systems for processing corrosive or reactive chemicals, including acrylates, alkanolamines, herbicides, pesticides, pharmaceuticals and solvents. The glass–lined pressure pipes excluded from this antidumping duty review are currently classifiable under subheadings 7304.39.0020, 7304.39.0024 and 7304.39.0028 of the HTSUS.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Fair Value Comparisons

To determine whether VMB made sales of seamless pipe to the United States at less than fair value, we compared the constructed export price (CEP) to the NV, as described below. Specifically, in accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we compared the CEP of individual U.S. transactions to monthly weighted–average NV.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by VMB covered by the descriptions in the ''Scope of the Antidumping Duty Review'' section of this notice to be foreign like products for the purpose of determining appropriate product comparisons to VMB's U.S. sales of seamless pipe.

We have relied on the following six criteria to match U.S. sales of the subject merchandise to sales in Brazil of the foreign like product: product specification, manufacturing process (hot finished or cold drawn), outside diameter, wall thickness, surface finish, and end finish.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's October 10, 2006, questionnaire.

Constructed Export Price

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by, or for the

account of, the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d).

In the instant review, VMB sold subject merchandise through an affiliated company, Vallourec & Mannesmann Tubes Corporation (V&M Corp.) of Houston, Texas. VMB reported all of its U.S. sales of seamless pipe as CEP transactions. After reviewing the evidence on the record of this review, we have preliminarily determined that VMB's transactions are classified properly as CEP sales because these sales occurred in the United States and were made through its U.S. affiliate to an unaffiliated buyer. Such a determination is consistent with section 772(b) of the Act and the U.S. Court of Appeals for the Federal Circuit's decision in *AK Steel Corp. et al. v. United States*, 226 F.3d 1361, 1374 (Fed. Cir. 2000) (*AK Steel*). In *AK Steel*, the Court of Appeals examined the definitions of EP and CEP, noting ''the plain meaning of the language enacted by Congress in 1994, focuses on where the sale takes place and whether the foreign producer or exporter and the U.S. importer are affiliated, making these two factors dispositive of the choice between the two classifications.'' *AK Steel* at 1369. The court declared, ''the critical differences between EP and CEP sales are whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate,'' and noted the phrase ''outside the United States'' had been added to the 1994 statutory definition of EP. *AK Steel* at 1368–70. Thus, the classification of a sale as either EP or CEP depends upon where the contract for sale was concluded (*i.e.*, in or outside the United States) and whether the foreign producer or exporter is affiliated with the U.S. importer.

For these CEP sales transactions, we calculated price in conformity with section 772(b) of the Act. We based CEP on the packed, delivered, duty–paid prices to an unaffiliated purchaser in the United States. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These movement expenses included foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including imputed credit expenses and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

A. Home Market Viability

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared VMB's volume of home market sales of seamless pipe to the volume of U.S. sales of seamless pipe, in accordance with section 773(a)(1)(B) of the Act. Because VMB's aggregate volume of home market sales of seamless pipe was greater than five percent of its aggregate volume of U.S. sales of seamless pipe, we determined the home market was viable. See section A response at Exhibit 1.

B. Cost of Production Analysis

In the most recently completed segment, the Department determined that VMB made sales in the home market at prices below its cost of production (COP) and, therefore, excluded such sales from its calculation of NV. *See Certain Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 56473 (September 27, 2006). The Department's affirmative findings of sales–below-cost in the preliminary results of the prior period review did not change in the final results. Therefore, the Department has reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that VMB made sales in the home market at prices below the COP for this POR. As a result, in accordance with section 773(b)(1) of the Act, we examined whether VMB's sales in the home market were made at prices below the COP.

In accordance with section 773(b)(3) of the Act, we calculated the weighted–average COP for each model based on the sum of VMB's material and fabrication costs for the foreign like product, plus amounts for selling expenses, general and administrative expenses (G&A), interest expenses and packing costs. The Department relied on the COP data reported by VMB, except as noted below:

1. We recalculated VMB's financial expense ratio (INTEX) calculation by excluding the offset for long–term interest income.

For further details regarding this adjustment, *see* the Department's ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - V&M do Brasil, S.A.'' (COP Memorandum), on file in the Department's Central Records Unit (CRU) located in Room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW, Washington, DC 20230, dated July 2, 2007.

We compared the weighted–average COP figures to the home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below COP. On a product–specific basis, we compared the COP to home market prices net of any applicable billing adjustments, indirect taxes (ICMS, IPI, COFINS and PIS), and any applicable movement charges.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made in substantial quantities within an extended period of time, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of VMB's home market sales of a given model were at prices below the COP, we did not disregard any below–cost sales of that model because we determined that the below–cost sales were not made within an extended period of time in ''substantial quantities.'' Where 20 percent or more of VMB's home market sales of a given model were at prices less than COP, we disregarded the below–cost sales because: (1) they were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted–average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for VMB revealed that for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for certain models, more than 20 percent of the home market sales of those models were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time.

Thus, in accordance with section 773(b)(1) of the Act, we excluded these below–cost sales from our analysis and used the remaining above–cost sales as the basis for determining NV.

C. Price–to-Price Comparisons

We matched all U.S. sales to NV. We calculated NV based on prices to unaffiliated customers. We adjusted gross unit price for billing adjustments, interest revenue, indirect taxes, and the per–unit value of any post–transaction complementary invoices (or credit notes) that were issued to adjust for any errors in the originating invoice. We made deductions, where appropriate, for foreign inland freight, insurance and warehousing, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and commissions. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.[2]

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting–price sales in the comparison market. For CEP, it is the level of the constructed sale from the exporter to the importer. To determine whether NV sales are at a different LOT than CEP sales, we examine different selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, where possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales for which we are unable to quantify a LOT adjustment, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP sales affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). In the present review, VMB claimed that there was no LOT in the home market comparable to the LOT of the CEP sales, and requested a CEP offset. *See* section B response at VI–41 through VI–43.

VMB reported two channels of distribution in the home market: one to unaffiliated distributors and one to end–users. *See* section A response at Exhibit 10. We examined the selling activities reported for each channel of distribution and organized the reported selling activities into the following four selling functions: 1) sales process and marketing support, 2) freight and delivery, 3) inventory maintenance and warehousing, and 4) warranty and technical services. We examined the reported selling functions and found that VMB's home market selling functions for all customers include sales forecasting, planning, order processing, general selling functions performed by VMB sales personnel, technical assistance, delivery of the merchandise, and provision for warranties. VMB also claimed packing as a selling function performed for all customers.] first supplemental questionnaire response at Exhibit 1. However, we make a separate COS adjustment for packing and do not consider this to be a selling function relevant to LOT.

VMB further reported several selling functions unique to each channel of distribution: personnel training, sales promotion, distributor/dealer training, sales/marketing support, and market research are selling functions performed only in sales to distributors. In contrast, advertising and after–sales services are provided solely to end–users. *See* first supplemental questionnaire response at Exhibit 1. VMB also paid commissions on sales to some end–users. In addition, VMB reported the selling function of inventory maintenance with regard to sales to one end–user customer, for which a small percentage of VMB's sales are transferred to unaffiliated warehouses from which this customer regularly extracts merchandise on a just–in-time basis. *See* section A Response at VI–18; *see also* section B response at VI–28. Based upon the above analysis, we preliminarily conclude that the selling functions for the reported home market channels of distribution are sufficiently different to consider them as two LOTs.

For CEP sales, we examined the selling activities related to each of the selling functions between VMB and its U.S. affiliate, V&M Corp. VMB reported that all of its sales to the United States are CEP sales made through V&M Corp., *i.e.*, through one channel of distribution, and claimed that there is only one LOT. We examined VMB's selling functions (&, sales forecasting, order processing, and freight and delivery) for sales to V&M Corp. and found that these selling functions are performed regardless of whether shipments are going to V&M Corp. or directly to the unaffiliated customer. *See* first supplemental questionnaire response at Exhibit 1. Therefore, we preliminary determine that VMB's U.S. sales constitute a single LOT.

We then compared the selling functions VMB provided in the home market LOTs with the selling functions provided for the U.S. LOT. While VMB provides a comparable level of assistance for freight and delivery in both the home and U.S. markets, VMB provides significantly more assistance for marketing support, and inventory maintenance and warehousing for the home market than the U.S. market. Additionally, VMB provides more technical services for the home market than the U.S. market. On this basis, we determined that the HM LOTs are not similar to VMB's U.S. LOT.

Based upon the above analysis, we preliminarily determine that there is no LOT in the home market comparable to the CEP LOT, and it is, therefore, not possible to determine whether the difference in LOT affects price comparability. Consequently, we examined whether a CEP offset may be appropriate pursuant to section 351.412(f) of the Department's regulations. We find that the selling functions VMB performs for sales to its U.S. affiliate are fewer and less complex than the selling functions VMB performs for either LOT in the home market. Compared to U.S. sales, the chain of distribution in the home market is at a level much more advanced. For example, many sales to distributors go through unaffiliated warehouses and VMB provides after–sales services to end–users (*e.g.*, surveys and repairs). In contrast, VMB's selling functions for U.S. sales end with delivery at the port of entry.

Accordingly, because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in the home market is at a more advanced stage of distribution than the LOT of the CEP transactions, we preliminarily determine that a CEP offset adjustment is appropriate, in

[2] *See* the Analysis Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Certain Small Diameter Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from Brazil, dated July 2, 2007, for further discussion of date of sale and other details on the calculation of the antidumping duty weighted-average margin. A public version of the memorandum is available in the Department's CRU.

accordance with section 773(a)(7)(B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by Dow Jones Reuters Business Interactive LLC (trading as Factiva).

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted–average dumping margin for the period August 1, 2005, through July 16, 2006, to be as follows:

Manufacturer / Exporter	Margin (percent)
V&M do Brasil, S.A.	0.00

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument: 1) a statement of the issue, 2) a brief summary of the argument, and 3) a table of authorities. An interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 2 days after the scheduled date for the submission of rebuttal briefs. *See* 19 CFR 351.310(d). The Department will issue the final results of these preliminary results, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above de minimis (*i.e.*, at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is de minimis (*i.e.*, less than 0.50 percent). *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The Department notified CBP to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after July 16, 2006, the effective date of revocation of the antidumping duty order.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: July 2, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–13383 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–908]

Postponement of Preliminary Determination of Antidumping Duty Investigation: Sodium Hexametaphosphate from the People's Republic of China

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

EFFECTIVE DATE: July 11, 2007.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Kristina Horgan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–1442 or (202) 482–8173, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination

On February 28, 2007, the Department of Commerce (''Department'') initiated the antidumping duty investigation of sodium hexametaphosphate from the People's Republic of China. *See Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate From the People's Republic of China*, 72 FR 9926 (March 6, 2007) (''*Initiation Notice*''); *see also Notice of Correction of Initiation of Antidumping Duty Investigation: Sodium Hexametaphosphate from the People's Republic of China*, 72 FR 11325 (March 13, 2007). The notice of initiation stated that the Department would make its preliminary determination for this antidumping duty investigation no later than 140 days after the date of issuance of the initiation.

On June 25, 2007, ICL Performance Products, LP and Innophos, Inc. (''Petitioners'') made a timely request pursuant to 19 CFR 351.205(e) and section 733(c)(1)(A) of the Tariff Act of 1930, as amended (''the Act'') for a postponement of the preliminary determination. Petitioners requested postponement of the preliminary determination to allow the Department additional time in which to review the complex questionnaire responses and

issue requests for clarification and additional information.

For the reasons identified by the Petitioners, and because there are no compelling reasons to deny the request, the Department is postponing the preliminary determination under section 733(c)(1)(A) of the Act, by 50 days to September 6, 2007. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination, unless extended.

This notice is issued and published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: July 2, 2007.

David Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–13378 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of Minnesota, et al., Notice of Consolidated Decision on Applications for Duty–Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Room 2104, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC.

Comments: None received. Decisions: Approved. We know of no instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, was being manufactured in the United States at the time of its order.

Docket Number: 07–025. Applicant: University of Minnesota, Minneapolis, MN 55455. Instrument: Confocal Raman Microscope. Manufacturer: Witec, Germany. Intended Use: See notice at 72 FR 33204, June 15, 20007. Reasons: The foreign instrument provides capability for distinguishing polymorphs in organic crystalline films, identifying components in polymer blends at the micron level, distinguishing components in complex biofilms, characterizing the surface composition of coated aerosol particles, etc. Precise mapping control through a piezo scan table, as well as high resolution and adaptation to different wavelengths of the laser are essential features.

Docket Number: 07–034. Applicant: Purdue University, West Lafayette, IN 47907–2054. Instrument: Electron Microscope. Manufacturer: FEI Company, The Netherlands. Intended Use: See notice at 72 FR 33204, June 15 2007. Reasons: The foreign instrument provides capability of high voltage electron microscopy.

Docket Number: 07–035. Applicant: Old Dominion University, Norfolk, VA 23529. Instrument: Electron Microscope. Manufacturer: JEOL, Ltd., Japan Intended Use: See notice at 72 FR 33204. Reasons: The foreign instrument provides capability of high voltage electron microscopy.

The capabilities of each of the foreign instruments describedabove are pertinent to each applicant's intended purposes and we know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Faye Robinson,

Director,Statutory Import Programs Staff, Import Administration.

[FR Doc. E7–13477 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure Magnesium and Alloy Magnesium from Canada: Final Results of 2005 Countervailing Duty Administrative Reviews

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

SUMMARY: On April 20, 2007, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1, 2005, through August 15, 2005. We gave interested parties an opportunity to comment on the preliminary results.

Our analysis of the comments received on the preliminary results did not lead to any changes in the net subsidy rate. Therefore, the final results do not differ from the preliminary results. The final net subsidy rate for the reviewed company is listed below in the section entitled ''Final Results of Reviews.''

EFFECTIVE DATE: July 11, 2007.

FOR FURTHER INFORMATION CONTACT: Andrew McAllister or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1174 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2007, the Department of Commerce (''the Department'') published the preliminary results of the administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1, 2005, through August 15, 2005. *See Pure Magnesium and Alloy Magnesium from Canada: Preliminary Results of Countervailing Duty Administrative Reviews*, 72 FR 19881 (April 20, 2007) (''*Preliminary Results*'').

Norsk Hydro Canada, Inc. (''NHCI'') submitted a case brief on May 7, 2007. In its case brief, NHCI agreed with the Department's *Preliminary Results* with respect to NHCI. US Magnesium LLC (''the petitioner'') did not file a case or rebuttal brief.

Scope of the Orders

The products covered by these orders are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to the orders is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Period of Reviews

The period for which we are measuring subsidies, or POR, is January 1, 2005, through August 15, 2005.

Changes Since the Preliminary Results

Based on our analysis of the record and comments received, we have made no changes to the preliminary results net subsidy rate.

Final Results of Reviews

In accordance with 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for the producer/exporter subject to these reviews. For the period January 1, 2005, through August 15, 2005, we find the net subsidy rate for NHCI to be 0.00 percent.

Cash Deposit Instructions

On July 6, 2006, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1)(iii), the Department revoked the countervailing duty orders on pure magnesium and alloy magnesium from Canada (*see Revocation of the Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium from Canada*, 71 FR 38382 (July 6, 2006)). The effective date of the revocations is August 16, 2005. As a result of this action, we are not issuing cash deposit instructions.

Assessment Rates

Because the countervailing duty rate for NHCI is zero, we will instruct U.S. Customs and Border Protection (''CBP'') to liquidate entries of this company during the period January 1, 2005, through August 15, 2005, without regard to countervailing duties. The Department will issue appropriate instructions directly to CBP 41 days after the date of publication of these final results.

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act.

Dated: July 3, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–13482 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA90

Nominations for the Western and Central Pacific Fisheries Commission Advisory Committee

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

ACTION: Request for nominations.

SUMMARY: NMFS, on behalf of the Secretary of Commerce, is seeking nominations for the advisory committee established under the Western and Central Pacific Fisheries Convention Implementation Act (Act). The advisory committee, to be composed of individuals from groups concerned with the fisheries covered by the Western and Central Pacific Fisheries Convention (Convention), will be given the opportunity to provide input to the United States Commissioners to the Western and Central Pacific Fisheries Commission (Commission) regarding the deliberations and decisions of the Commission.

DATES: Nominations must be received no later than September 10, 2007.

ADDRESSES: Nominations should be directed to William L. Robinson, Regional Administrator, NMFS Pacific Islands Regional Office, and may be submitted by any of the following means:

- E-mail: *pir.wcpfc@noaa.gov*. Include in the subject line the following document identifier: ''Advisory committee nominations''. E-mail messages, with or without attachments, are limited to 5 megabytes.
- Mail or hand delivery: 1601 Kapiolani Blvd. Suite 1110, Honolulu, HI 96814.
- Facsimile: 808–973–2941.

FOR FURTHER INFORMATION CONTACT: Raymond P. Clarke, NMFS Pacific Islands Regional Office; telephone: 808–944–2205; facsimile: 808–973–2941; e-mail: *raymond.clarke@noaa.gov*.

SUPPLEMENTARY INFORMATION:

The Convention and the Commission

The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the United Nations Convention on the Law of the Sea of 1982 (UNCLOS) and the Agreement for the Implementation of the Provisions of the UNCLOS Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. The Convention establishes the Commission, the secretariat of which is based in Pohnpei, Federated States of Micronesia.

The Convention applies to all highly migratory fish stocks (defined as all fish stocks of the species listed in Annex I of the UNCLOS occurring in the Convention Area, and such other species of fish as the Commission may determine), except sauries.

The United States played a very active role in supporting the negotiations and the development of the Convention and signed the Convention when it was opened for signature in 2000. It has participated as a cooperating non-member in the Commission since it became operational in 2005. Upon completion of the Convention ratification process, which will occur July 27, 2007, the United States will become a Contracting Party to the Convention and a full member of the Commission. Under the Act, the United States will be represented on the Commission by five United States Commissioners, appointed by the President.

Advisory Committee

The Act (Public Law 109–479, sec 501–511) provides (in sec 503(d)) that the Secretary of Commerce, in consultation with the United States Commissioners to the Commission, will appoint certain members of the advisory committee established under the Act.

The members to be appointed to the advisory committee are to include not less than 15 nor more than 20 individuals selected from the various groups concerned with the fisheries covered by the Convention, providing, to the extent practicable, an equitable balance among such groups. On behalf of the Secretary of Commerce, NMFS is now seeking nominations for these appointments.

In addition to the 15–20 appointed members, the advisory committee also includes the chair of the Western and Central Pacific Fishery Management Council's Advisory Committee (or designee), and officials of the fisheries management authorities of American Samoa, Guam, and the Northern Mariana Islands (or their designees).

Members of the advisory committee will be invited to attend all non-executive meetings of the United States Commissioners to the Commission and at such meetings will be given opportunity to examine and be heard on all proposed programs of investigation,

reports, recommendations, and regulations of the Commission.

Each appointed member of the advisory committee will serve for a term of two years and will be eligible for reappointment.

The Secretaries of Commerce and State will furnish the advisory committee with relevant information concerning fisheries and international fishery agreements.

NMFS, on behalf of the Secretary of Commerce, will provide to the advisory committee administrative and technical support services as are necessary for its effective functioning.

Appointed members of the advisory committee will serve without pay, but while away from their homes or regular places of business in the performance of services for the advisory committee will be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code. They will be considered Federal employees while performing service as members of the advisory committee only for purposes of: (1) injury compensation under chapter 81 of title 5, United States Code; (2) requirements concerning ethics, conflicts-of-interest, and corruption, as provided by title 18, United States Code, and (3) any other criminal or civil statute or regulation governing the conduct of Federal employees in their capacity as Federal employees.

Procedure for Submitting Nominations

Nominations for the advisory committee should be submitted to NMFS (see **ADDRESSES**). Self nominations are acceptable. Nominations should include the following information: (1) Full name, address, telephone, facsimile, and e-mail of nominee; (2) nominee's organization(s) or professional affiliation(s) serving as the basis for the nomination, if any; and (3) a background statement, not to exceed one page in length, describing the nominee's qualifications, experience and interests, specifically as related to the fisheries covered by the Convention.

Dated: July 6, 2007.

James P. Burgess,

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

[FR Doc. E7–13476 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB29

Permits; Foreign Fishing

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

ACTION: Notice of receipt of foreign fishing application.

SUMMARY: NMFS publishes for public review and comment information regarding a foreign fishing application submitted under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by July 25, 2007.

ADDRESSES: Send comments or requests for a copy of the application to NMFS, Office of Sustainable Fisheries, International Fisheries Division, 1315 East-West Highway, Silver Spring, MD 20910.

Comments on this notice may also be submitted by e-mail. The address for providing e-mail comments is *nmfs.foreignfishing@noaa.gov*. Include in the subject line the following document identifier: RIN 0648–XB29.

FOR FURTHER INFORMATION CONTACT: Robert A. Dickinson, Office of International Affairs, (301) 713–2276.

SUPPLEMENTARY INFORMATION:

Background

Section 204(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) provides, among other things, that the Secretary of Commerce (Secretary) may issue a transshipment permit which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the U.S. Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the boundaries of that state to a point outside the United States.

Section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application may not be approved until the Secretary determines that ''no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated ... an interest in performing the transportation at fair and reasonable rates.'' NMFS is publishing this notice as part of its effort to make such a determination with respect to the application described below.

Summary of Application

NMFS has received an application requesting authorization for five Mexican vessels to receive, within the Pacific waters of the U.S. EEZ south of 34°00′ N. lat. and east of 121°00′ W. long., transfers of live tuna from U.S. purse seiners for the purpose of transporting the tuna alive to an aquaculture facility located in Baja California, Mexico.

Interested U.S. vessel owners and operators may obtain a copy of the complete application from NMFS (see **ADDRESSES**).

Dated: July 5, 2007.

Jean-Pierre Ple,

Acting Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. E7–13484 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB31

Marine Mammals; File No. 1127–1921

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Hawaii Marine Mammal Consortium, PO Box 6107, Kamuela, HI 96743, has applied in due form for a permit to conduct research on 24 cetacean species found in Hawaiian waters.

DATES: Written, telefaxed, or e-mail comments must be received on or before August 10, 2007.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should

set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1127–1921.

FOR FURTHER INFORMATION CONTACT: Brandy Hutnak or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The Hawaii Marine Mammal Consortium seeks a five year permit to conduct research on 24 cetacean species, including the following endangered species: blue whale (*Balaenoptera musculus*), fin whale (*B. physalus*), humpback whale (*Megaptera novaeangliae*), sei whale (*B. borealis*), and sperm whale (Physeter macrocephalus). The objectives of the research are to assess the status, numbers, distribution, and life histories of cetacean species in Hawaiian waters. The type of take involved would consist of Level A harassment (biopsy sampling) and Level B harassment (close approach, photo-id, audio recording, underwater photography and video, photogrammetry, and collection of sloughed skin and fecal samples). All age classes, except mothers and associated calves less than one year old, would be biopsy sampled. The core study area is the leeward coast of the island of Hawaii, but activities might be conducted in any of the near shore waters of the main and northwestern Hawaiian Islands, including waters off the Northwestern Hawaiian Islands Marine National Monument. No mortality or incidental harassment of non-target species is being requested.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 5, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–13474 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice To Adopt a Standard Model for Mathematical Vertical Datum Transformations

AGENCY: National Geodetic Survey (NGS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce a decision by the Federal Geodetic Control Subcommittee (FGCS) to recommend adoption of a standard method for mathematical transformations between the vertical geodetic datums: The National Geodetic Vertical Datum of 1929 (NGVD 29) and the North American Vertical Datum of 1988 (NAVD 88). These methods are designated, in descending order of accuracy: (1) The recomputation or readjustment of survey observations method, (2) the mathematical transformation method, and (3) the average shift method. In order to maintain consistency of results and to minimize misuse associated with the mathematical transformation method, FGCS recommends software identified as VERTCON (Vertical Conversion) as a Federal standard.

DATES: Individuals or organizations wishing to submit comments on the adoption of VERTCON as the standard method, should do by August 10, 2007.

ADDRESSES: Written comments should be sent to the attention of David Doyle, Chief Geodetic Surveyor, Office of the National Geodetic Survey, National Ocean Service (N/NGS2), 1315 East-West Highway, Silver Spring, Maryland 20910, fax 301–713–4324, or via e-mail *Dave.Doyle@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to David Doyle, Chief Geodetic Surveyor, National Geodetic Survey (N/NGS2), 1315 East-West Highway, Silver Spring, MD 20910; Phone: (301) 713–3178.

SUPPLEMENTARY INFORMATION: The intent of this notice is to standardize a vertical datum transformation method when a mathematical transformation is desired. FGCS selected the method incorporated in the software identified as VERTCON. It is not the intent of the notice to declare when to use a datum transformation or by what method but only to declare that when a mathematical transformation is appropriate, VERTCON is recommended. Note that VERTCON is not appropriate to transform between NGVD 29 and NAVD 88 for first-, second-, or third-order heights, as defined in the Federal Geodetic Control Committee (FGCC), Standards and Specifications for Geodetic Control Networks, and retain first- or second-, or third-order accuracies in the results. Method 1, recomputation or readjustment of survey observations, is usually more appropriate to maintain first-, second-, and third-order FGCC accuracies.

VERTCON can be accessed for on-line computation from the NGS Geodetic Tool Kit at *http://www.ngs.noaa.gov/TOOL/Vertcon/vertcon.html,* or copies of the VERTCON software are available for free download from the NGS Web site *http://www.ngs.noaa.gov/PC_PROD/pc_prod.shtml#VERTCON.*

Dated: July 5, 2007.

Elizabeth R. Scheffler,

Associate Assistant Administrator for Management, Ocean Services and Coastal Zone Management.

[FR Doc. 07–3377 Filed 7–10–07; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Commission on Care for America's Returning Wounded Warriors

AGENCY: Department of Defense.

ACTION: Federal Advisory Committee Meeting Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) and 41 Code of Federal Regulations (CFR) 102–3.140 thorough 160, the Department of Defense announces the forthcoming public meeting:

Name of Commission: President's Commission on Care for America's Returning Wounded Warriors (hereafter referred to as the Commission).

Date of Meeting: July 25, 2007.

Time of Meeting: 11 a.m. to (To Be Determined).

Place of Meeting: Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004.

Purpose of Meeting: Review and evaluate the Commission's report and the findings and recommendations related to the Commission's mission to examine the care provided to wounded service members.

Subject to seating availability this meeting is open to the public.

The Commission will discuss its report and recommendations; consequently there will be no oral public forum. Any person desiring to make a written submission must provide the point of contact listed below with one copy of the written submission by 18 July 2007 5 p.m. Point of Contact is Major Teresa Barnes or Leslie Smith. Telephone number is toll free (877) 588–2035 or Fax (703) 588–2046.

FOR FURTHER INFORMATION ON SUBMITTING STATEMENTS CONTACT: Major Teresa Barnes or Leslie Smith, toll free (877) 588–2035 or fax (703) 588–2046.

SUPPLEMENTARY INFORMATION:

Meeting agenda:

11 a.m. to 11:15 a.m. (Not Open to the Public) Administrative Work Meeting.

11:15 a.m. To Be Determined (Public Session) Review and Evaluation of Commissions Findings and Recommendations.

Dated: July 5, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–3389 Filed 7–9–07; 11:15 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Commission on Care for America's Returning Wounded Warriors

AGENCY: Department of Defense.

ACTION: Federal Advisory Committee Meeting Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) and 41 Code of Federal Regulations (CFR) 102–3.140 through 160, the Department of Defense announces the cancellation of the public meeting referenced below:

Name of Commission: President's Commission on Care for America's Returning Wounded Warriors (hereafter referred to as the Commission).

Date of Meeting: July 16, 2007.

Time of Meeting: 10 a.m. to (To Be Determined).

Place of Meeting: Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004.

Dated: July 5, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 07–3390 Filed 7–9–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army: Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (EIS) for a Permit Application for Compartments B and C, Palm Beach and Hendry Counties, FL

AGENCY: U.S. Army Corps of Engineers, Jacksonville District, DoD.

ACTION: Notice of Intent (NOI).

SUMMARY: The U.S. Army Corps of Engineers (Corps), Jacksonville District, will be receiving a permit application for a Department of the Army permit under Section 404 of the Clean Water Act from the South Florida Water Management District (SFWMD) to construct Stormwater Treatment Areas (STAs) on parcels of land identified as Compartments B and C of the Everglades Agricultural Area (EAA) (Proposed Action). As part of the permit process, the Corps is evaluating the environmental effects associated with construction of STAs on these parcels in order to provide additional treatment to assist the existing STAs in the overall goal of improving the quality of water delivered and to be delivered to the Everglades Protection Area (EPA) in order to prevent further environmental degradation.

The primary federal involvement associated with the Proposed Action is the discharge of fill material (including permanent inundation) within federal jurisdictional areas and Waters of the United States. In addition, the Proposed Action could have potential significant effects on the human environment. Therefore, the Corps will prepare an EIS in compliance with the National Environmental Policy Act (NEPA) to render a final decision on the SFWMD's permit application. The Corps' decision will be to either issue or deny a Department of the Army permit for the Proposed Action. The Draft EIS is intended to be sufficient in scope to address federal, state, and local requirements and environmental issues concerning the Proposed Action and permit reviews.

FOR FURTHER INFORMATION CONTACT: Questions about the Proposed Action and Draft EIS should be directed to Ms. Tori White, Corps Regulatory Project Manager, by telephone at (561) 472–8888 or by e-mail at *tori.white@usace.army.mil.* Written comments should be addressed to the U.S. Army Corps of Engineers, South Florida Restoration Program Office, Attn: Ms. Tori White, 1400 Centrepark Boulevard, Suite 750, West Palm Beach, Florida 33401 or by facsimile at (561) 683–2418. Information about the Proposed Action and Draft EIS can also be obtained from the Jacksonville District Web site at *http://www.saj.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Project Site and Background Information.* The Proposed Action is located at Compartments B and C of the EAA. Compartment B is located within USGS Quadrangles of Deem City, North of Deem City and West of Big Lake, Sections 23, 24, 25 and 36, Township 46 south, Range 37 east; Sections 19, 20, 21, 28, 29, 30, 31, 32 and 33, Township 46 south, Range 38 east; Sections 05, 06, 08, 09, 10, 11, 14, 15, 16, 17, 21 and 22, Township 47 south, Range 38 east. More specifically it is located in southern Palm Beach County east of Highway U.S. 27, and west of Water Conservation Area 2A and STA 2 in Southern Palm Beach County, Florida. Compartment C is located within the USGS Quadrangle of Everglades 2NW and Everglades 2SW, Sections 09, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 26 and 27, Township 47 south, Range 34 east. More specifically, it is located west of the Rotenberger Wildlife Management Area and east of the L–3 Canal between STA–5 and STA–6 in eastern Hendry County, Florida.

(a) *Background.* On October 4, 1996, the Corps published a Final Programmatic Environmental Impact Statement (PEIS) for the initial Everglades Construction Project (ECP) which consisted of six STAs comprising approximately 44,000 acres. The ECP was implemented by the SFWMD as a result of nutrient loads of stormwater and runoff and high phosphorus loads from the EAA, Lake Okeechobee, and other contributory basins which discharge into the EPA. The EPA includes Water Conservation Areas 1 (Arthur R. Marshall Loxahatchee National Wildlife Refuge), 2A, 2B, 3A, 3B and Everglades National Park. The initial ECP was intended to achieve an interim target discharge of a long-term

annual flow-weighted mean phosphorus concentration of approximately 50 parts per billion (50 ppb). Pursuant to the Consent Decree in *United States* v. *South Florida Water Management District,* the State committed to provide water quantity and quality needed to preserve and restore the unique flora and fauna of the Everglades National Park and the Loxahatchee Wildlife Refuge. The Everglades Forever Act (EFA) embodies the same goals. The SFWMD's Long-Term Plan for Achieving Water Quality Goals, October 27, 2003 and the November 2004 revision recommend further studies that will help provide the additional detailed information required for making a more informed decision. In 2005, the SFWMD completed the EAA Regional Feasibility Study as part of the November 2004 revision to the Long-Term Plan. The Feasibility Study evaluated additional treatment needed in order to reduce phosphorus loads to the EPA and comply with the EFA including construction of STAs on Compartments B and C.

(b) *Purpose and Need.* The overall project purpose is to reduce nutrient loads of stormwater and runoff from the EAA and nutrient concentrations in water delivered from Lake Okeechobee prior to distribution into the EPA in order to meet legal requirements. The six existing STAs included in the ECP were built and operated pursuant to the requirements of the EFA and contain approximately 40,000 acres of effective treatment area. Subsequent to the design and construction of these STAs, the inflow volumes and phosphorus concentrations loads were updated to incorporate best available information, including several years of actual STA inflow data and outflow performance data. One of the key assumptions during the design of the original STAs was that EAA Best Management Practices (BMPs) would result in a 20% reduction in inflow volumes; however, recent historic data has shown that although the required BMPs reduced phosphorus loads, the assumed inflow volume reductions have not occurred. The Consent Decree assumed that flow lost to BMPs would be replaced with additional flow from Lake Okeechobee; however, neither the original ECP design flow nor the 2001 Basin-Specific Feasibility Studies (ECP update with enhanced STAs) provided treatment capacity for those additional flows. In addition to higher than originally assumed stormwater runoff volumes from the EAA, the STA inflow phosphorus concentrations have also shown notable increases in the past several years, likely a result of long-term increasing trends in Lake Okeechobee phosphorus concentrations, further amplified by the 2004 and 2005 hurricanes, as well as additional lake regulatory release volumes. The higher-than-anticipated EAA runoff volumes, flows and loads from Lake Okeechobee, and STA inflow concentrations have resulted in impacts to existing STA performance.

(c) *Proposed Action.* The SFWMD proposes to convert approximately 13,740 acres of publicly owned, primarily agricultural lands to additional STAs. The Compartment B STA will consist of approximately 6,700 acres of effective treatment area, and will be operated in close coordination with the existing STA–2 and STA–3/4 to assist in optimizing the phosphorus removal performance of these two STAs. Depending upon the hydrologic and hydraulic conditions, the Compartment B STA can assist in the reduction of inflows to STA–1W and STA–1E, which discharges into the WCA–1. The Compartment C STA will consist of approximately 6,200 acres of effective treatment area, and can be operated in close coordination with existing STA–5 and STA–6 to assist in the phosphorus reduction capability of these two STAs, which discharge into WCA–3A.

2. *Alternatives.* Alternatives to the Proposed Action initially being considered include:

(a) Construction of Compartment B STA and Compartment C STA to treat additional runoff in the EAA.

(b) Construction of Compartment B STA to recover ability to treat Lake Okeechobee volumes originally intended to be treated by STA–3/4 and construction of Compartment C STA to treat additional runoff in the EAA.

(c) Construction of Compartment B STA to treat a combination of Lake Okeechobee volumes and EAA runoff and construction of Compartment C STA to treat additional runoff in the EAA.

(d) Construction of STAs on additional parcels of land.

(e) Additional Treatment Technologies including but not limited to hyacinth and algae turf scrubber application.

(f) No Action.

3. *Draft EIS Scoping Process.*

(a) The Corps is furnishing this notice to: (1) Advise other Federal and state agencies, affected Tribes, and the public of our intentions; (2) announce the initiation of a 30-day scoping period; and (3) obtain suggestions and information on the scope of issues and alternatives to be included in the Draft EIS. The Corps invites comments from all interested parties to ensure that the full range of issues related to the permit request is addressed and that all significant issues are identified. We will accept written comments until 30 days after the date of publication of this notice.

(b) Significant issues to be analyzed in the Draft EIS include: Aesthetics/visual quality, agricultural resources, air quality, biological resources, cultural resources, cumulative impacts, environmental justice, flood protection, geology/soils, growth inducement, land use/planning, noise/vibration, public health and safety, public services/utilities, recreation, socioeconomics, threatened and endangered species, traffic/circulation, water resources including wetlands, and other issues identified through scoping, public involvement, and interagency coordination.

(c) The Corps will conduct an environmental review of the Proposed Action in accordance with the requirements of NEPA, 1969 as amended, (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 Code of Federal Regulations, Section 1500 *et seq.*), Corps Procedures for Implementing NEPA (33 Code of Federal Regulations, Section 230 *et seq.*), and with other appropriate federal laws and regulations, policies, and procedures of the Corps for compliance with those regulations. The Proposed Action, through the Corps permit review process, will require consultation under Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act. Additionally, the proposed action would involve evaluation for compliance with the Section 404(b)(1) Guidelines of the Clean Water Act; the Magnunson-Stevens Fishery Conservation and Management Act; Water Quality Certification pursuant to Section 401 of the Clean Water Act; certification of state lands, easements and right of ways; and determination of Coastal Zone Management Act consistency. Additionally, the EIS will include an evaluation of modifying land for new uses which also involves zoning, land use planning, water management, and other regulatory requirements at the local, state, and federal level. The Compartments B and C lands were purchased using funds appropriated to the Department of Interior (DOI) under the authority of the 1996 Farm Bill (Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127, 110 Stat. 1022). The DOI, Corps, Florida Department of Environmental Protection, and the SFWMD are parties to a Framework Agreement under which

all interim uses of lands acquired with these funds must be consistent with the ultimate use of the property in a congressionally authorized federal project for Everglades restoration. The SFWMD will be required to obtain a land use approval from the DOI prior to construction.

4. *Scoping Meeting.* Public scoping meetings will be held on the Proposed Action on July 25, 2007, at 6 p.m. at the B1–Auditorium, SFWMD, 3301 Gun Club Road, West Palm Beach and on July 26, 2007, at 5 p.m. at the Institute of Food and Agricultural Sciences, 3200 E. Palm Beach Road, Belle Glade, Florida. The meetings will give agencies and the public an opportunity to receive more information on the Proposed Action and to provide comments and suggestions on the scope of the EIS.

5. *Availability of the Draft EIS.* The Corps currently expects the Draft EIS to be made available to the public in April 2008. A public meeting will be held during the public comment period for the Draft EIS. Written comments will be accepted at the meeting.

Dated: July 3, 2007.

David S. Hobbie,

Chief, Regulatory Division, Jacksonville District.

[FR Doc. E7–13401 Filed 7–10–07; 8:45 am]

BILLING CODE 3710–AJ–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Developing Hispanic-Serving Institutions (HSI) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031S.

Dates:

Applications Available: July 11, 2007.

Deadline for Transmittal of Applications: August 10, 2007.

Eligible Applicants: Institutions of higher education (IHEs) that qualify as eligible HSIs are eligible to apply for new Individual Development Grants and Cooperative Arrangement Development Grants under the HSI Program. To be an eligible HSI, an IHE must—

(1) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(2) Be legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(3) Be designated as an ''eligible institution'' by demonstrating that it: (A) Has an enrollment of needy students as described in 34 CFR 606.3; and (B) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 606.4;

(4) Have an enrollment of undergraduate FTE students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application.

Effective September 30, 2006, the Third Higher Education Extension Act of 2006 (Pub. L. 109–292) amended section 502(a) of the Higher Education Act of 1965, as amended (HEA), by requiring that institutions report their undergraduate Hispanic FTE percentage at the end of the award year immediately preceding the date of application. Funds for the Developing HSI Program are awarded each fiscal year, thus, for this program, the end of the award year refers to the end of the fiscal year prior to the application due date. The end of the fiscal year occurs on September 30. Therefore, for purposes of making the determination described in paragraph (4) IHEs must report their undergraduate Hispanic FTE percentage based on the student enrollment count closest to, but not after, September 30, 2006.

The Third Higher Education Extension Act of 2006 also amended section 502(a) of the HEA by eliminating the requirement in the HSI Program that an institution applying for a grant provide an assurance that not less than 50 percent of the institution's Hispanic students are low-income individuals.

The Notice Inviting Applications for Designation as Eligible Institutions for FY 2007 was published in the **Federal Register** on January 8, 2007 (72 FR 670). The HSI eligibility requirements are in 34 CFR 606.2 through 606.5 and can be accessed from the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_01/34cfr606_01.html.*

The regulations in 34 CFR part 606 do not reflect the changes made by the Third Higher Education Extension Act of 2006 that are mentioned above.

Relationship Between HSI and Title III, Part A Programs

Note 1: A grantee under the HSI Program, which is authorized by Title V of the HEA, may not receive a grant under any HEA, Title III, Part A Program. The Title III, Part A Programs include: The Strengthening Institutions Program, the American Indian Tribally Controlled Colleges and Universities Program; and the Alaska Native and Native Hawaiian-Serving Institutions Programs. Further, a current HSI Program grantee may not give up its HSI grant in order to receive a grant under any Title III, Part A Program.

Note 2: An HSI that does not fall within the limitation described in Note 1 may apply for a FY 2007 grant under all Title III, Part A Programs for which it is eligible, as well as under the HSI Program. However, a successful applicant may receive only one grant.

Note 3: An eligible HSI that submits more than one application may only be awarded one Individual Development Grant or one Cooperative Arrangement Development Grant in a fiscal year. Furthermore, we will not award a second Cooperative Arrangement Development Grant to an otherwise eligible HSI for the same award year as the HSI's existing Cooperative Arrangement Development Grant.

Note 4: The Department will cross-reference for verification, data reported to the Integrated Postsecondary Education Data System (IPEDS), the IHE's State-reported enrollment data, and the institutional annual report. If there are any differences in the percentages reported in IPEDS and the percentages reported in the grant application, the IHE should justify the differences as a part of its eligibility documentation.

Estimated Available Funds: $17,181,510.

Estimated Range of Awards: $550,000–$713,000.

Estimated Average Size of Awards: Individual Development Grant: $575,000. Cooperative Arrangement Development Grant: $713,000.

Maximum Awards: Individual Development Grant: $575,000; Cooperative Arrangement Development Grant: $713,000. We will not fund any application at an amount exceeding these maximum amounts for a single budget period of 12 months. We may choose not to further consider or review applications with budgets that exceed the maximum amounts specified, if we conclude, during our initial review of the application, that the proposed goals and objectives cannot be obtained with the specified maximum amount.

Estimated Number of Awards: Individual Development Grant: 15. Cooperative Arrangement Development Grant: 12.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the HSI Program Web site for further information. The address is: *http://www.ed.gov/programs/idueshsi/index.html.*

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The HSI Program provides grants to assist HSIs to expand

educational opportunities for, and improve the academic attainment of, Hispanic students. The HSI Program grants also enable HSIs to expand and enhance their academic offerings, program quality, and institutional stability.

Priorities: This notice contains one competitive preference priority and five invitational priorities. We are establishing the competitive preference priority for the FY 2007 grant competition only, in accordance with section 437(d)(1) of the General Education Provisions Act.

Competitive Preference Priority: For FY 2007, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we will award an additional 25 points to an Individual Development Grant application that meets this priority.

This priority is:

We will give priority to applicants for Individual Development Grants that will not receive a non-competing continuation grant under the HSI Program in FY 2007. Applicants submitting multiple applications for Individual Development Grants who do not have non-competing continuations in FY 2007 may submit only one Individual Development Grant application under this competitive preference priority and must indicate which one of its Individual Development Grant applications is to be considered under this competitive preference priority.

Background: We are establishing this competitive preference priority to ensure that eligible IHEs have a full opportunity to apply for and receive Individual Development Grants and that IHEs that already have a five-year Individual Development Grant do not receive additional funding until their current grant has ended.

The Department believes that this approach is consistent with Congress' intent in enacting recent changes to the HSI program as part of the Third Higher Education Extension Act of 2006. As part of that law, Congress eliminated the provision in section 504(a) of the HEA that required grantees that received a five-year Individual Development Grant to wait for two years after completion of that grant before receiving a new grant. We believe that Congress intended to permit grantees to receive a new Individual Development Grant immediately after completing the old grant but did not necessarily intend this change to allow grantees to receive more than one Individual Development Grant at a time.

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

Individual Development or Cooperative Arrangement Development Grants that aim to expand and enhance the academic offerings and program quality of colleges and universities with significant numbers of Hispanic students and other low-income individuals by strengthening academic offerings and program quality in the following National Science and Mathematics Access to Retain Talent (National SMART Grant) Program fields of study as delineated in 34 CFR 691.17: Computer science, engineering, technology, life sciences, mathematics, physical sciences and foreign languages, and in particular, for majors and critical foreign languages designated in Dear Colleague Letter (DCL) GEN–06–15. The Web site for DCL GEN–06–15 is: *http://www.ifap.ed.gov/dpcletters/Gen0615.html.*

Invitational Priority 2

Individual Development or Cooperative Arrangement Development Grants that aim to expand educational opportunities for and improve the academic attainment of Hispanic students and other low-income individuals by establishing or strengthening community outreach programs to middle school and high school students to provide information on rigorous secondary school program of study requirements as defined in 34 CFR 691.16 for the Academic Competitiveness Grant (ACG) Program. The Web site listing the recognized secondary school programs of study for each State for students graduating in 2005 or 2006 is *http://www.ed.gov/admins/finaid/about/ac-smart/state-programs06.html.* The Web site listing the recognized rigorous secondary school programs of study for each State for students graduating in 2007 is *http://www.ed.gov/admins/finaid/about/ac-smart/2007/state-programs-07.html.*

Invitational Priority 3

Individual Development or Cooperative Arrangement Development Grants that aim to improve the academic attainment of Hispanic students and other low-income individuals by establishing or improving tutoring, counseling, and student service programs designed to improve student academic success in the following National SMART Grant fields of study as delineated in 34 CFR 691.17: computer science, engineering, technology, life sciences, mathematics, physical sciences and foreign languages, and in particular, for majors and critical foreign languages designated in Dear Colleague Letter GEN–06–15. The Web site for DCL GEN–06–15 is: *http://www.ifap.ed.gov/dpcletters/Gen0615.html.*

Invitational Priority 4

Individual Development or Cooperative Arrangement Development Grants that aim to expand educational opportunities of Hispanic students and other low-income individuals by improving or strengthening institutional capacity to evaluate student eligibility for the ACG and National SMART Grant Programs.

Invitational Priority 5

Applications that include an external evaluator to assess the project's plan for a rigorous experimental design and evaluation to determine linkages between proposed project interventions and successful outcomes.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on a competitive preference priority. Section 437(d)(1) of General Education Provisions Act, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program since the enactment of the amendments made by the Third Higher Education Extension Act of 2006 and therefore qualifies for this exemption. To make timely grant awards in FY 2007, the Secretary has decided to issue this application notice without first publishing this competitive preference priority for public comment. This competitive preference priority will apply to the FY 2007 grant competition only.

Program Authority: 20 U.S.C. 1101–1101d, 1103–1103g.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 606.

II. Award Information

Type of Award: Discretionary grant. Five-year Individual Development Grants and Five-year Cooperative Arrangement Development Grants will be awarded in FY 2007. Planning grants will not be awarded in FY 2007.

Estimated Available Funds: $17,181,510.

Estimated Range of Awards: $550,000–$713,000.

Estimate Average Size of Awards: Individual Development Grant: $575,000. Cooperative Arrangement Development Grant: $713,000.

Maximum Awards: Individual Development Grant: $575,000. Cooperative Arrangement Development Grant: $713,000. We will not fund any application at an amount exceeding these maximum amounts for a single budget period of 12 months. We may choose not to further consider or review applications with budgets that exceed the maximum amounts specified, if we conclude, during our initial review of the application, that the proposed goals and objectives cannot be obtained with the specified maximum amount.

Estimated Number of Awards: Individual Development Grant: 15. Cooperative Arrangement Development Grant: 12.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the HSI Program Web site, for further information. The address is: *http://www.ed.gov/programs/idueshsi/index.html.*

Project Period: Up to 60 months.

III. Eligibility Information

Eligible Applicants: IHEs that qualify as eligible HSIs are eligible to apply for new Individual Development Grants and Cooperative Arrangement Development Grants under the HSI Program. To be an eligible HSI, an IHE must—

(1) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(2) Be legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(3) Be designated as an ''eligible institution'' by demonstrating that it: (A) Has an enrollment of needy students as described in 34 CFR 606.3; and (B) has low average educational and general expenditures per FTE undergraduate student as described in 34 CFR 606.4;

(4) Have an enrollment of undergraduate FTE students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application.

Effective September 30, 2006, the Third Higher Education Extension Act of 2006, amended section 502(a) of the HEA by requiring that institutions report their undergraduate Hispanic FTE percentage at the end of the award year immediately preceding the date of application. Funds for the HSI Program are awarded each fiscal year, thus, for this program, the end of the award year refers to the end of the fiscal year prior to the application due date. The end of the fiscal year occurs on September 30 for any given year. Therefore, for purposes of making the determination described in paragraph (4), IHEs must report their undergraduate Hispanic FTE percent based on the student enrollment count closest to, but not after, September 30, 2006.

The Third Higher Education Extension Act of 2006 also amended section 502(a) of the HEA by eliminating the requirement in the HSI Program that an IHE applying for a grant provide an assurance that not less than 50 percent of the institution's Hispanic students are low-income individuals.

The Notice Inviting Applications for Designation as Eligible Institutions for FY 2007 was published in the **Federal Register** on January 8, 2007 (72 FR 760). The HSI eligibility requirements are in 34 CFR 606.2 through 606.5 and can be accessed from the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_01/34cfr606_01.html.* These regulations do not reflect the changes made to the HSI program requirements by the Third Higher Education Extension Act of 2006.

Relationship Between HSI and Title III, Part A Programs

Note 1: A grantee under the HSI Program, which is authorized by Title V of the HEA, may not receive a grant under any HEA, Title III, Part A Program. The Title III, Part A Programs include: The Strengthening Institutions Program; the American Indian Tribally Controlled Colleges and Universities Program; and the Alaska Native and Native Hawaiian-Serving Institutions Programs. Further, a current HSI Program grantee may not give up its HSI grant in order to receive a grant under any Title III, Part A Program.

Note 2: An HSI that does not fall within the limitation described in Note 1 may apply for a FY 2007 grant under all Title III, Part A Programs for which it is eligible, as well as under the HSI Program. However, a successful applicant may receive only one grant.

Note 3: An eligible HSI that submits more than one application may only be awarded one Individual Development Grant or one Cooperative Arrangement Development Grant in a fiscal year. Furthermore, we will not award a second Cooperative Arrangement Development Grant to an otherwise eligible HSI for the same award year as the HSI's existing Cooperative Arrangement Development Grant.

Note 4: The Department will cross-reference for verification, data reported to the IPEDS, the IHE's State-reported enrollment data, and the institutional annual report. If there are any differences in the percentages reported in the IPEDS and the percentages reported in the grant application, the IHE should justify the differences as a part of its eligibility documentation.

2. *Cost Sharing or Matching:* There are no cost sharing or matching requirements unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds. (20 U.S.C. 1101b(c)(2)).

IV. Application and Submission Information

1. *Address to Request Application Package:* J. Alexander Hamilton, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7583 or by e-mail: *Josephine.Hamilton@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 Limits: The application narrative (Part III) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We have established mandatory page limits for both the Individual Development Grant and the Cooperative Arrangement Development Grant applications. You must limit the section of the narrative that addresses the selection criteria to no more than 50 pages for the Individual Development Grant application and 70 pages for the Cooperative Arrangement Development Grant application, using the following standards:

- A page is 8.5″ x 11″, on one side only, with 1 inch margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, captions and all text in charts, tables, 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 not be accepted.

• Use font size 12.

The page limit does not apply to Part I, the application for federal assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget information summary form (ED Form 524); Part III, the Project Abstract and the Five-year Plan; and Part IV, the assurances and certifications. The page limit also does not apply to a table of contents. If you include any attachments or appendices, these items will be counted as part of the Program Narrative (Part III) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the program narrative.

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: June 11, 2007.

Deadline for Transmittal of Applications: August 10, 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 hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

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

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

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 the regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

Applicability of Executive Order 13202

Applicants that apply for construction funds under the HSI Program must comply with Executive Order 13202 signed by President Bush on February 17, 2001, and amended on April 6, 2001. This Executive order provides that recipients of Federal construction funds may not ''require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)'' or ''otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s).'' However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements. Projects funded under this program that include construction activity will be provided a copy of this Executive order and will be asked to certify that they will adhere to it.

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

a. *Electronic Submission of Applications.*

Applications for grants under the HSI Program (CFDA Number 84.031S) must be submitted electronically using the Government wide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

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 HSI 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 84.031, not 84.031S).

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 competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all of the 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 for CCR registration on an annual basis. This may take three or more business days to complete.

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

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

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

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

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

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

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

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

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

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

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

• You do not have access to the Internet; or

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

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

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

Address and mail or fax your statement to: J. Alexander Hamilton, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513 FAX: (202) 502–7861.

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 84.031S), 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 84.031S), 7100 Old Landover Road, Landover, MD 20785–1506.

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

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

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

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

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

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

(1) A private metered postmark; or

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

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

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

c. *Submission of Paper Applications by Hand Delivery.*

If you 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 84.031S), 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.

(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 program are in 34 CFR 606.22. In addition to these selection criteria, we evaluate an applicant's performance under a previous Development Grant under 34 CFR 606.24.

2. *Review and Selection Process:*

(A) Applicants must provide, as an attachment to the application, the documentation the institution relied upon in determining that at least 25 percent of the institution's undergraduate FTE students are Hispanic.

Note: The 25 percent requirement applies only to undergraduate Hispanic students and is calculated based upon FTE students. Instructions for formatting and submitting the verification documentation to Grants.gov are in the application package for this competition.

(B) Tiebreaker for Development Grants. In tie-breaking situations for development grants described in 34 CFR 606.23(b), the HSI Program regulations require that we award one additional point to an application from an IHE that has an endowment fund for which the market value per FTE student is less than the comparable average per FTE student at a similar type IHE. We also award one additional point to an application from an IHE that had expenditures for library materials per FTE student that are less than the comparable average per FTE student at a similar type IHE.

For the purpose of these funding considerations, we use 2004–2005 data.

If a tie remains after applying the tiebreaker mechanism above, priority will be given (a) for Individual Development Grants, to applicants that addressed the statutory priority found in section 511(d) of the HEA; and (b) for Cooperative Arrangement Development Grants, to applicants in accordance with section 514(b) of the HEA, where the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant HSI.

If a tie still remains after applying the additional point(s), and the relevant statutory priority, we will determine the ranking of applicants based on the lowest endowment values per FTE student.

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, 34 CFR 75.720 and in 34 CFR 606.31.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the HSI Program: (1) The number of full-time degree-seeking undergraduates enrolled at HSIs. (2) The percentage of first-time, full-time degree-seeking undergraduate students who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same institution. (3) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year HSIs graduating within six years of enrollment. (4) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year HSIs graduating within three years of enrollment. (5) Federal cost for undergraduate and graduate degrees at institutions in the Developing HSIs program.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: J. Alexander Hamilton, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7583 or by e-mail: *Josephine.Hamilton@ed.gov* or Carnisia Proctor, Telephone: (202) 502–7606 or by e-mail: *Carnisia.Proctor@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: July 6, 2007.

James F. Manning,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. E7–13473 Filed 7–10–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Grant Competition To Improve Public Knowledge of and Support for Democracy; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.929C.

Dates:

Applications Available: July 11, 2007.

Deadline for Transmittal of Applications: August 10, 2007.

Deadline for Intergovernmental Review: September 10, 2007.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: To improve the quality of civic education through the implementation of comprehensive programs to improve public knowledge, understanding, and support of the United States Congress and the State legislatures.

Program Authority: 20 U.S.C. 6711–6714; Section 20629 of Public Law 110–5, ''Division B—Continuing Appropriations Resolution, 2007,'' and Title III, Department of Education Appropriations Act, 2006, Safe Schools and Citizenship Education, of Public Law 109–149.

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.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $2,984,750.

Estimated Range of Awards: $500,000–$2,984,750.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 4–5.

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

Project Period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:*

State educational agencies, local educational agencies, institutions of higher education; and other public and private agencies, organizations, and institutions, or a combination of such entities.

2. *Cost Sharing or Matching:*

This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Rita Foy Moss, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E247, Washington, DC 20202. Telephone: (202) 205–8061 or by e-mail: *rita.foy.moss@ed.gov.*

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

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the 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 competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You should limit the application narrative to 25 single-sided, double-spaced, 8.5″ x 11″ pages using a font not smaller than 12 point, with 1-inch margins at the top, bottom, left, and right sides. The narrative should follow the format and sequence of the selection criteria.

3. *Submission Dates and Times:*

Applications Available: July 11, 2007.

Deadline for Transmittal of Applications: August 10, 2007.

Applications for grants under this competition may be submitted electronically using the *http://www.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 in paper format 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** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 10, 2007.

4. *Intergovernmental Review:*

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

5. *Funding Restrictions:*

We reference regulations outlining funding restrictions in the *Applicable Regulations* section in 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 *http://www.grants.gov.* Apply site. The competition to Improve Public Knowledge of and Support for Democracy, CFDA Number 84.929C, is included in this project. We request your participation in *http://www.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 this competition at *http://www.grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.929, not 84.929C).

Please note the following:

- Your participation in grants.gov is voluntary.
- When you enter the grants.gov Web 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://eGrants.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 must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via grants.gov. In addition you, will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 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 Technical Issues with the grants.gov System: If you are experiencing problems submitting your application through grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a grants.gov Support Desk Case Number and must keep a record of it.

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

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

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

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 84.929C), 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 84.929C), 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 84.929C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

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

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

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

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

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR part 75.210 in EDGAR 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 Notice (GAN). We may notify you informally, also.

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

2. *Administrative and National Policy Requirements:*

We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

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

3. *Reporting:*

At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to: *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measure:*

If funded, applicants will be expected to evaluate the effectiveness of the grant supported activities on improving the knowledge, understanding, and support of the United States Congress and the State legislatures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Rita Foy Moss, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E247, Washington, DC 20202. Telephone: (202) 205–8061 or by e-mail: *rita.foy.moss@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format:

Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document:

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

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

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

Dated: July 6, 2007.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E7–13472 Filed 7–10–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–504–000]

Algonquin Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2007.

Take notice that on June 29, 2007, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective on August 1, 2007:

First Revised Sheet No. 519
First Revised Sheet No. 520
First Revised Sheet No. 521.

Algonquin submits these tariff sheets in order to address gas quality and interchangeability on its system. Algonquin states that these issues were raised in the context of a proposal to bring large-scale volumes of regasified LNG into the system. Algonquin states that the instant proposal will maximize the number of potential LNG supply sources that may come into its system while minimizing the effects on downstream parties.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention

or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13431 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–907–000]

Bruce Power Inc.; Notice of Issuance of Order

July 3, 2007.

Bruce Power Inc. (Bruce Power) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Bruce Power also requested waivers of various Commission regulations. In particular, Bruce Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Bruce Power.

On June 29, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Bruce Power should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is July 30, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Bruce Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Bruce Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Bruce Power's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also 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 filed to access the document. Comments, protests, and interventions 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13466 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–495–000]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Tariff

July 3, 2007.

Take notice that on June 27, 2007, CenterPoint Energy Mississippi River Transmission Corporation (MRT), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective July 1, 2007:

Sixtieth Revised Sheet No. 5.
Sixtieth Revised Sheet No. 6.
Fifty-Seventh Revised Sheet No. 7.

MRT states that these tariff sheets reflect the termination of a supplemental adjustment percentage that went into effect on May 1, 2006 as a result of an Uncontested Settlement Agreement related to MRT's Annual Fuel and LUFG adjustment filing in Docket No. RP05–691–000.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13452 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–404–000]

Centerpoint Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

July 3, 2007.

Take notice that on June 20, 2007, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP07–404–000, a prior notice request pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to replace an existing delivery lateral and increase the line's maximum allowable operating pressure (MAOP), located in Ouachita and Union Counties, Arkansas, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, CEGT proposes to replace approximately 24.9 miles of Line E, a 12-inch diameter mechanically-coupled pipeline, with approximately 24.9 miles of 12-inch steel welded pipe, install a 10-inch interconnect between Line E and Line SM–23, and install auxiliary facilities including pig launcher and receiver facilities, a 6-inch check meter station and 4-inch regulator, and all other appurtenant facilities necessary. CEGT also requests authorization to increase the MAOP of the proposed replacement segment of Line E from 415 psig to 800 psig. CEGT states that the MAOP increase will enable Line E to operate up to Line SM–23's current MAOP of 800 psig. CEGT estimates the cost of construction to be $17,717,876.

Any questions regarding the application should be directed to Lawrence O. Thomas, Director-Rate & Regulatory, CenterPoint Energy Gas Transmission Company, P. O. Box 21734, Shreveport, Louisiana 71151, or call at (318) 429–2804.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13458 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–177]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

July 3, 2007.

Take notice that on June 28, 2007, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval an amendment to a negotiated rate agreement between CEGT and BP Energy Company. The amended agreement will be effective July 1, 2007.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13464 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–178]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

July 3, 2007.

Take notice that on June 28, 2007, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval an amendment to a negotiated rate agreement between CEGT and Enbridge Marketing (U.S.), LP. The amended agreement will be effective July 1, 2007.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13465 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–499–000]

Central Kentucky Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2007.

Take notice that on June 29, 2007, Central Kentucky Transmission Company (Central Kentucky) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, with a proposed effective date of August 1, 2007:

First Revised Sheet No. 385.
First Revised Sheet No. 386.
First Revised Sheet No. 387.
First Revised Sheet No. 388.
First Revised Sheet No. 389.

Central Kentucky states that it is proposing to revise the pro forma Form of Assignment Agreement to be used by replacement shippers when entering into contracts with Central Kentucky with respect to capacity awarded.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13462 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–509–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2007.

Take notice that on June 29, 2007, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of August 1, 2007:

Third Revised Sheet No. 580
Sixth Revised Sheet No. 581
Second Revised Sheet No. 582

Columbia states that it is proposing to revise the pro forma Form of Assignment Agreement to be used by replacement shippers when entering into contracts with Columbia with respect to capacity awarded.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13453 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–507–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2007.

Take notice that on June 29, 2007, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2007:

Fifth Revised Sheet No. 105
Third Revised Sheet No. 106
Eighth Revised Sheet No. 108
Second Revised Sheet No. 207
Fifth Revised Sheet No. 217
First Revised Sheet No. 353A

Columbia states that it is proposing various revisions to its Tariff in connection with the launch of the new Navigates Electronic Bulletin Board system.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13455 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–508–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2007.

Take notice that on June 29, 2007, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2007:

Eighth Revised Sheet No. 193.
Ninth Revised Sheet No. 194.

Columbia Gulf states that it is proposing to revise Section 14.3 of the General Terms and Conditions (GTC) of its Tariff in order to discontinue the practice (under GTC Section 14.3(e)) of allowing releasing shippers to include in Release Notices a requirement that potential replacement shippers bid on parcels of capacity on both Columbia Gulf and Columbia Gas Transmission Corporation which are being packaged for bidding purposes.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13454 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–500–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2007.

Take notice that on June 29, 2007, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2007:

Third Revised Sheet No. 391
Fourth Revised Sheet No. 392
Fifth Revised Sheet No. 393

Columbia Gulf states that it is proposing to revise the pro forma Form of Assignment Agreement to be used by replacement shippers when entering into contracts with Columbia Gulf with respect to capacity awarded.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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 email 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13461 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–515–000]

Crossroads Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2007.

Take notice that on June 29, 2007, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2007:

First Revised Sheet No. 585
Second Revised Sheet No. 586
Second Revised Sheet No. 587
First Revised Sheet No. 588
First Revised Sheet No. 589

Crossroads states that it is proposing to revise the pro forma Form of Assignment Agreement to be used by replacement shippers when entering into contracts with Crossroads with respect to capacity awarded.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13444 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–632–023]

Dominion Transmission, Inc.; Notice of Fuel Report

July 3, 2007.

Take notice that on June 27, 2007, Dominion Transmission, Inc. (DTI) tendered for filing its informational fuel report. DTI states that the fuel report details DTI's System Gas Requirements and gas retained or otherwise obtained for the twelve-month period ending March 31, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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 July 10, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13463 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–749–000; ER07–749–001]

Dyon, LLC.; Notice of Issuance of Order.

July 3, 2007.

Dyon, LLC (Dyon) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Dyon also requested waivers of various Commission regulations. In particular, Dyon requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Dyon.

On July 2, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Dyon should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is August 1, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Dyon is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Dyon, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Dyon's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also 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 filed to access the document. Comments, protests, and interventions 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13435 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–512–000]

El Paso Natural Gas Company; Notice of Pathing and Segmentation Report

July 3, 2007.

Take notice that on June 29, 2007, El Paso Natural Gas Company (EPNG) tendered for filing its one year report of pathing and segmentation activity.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13446 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–511–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2007.

Take notice that on June 29, 2007, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the tariff sheets listed in Appendix A to the filing, effective January 1, 2008.

EPNG states that these tariff sheets are filed to propose provisions for a non-critical condition daily scheduling penalty, which will apply toward packs and drafts of EPNG's pipeline system, taking into account certain procedures and safe harbor tolerance levels.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13447 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–904–000]

FPL Energy Point Branch, LLC; Notice of Issuance of Order

July 3, 2007.

FPL Energy Point Branch, LLC (FPLE Point Branch) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. FPLE Point Branch also requested waivers of various Commission regulations. In particular, FPLE Point Branch , requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by FPLE Point Branch.

On June 26, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by FPLE Point Branch should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is June 25, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, FPLE Point Branch is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of FPLE Point Branch, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of FPLE Point Branch's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also 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 filed to access the document. Comments, protests, and interventions 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13433 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–503–000]

Hardy Storage Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2007.

Take notice that on June 29, 2007, Hardy Storage Company, LLC (Hardy) tendered for filing as part of its FERC Gas Tariff, Original Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 2007:

First Revised Sheet No. 232
First Revised Sheet No. 233
First Revised Sheet No. 234
First Revised Sheet No. 235

Hardy states that it is proposing to revise the pro forma Form of Assignment Agreement to be used by replacement shippers when entering into contracts with Hardy with respect to capacity awarded.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13451 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–892–000]

Louis Dreyfus Energy Services, L.P.; Notice of Issuance of Order

July 3, 2007.

Louis Dreyfus Energy Services, L.P. (Louis Dreyfus) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Louis Dreyfus also requested waivers of various Commission regulations. In particular, Louis Dreyfus requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Louis Dreyfus.

On June 29, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Louis Dreyfus should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is June 30, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Louis Dreyfus is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Louis Dreyfus, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Louis Dreyfus' issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also 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 filed to access the document. Comments, protests, and interventions 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13432 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–514–000]

MIGC, Inc.; Notice of Compliance Filing

July 3, 2007.

Take notice that on June 29, 2007, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet No. 6, to become effective August 1, 2007.

MIGC asserts that the instant tariff sheet is being submitted in compliance with Section 25 of MIGC's FERC Gas Tariff, First Revised Volume No. 1, which provides for MIGC to file revised fuel retention and loss percentage factors (FL&U factors) each year.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13445 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–919–000]

Mint Farm Energy Center, LLC; Notice of Issuance of Order

July 3, 2007.

Mint Farm Energy Center, LLC (Mint Farm) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Mint Farm also requested waivers of various Commission regulations. In particular, Mint Farm requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Mint Farm.

On June 26, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Mint Farm should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is July 27, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Mint Farm is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Mint Farm, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Mint Farm's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also 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 filed to access the document. Comments, protests, and interventions 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13438 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–406–000, CP07–407–000, CP07–408–000]

Monroe Gas Storage Company, LLC; Notice of Filing

July 3, 2007.

Take notice that on June 26, 2007, Monroe Gas Storage Company, LLC (Monroe Gas), 707 17th Street, Suite 3020, Denver, CO 80202, filed an application for a certificate of public convenience and necessity, pursuant to Section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations, authorizing Monroe Gas to construct, own, and operate the Monroe Gas Storage Project located in Monroe County, Mississippi (Project). Monroe Gas also seeks approval of its Pro-Forma Gas Tariff and requests authorization to charge market-based rates for the proposed storage services. Additionally, Monroe Gas requests a blanket certificate authorizing Monroe Gas to engage in certain self-implementing routine activities under Part 157 and a blanket certificate authorizing Monroe Gas to provide open-access non-discriminatory firm and interruptible natural gas storage services and unbundled sales services on behalf of others. The Project will provide up to 12.0 Bcf of working gas storage capacity, as well as provide up to 465 MMcf/d of delivering and withdrawing gas. The application 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.

The Project will be located within land developed by Grace Petroleum, variously known as the Four Mile or Fourmile Creek Gas Field. The Project consists principally of: Nine new natural gas injection/withdrawal wells, five existing natural gas production wells, a compressor station with three 4,735 hp compressor units, and related pipelines. The proposed project will be connected with the Texas Eastern Transmission Corp. and Tennessee Gas Pipeline Company systems. Monroe Gas proposes to complete construction of the Project by September 30, 2008.

Any questions regarding the application are to be directed to William B. Mathews, Monroe Gas Storage Company, 707 17th Street, Suite 3020, Denver, CO 80202.

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.

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: July 24, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13443 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–501–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2007.

Take notice that on June 29, 2007, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, 103rd Revised Sheet No. 9, to become effective June 1, 2007.

National states that Article II, Sections 1 and 2 of the settlement provide that National will recalculate the maximum Interruptible Gathering (''IG'') rate semi-annually and monthly. Further, Section

2 of Article II provides that the IG rate will be the recalculated monthly rate, commencing on the first day of the following month, if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG rate of $1.49 per dth. In addition, Article III, Section 1 states that any overruns of the Firm Gathering service provided by National shall be priced at the maximum IG rate. Pursuant to a posting on its web site, National is currently discounting its IG rate to all shippers to $0.8000 per dth. This discount will remain in effect at least throughout the month of July 2007 and until further notice.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13460 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–875–000]

Peetz Table Wind Energy, LLC; Notice of Issuance of Order

July 3, 2007.

Peetz Table Wind Energy, LLC (Peetz Wind) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Peetz Wind also requested waivers of various Commission regulations. In particular, Peetz Wind requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Peetz Wind.

On June 26, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Peetz Wind should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is July 27, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Peetz Wind is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Peetz Wind, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Peetz Wind's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also 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 filed to access the document. Comments, protests, and interventions 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13434 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–510–000]

Petal Gas Storage, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

July 5, 2007.

Take notice that on June 29, 2007, Petal Gas Storage, L.L.C. (Petal) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets with an effective date of August 1, 2007:

Fifth Revised Sheet No. 0
First Revised Sheet No. 100A
Fourth Revised Sheet No. 104
Fifth Revised Sheet No. 105
Second Revised Sheet No. 108A
Sixth Revised Sheet No. 109
Fifth Revised Sheet No. 110
Seventh Revised Sheet No. 126
Seventh Revised Sheet No. 127
Original Sheet No. 141
Original Sheet No. 142
Fourth Revised Sheet No. 210
Fourth Revised Sheet No. 222

Petal states that the filing is being made to update the General Terms and Conditions of its FERC Gas Tariff.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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 email 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13449 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–196; Docket No. EL00–98–180]

San Diego Gas & Electric Company v. Sellers of Energy and Other Ancillary; Services Into Markets Operated by the California Power Independent System Operator Corporation and the California Power Exchange; Notice of Compliance Filing

July 2, 2007.

Take notice that on April 24, 2007, APX Inc and the APX Sponsoring Parties submitted a compliance filing as directed by the Commission in an order approving the APX Settlement, *San Diego Gas & Electric* v. *Sellers of Ancillary Serv.,* 118 FERC ¶ 61,168 (2007). The compliance filing was contemplated by the APX/California Parties Term Sheet that was filed with the Commission as Appendix A to the APX/California Parties February 7, 2007 reply Comments on the APX Settlement.

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 July 12, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13439 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–513–000]

Sea Robin Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2007.

Take notice that on June 29, 2007, Sea Robin Pipeline Company, LLC, (Sea Robin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to become effective August 1, 2007.

Sea Robin states that the primary reason for the filing of the revised tariff sheets is to adjust Sea Robin's rates for gathering and transmission transportation services for a general rate increase. Projected transportation revenues, excluding surcharges, are $22.0 million based on the 12-month period ending February 28, 2007, as adjusted, resulting in a $13.5 million increase when compared with actual revenues.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13448 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–502–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2007.

Take notice that on June 29, 2007, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1 and First Revised Volume No. 2, revised tariff sheets, as listed on Appendix B to the filing, to become effective August 1, 2007.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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 email 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13459 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–405–000]

Texas Gas Transmission, LLC; Notice of Filing

July 3, 2007.

Take notice that on June 25, 2007, Texas Gas Transmission, LLC (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed an abbreviated application for a certificate of public convenience and necessity, pursuant to Section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations, authorizing Texas Gas to expand its facilities at Midland Gas Storage Field in Muhlenberg County, Kentucky. The project will provide up to 8.25 Bcf of new firm storage capacity, as well as provide up to 92.2 MMcf/d of increased firm deliverability. The application 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.

Texas Gas is seeking a determination that it qualifies for market-based rates. In the event that the Commission does not allow market-based rates for the new storage capacity under either the traditional market power analysis or section 4(f) of the NGA, Texas Gas seeks authorization to construct only the facilities necessary to create approximately 2 Bcf of new storage capacity at the rates reflected in the Precedent Agreement between Texas Gas and its storage customer.

For the 2 Bcf expansion, Texas Gas proposes the following activities:

—To install a discharge cooler and additional gas dehydration facilities, and to uprate two electric drive compressors (from 1,250 to 1,500 HP each) at the Midland 3 Compressor Station, and

—To restage one existing centrifugal compressor at the Slaughters Compressor Station.

For the full 8.25 Bcf expansion, Texas Gas proposes the following additional activities:

—At the Midland 3 Compressor Station, to install one 5,488 HP Solar Centaur 50gas turbine13 and auxiliary facilities, to retire in place two existing 2,000 HP Delaval reciprocating compressor units, including certain auxiliary facilities, and to construct a 2,900-foot extension of its E–9 16-inch storage lateral.

—To construct approximately 11 miles of 30-inch mainline pipeline loop from the discharge side of the Midland 3 Compressor Station to a point near Hanson, Kentucky.

—To drill seven horizontal injection/withdrawal wells and install related piping and measurement at Midland.

Texas Gas proposes the service dates of November 1, 2008 and November 1, 2009 for the 2 Bcf expansion and 8.25 Bcf expansion, respectively.

Any questions regarding the application are to be directed to Kathy D. Fort, Manager of Certificates and Tariffs, Texas Gas Transmission, LLC, 3800 Frederica Street, Owensboro, Kentucky 42301.

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.

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: July 24, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13442 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–569–000]

Transcontinental Gas Pipe Line Corp.; Notice of Informal Settlement Conference

July 3, 2007.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 9 a.m. (EST) on Friday July 6, in Hearing Room 1 at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For additional information, please contact Bill Collins at (202) 502–8248, *william.collins@ferc.gov* or Irene Szopo at (202) 502–8323, *irene.szopo@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13441 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–506–000]

Trunkline LNG Company, LLC; Notice of Revenue Surcharge Adjustment

July 3, 2007.

Take notice that on June 29, 2007, Trunkline LNG Company (TLNG) tendered a filing pursuant to Section 21 of the General Terms and Conditions of TLNG's FERC Gas Tariff, Second Revised Volume No. 1–A.

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 and 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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 July 10, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13456 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–505–000]

Trunkline LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

July 3, 2007.

Take notice that on June 29, 2007, Trunkline LNG Company, LLC (TLNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Twelfth Revised Sheet No. 5, with an effective date of August 1, 2007.

TLNG states that the filing is being made in accordance with Section 19 (Fuel Reimbursement Adjustment) and Section 20 (Electric Power Cost Adjustment) of the General Terms and Conditions of TLNG's FERC Gas Tariff, Second Revised Volume No. 1–A.

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 and 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 in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13457 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–78–000]

330 Fund I, L.P., Complainant, v. New York Independent System Operator, Inc., Respondent; Notice of Complaint

July 3, 2007.

Take notice that on June 29, 2007, 330 Fund I, L.P. (330 Fund), pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e(a) (2000) and Rule 206 of the Rules of Practice and Procedure of the Commission's Regulations 18 CFR 385.206 (2006), brings a complaint against the New York Independent System Operator Inc. (NYISO) stating NYISO has violated at least three provisions of the Open Access Transmission Tariff approved by the Commission, including the NYISO's Commission-imposed obligations to timely post information on its Open Access Same-time Information System and Web site.

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 July 19, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13440 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–11–000]

ExxonMobil Oil Corporation, Complainant, v. SFPP, L.P., Respondent; Notice of Complaint

July 3, 2007.

Take notice that on June 29, 2007, ExxonMobil Oil Corporation (ExxonMobil), tendered for filing a Complaint against SFPP, L.P. (SFPP), challenging SFPP's 205 index rate increase as unjust and unreasonable. ExxonMobil requests that the Commission review and investigate SFPP's index rate increases; set the proceeding for an evidentiary hearing to determine just and reasonable rates for SFPP; require the payment of reparations and interest starting two years before the date of complaint for all rates; and award such other relief as is necessary and appropriate under the Interstate Commerce Act.

ExxonMobil states that copies of the Complaint were served on SFPP, L.P.

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 July 19, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13450 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–69–000]

Western Systems Power Pool Agreement; Notice of Institution of Proceeding and Refund Effective Date

July 3, 2007.

On June 21, 2007, the Commission issued an order that instituted a proceeding in the above-referenced docket, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824c, to investigate whether the Western Systems Power Pool Agreement ceiling rate is just and reasonable for a public utility seller in markets in which such seller has been found to have market power or is presumed to have market power. *Western System Power Pool,* 119 FERC ¶ 61,302 (2007).

The refund effective date in the above-docketed proceeding, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13436 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

July 3, 2007.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are 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.

EXEMPT

Docket No.	Date received	Presenter or requester
1. CP06–459–000	6–20–07	Hon. Manuel V. Alvarez.
2. CP06–459–000	6–20–07	Hon. Judy M. Burges.
3. CP06–459–000	6–20–07	Hon. Thomas L. Schoaf.
4. CP06–459–000	6–25–07	Hon. Jennifer J. Burns.
5. CP06–459–000	6–25–07	Hon. John Nelson.
6. CP06–459–000	6–25–07	Hon. Elaine M. Scruggs.
7. CP07–8–000	6–8–07	Steven Ugoretz.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–13437 Filed 7–10–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Colorado River Storage Project—Rate Order No. WAPA–132

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of order temporarily extending transmission and ancillary services rates.

SUMMARY: This action is to temporarily extend the existing Colorado River Storage Project (CRSP) transmission and ancillary services rates through September 30, 2010. The existing transmission and ancillary services rates will expire September 30, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Bradley S. Warren, CRSP Manager, CRSP Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1580, (801) 524–6372, e-mail *warren@wapa.gov*, or Ms. Carol Loftin, Rates Manager, CRSP Management Center, Western Area Power Administration, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111–1580, (801) 524–6380, e-mail *loftinc@wapa.gov.*

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (Commission).

The existing rates, contained in Rate Order No. WAPA–99,[1] were approved for 5 years through September 30, 2007. Western is temporarily extending the existing CRSP transmission and ancillary services rates in accordance with 10 CFR part 903.23(b). The existing CRSP rate formula methodology collects annual revenue sufficient to recovery annual expenses (including interest) and capital requirements, thus ensuring repayment of the project within the cost recovery criteria set forth in DOE order RA 6120.2. The temporary extension will permit a concurrent public process and rate approval period for firm electric service, transmission service, and ancillary services.

Western did not have a consultation and comment period and did not hold public information and comment forums, which in accordance with 10 CFR part 903.23(b) are not required. Following review of Western's proposal within DOE, I hereby approve Rate

[1] WAPA–99 was approved by the Commission on a final basis on November 14, 2003, in Docket No. EF02–5171–000 (105 FERC ¶ 62,093).

Order No. WAPA–132 which extends the existing CRSP transmission and ancillary services rates through September 30, 2010.

Dated: June 29, 2007.

Clay Sell,

Deputy Secretary.

Department of Energy; Deputy Secretary

Rate Order No. WAPA–132

In the Matter of: Western Area Power Administration Rate Extension for Colorado River Storage Project Transmission and Ancillary Services Rates; Order Confirming and Approving a Temporary Extension of the Colorado River Storage Project Transmission and Ancillary Services Rates

The transmission and ancillary services rates were established following section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project system involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission.

Background

The existing rates, contained in Rate Order No. WAPA–99, were approved for 5 years and are effective through September 30, 2007.

Discussion

CRSP firm power, transmission, and ancillary services rates were placed into effect in 2002,[2] with expiration in 2007. In 2005, CRSP firm power rates were found to be insufficient, so a new increased firm electric service rate was placed into effect on October 1, 2005, through September 30, 2010.[3] The CRSP transmission and ancillary services rates remained the same, with expiration in 2007. Western is temporarily extending the CRSP transmission and ancillary services rates until 2010 pursuant to 10 CFR part 903.23(b). This will result in the CRSP firm electric, transmission, and ancillary services rates having the same expiration date, and will permit a concurrent public process and rate approval period for those services. The existing transmission and ancillary services rate formula methodologies collect annual revenues sufficient to recover annual expenses (including interest) and capital requirements, thus ensuring repayment of the project costs under the cost recovery criteria set forth in DOE order RA 6120.2. As permitted by 10 CFR part 903.23(b), Western did not have an advanced notice and comment period, and did not hold public information and comment forums on the temporary extension of CRSP transmission and ancillary services rates.

Order

In view of the above and under the authority delegated to me, I hereby temporarily extend for a period effective from October 1, 2007, through September 30, 2010, the existing rate schedules SP–PTP6, SP–NW2, SP–NFT5, SP–SD2, SP–RS2, SP–EI2, SP–FR2, and SP–SSR2 for transmission and ancillary services.

Dated: June 29, 2007.

Clay Sell,

Deputy Secretary.

[FR Doc. E7–13418 Filed 7–10–07; 8:45 am]

BILLING CODE 6450–01–P

[2] Rate Order No. WAPA–99, 67 FR 60656 (Sept. 26, 2002). Approved by the Federal Energy Regulatory Commission (FERC) on November 14, 2003 (105 FERC ¶ 62, 093).

[3] Rate Order No. WAPA–117, 70 FR 47823 (August 15, 2005). Approved by FERC on June 13 2006 (115 FERC ¶ 62,271).

DEPARTMENT OF ENERGY

Western Area Power Administration

Consideration of Certain Public Utility Regulatory Policies Act Standards Set Forth in the Energy Policy Act of 2005

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of determination.

SUMMARY: As a non-regulated electric utility, the Western Area Power Administration (Western) must consider and determine whether to implement certain standards under the Energy Policy Act of 2005 (EPAct of 2005), which amended the Public Utility Regulatory Policies Act of 1978 (PURPA). Western considered five standards: Net metering, fuel source diversity, fossil fuel generation efficiency, smart metering, and consumer interconnections. After considering the comments received, Western will not adopt the EPAct of 2005 standards for PURPA at this time.

DATES: The decision to not adopt these standards is effective August 10, 2007.

FOR FURTHER INFORMATION CONTACT: Deborah K. Emler, Desert Southwest Region, Federal Power Programs Manager, 615 S. 43rd Avenue, P.O. Box 6457, Phoenix, AZ 85005–6457, or by telephone (602) 605–2555, or e-mail *emler@wapa.gov.*

SUPPLEMENTARY INFORMATION: Western, as a non-regulated electric utility, is subject to Title XII, Subtitle E of the Energy Policy Act of 2005 and is required to consider the implementation of certain PURPA standards.

Western was established on December 21, 1977, under the Department of Energy Organization Act of 1977 (DOE Act). The DOE Act transferred to Western the power marketing functions of the Bureau of Reclamation (Reclamation), including the construction, operation, and maintenance of transmission lines and attendant activities.

Western sells power to cooperatives, municipalities, public utility districts, private utilities, Federal and State Agencies, Indian tribes, water systems and irrigation districts. Electric power marketed by Western is generated by the hydroelectric resources of Reclamation, the Corps of Engineers, and the International Boundary and Water Commission. Additionally, Western markets the United States' entitlement from the large Navajo coal-fired plant near Page, Arizona.

Western's transmission system, totaling approximately 17,000 line miles with over 290 substations, includes several project-specific systems, some of which are interconnected with one another. There are also numerous interconnections between Western's systems and other systems. Geographically, Western's transmission systems operate in 15 states that are generally west of the Mississippi River.

Western's obligations to its customers are contractually established. Customer requirements in excess of the power and energy available from Western must be obtained by the customer from other sources.

The major projects from which Western markets power include the

Boulder Canyon Project, Central Arizona Project, Central Valley Project, Colorado River Storage Project, Colorado River Basin Project, Falcon-Amistad Project, Parker-Davis Project, and the Pick-Sloan Missouri Basin Program. Each of these projects is a separate entity with its own geographic area, power marketing criteria, revenue requirements, and power and energy rates. Consideration of the PURPA standards was on a Western-wide basis, as opposed to a project-by-project or system-by-system basis.

A brochure entitled ''Preconsideration of Sections 1251, 1252, and 1254 of the Energy Policy Act of 2005'' was prepared and made available for public review in September 2006, and posted at *http://www.wapa.gov/dsw/pwrmkt/PURPA/.* A public hearing was held on October 26, 2006, at Western's Corporate Service Office in Lakewood, CO, and written comments on Western's consideration of the standards were received through November 10, 2006. In addition to the publication of this notice, Western's final action will also be made available to the public at *http://www.wapa.gov/dsw/pwrmkt/PURPA/.*

Response to Comments

Western received comments from three entities within the comment period. Two entities supported Western's initial preconsideration to forego the implementation of the PURPA standards. A third entity expressed a similar agreement with Western's initial assessment regarding fossil fuel generation efficiency standards, (Section 1251(a)(13)), and smart metering, (Section 1252(a)(14)). However, the same entity did express several other concerns.

1. An objection was raised regarding Western's assertion that there was no need for action in response to the net metering standard, (Section 1251(a)(11)). The entity requested a guarantee of net metering services, as opposed to being covered by a broad categorization of Western's primary customers. This commenter represents a group of Federal agencies that are end users of electricity and are not utilities. Applying a net metering standard to a customer served by multiple power suppliers presents unique challenges. Western currently has an ongoing metering issue with a Federal agency customer regarding a renewable energy system that has proven quite difficult to resolve. Western believes that these situations are better dealt with on a case-by-case basis. Western prefers to establish policy on an agency-wide basis and not by exception for a narrow segment of our customer base. However, Western commits to work with its end use customers in a targeted and focused manner to provide assistance in implementing net metering services.

2. In the case of fuel sources, (Section 1251(a)(12)), Western was asked to adopt this standard on a contingent basis. The thought was that if Western's mission changes over the next decade in response to increased demand, the diversification standard would become relevant and should be held as a contingent standard to cover that possibility.

Western does not own generation and predominately markets hydroelectric power. Western sees no value in adopting a diverse fuel source standard when Congress has not given us authority to generate power. If Congress authorizes Western to own generating resources at some point in the future, Western will consider implementing a fuel source diversity standard at that time.

3. Regarding interconnection (Section 1254(a)(15)), one commenter indicated substantial interest in energy conservation and was interested in preserving a requirement through the proposed standard that Western aid them, as a retail customer, in adopting energy conservation measures, such as interconnection service to on-site generation facilities.

Western is primarily a bulk wholesale electric provider that provides a very limited amount of energy to end-use loads. Western's power is marketed by individual projects primarily to preference customers, most of which are electric utilities. These electric utilities in turn blend the Federal hydropower resource into their resource base and sell it to their retail customers. Those preference customers would principally be responsible for interconnection service ''to the local distribution facilities'', as opposed to Western.

Western's facilities are primarily bulk transmission system facilities. Western's policies and procedures for interconnections to its power system are set forth in Western's Open Access Transmission Tariff which is on file with the Federal Energy Regulatory Commission. These policies and procedures will be used to manage all interconnection requests that Western receives. Western commits to work with its end use customers as needed on a case-by-case basis to address consumer interconnection issues.

4. One entity indicated that its interests were not represented by the general treatment that has been given to Western's customer base in considering the proposed standards. This commenter stated that the customer had substantial and ongoing renewable energy and energy conservation programs that would be positively impacted by the adoption of the PURPA standards. The guarantees provided under those standards are essential to planning and the viability of renewable energy and conservation programs.

For the reasons already expressed in response to comments on the net metering and consumer interconnection standards, Western prefers to establish policy on an agency-wide basis and not by exception for a narrow segment of our customer base. Western intends to support ongoing customer renewable energy and energy conservation in a targeted manner on a case-by-case basis.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021), Western has determined this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: June 29, 2007.

Timothy J. Meeks,

Administrator.

[FR Doc. E7–13417 Filed 7–10–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2006–0835; FRL–8338–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Applicant Background Questionnaire: Race, National Origin, Gender, and Disability Demographics (Renewal); EPA ICR #2248.03; OMB Control Number 2030–0045

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document

announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is schedule to expire on November 30, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 10, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2006–0835 by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: simms.rosyletta@epa.gov*.
- *Fax:* (202) 564–4613.
- *Mail:* Applicant Background Questionnaire: Race, National Origin, Gender, and Disability Demographics, Environmental Protection Agency, Mailcode: 3600A, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Office of Environmental Information Docket, 1301 Constitution Avenue, NW., EPA West, Room 3334, 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–OARM–2006–0835. 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 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 *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: (1) Rosyletta Simms, Office of Human Resources, Mail Code MC 3600A, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave NW., Washington DC, 20460; telephone number: (202) 564–7897; e-mail address: *simms.rosyletta@epa.gov*. Or, (2) Mirza P. Baig, Office of Civil Rights, Mail Code MC 1201A, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7288; e-mail address: *baig.mirza@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OARM–2006–0835, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Office of Environmental Information Docket Room, 1301 Constitution Ave., NW., EPA West, Room 3334, Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Environmental Information Docket is 202–566–0219.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Docket ID No.: EPA–OARM–HQ–2006–0835.

Affected entities: Entities potentially affected by this action is any person applying for a job at the U.S. Environmental Protection Agency.

Title: Applicant Background Questionnaire: Race, National Origin, Gender, and Disability Demographics (Renewal).

ICR numbers: EPA ICR No. 2248.03.

ICR status: This ICR is currently scheduled to expire on November 30, 2007. An Agency may not conduct or

sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The purpose of this information collection request is to seek approval to use the Environmental Protection Agency's USAJOBS-EZhire, vacancy announcement and job application system to collect gender, race, national origin and disability information from employees within the agency and outside job applicants. All job applicants, whether internal or external, would be asked to complete, on a voluntary basis, an ''*Applicant Background Questionnaire: Race, National Origin, Gender, and Disability Demographics.*''

The Equal Employment Opportunity Commission Management Directive 715 (MD 715), requires agencies to: (1) Maintain a system that collects and maintains accurate information on the race, national origin, gender and disability of agency employees in accordance with 29 CFR, paragraph 1614.601); (2) maintain a system that tracks applicant flow data, which identifies applicants by race, national origin, gender, and disability status and disposition of all applications; and (3) maintain a tracking system of recruitment activities to permit analyses of these efforts in any examination of potential barriers to equality of opportunity. MD 715 requires agencies to ''conduct an internal review and analysis of the effects of all current and proposed policies, practices, procedures and conditions that directly or indirectly,'' relate to the employment of individuals with disabilities based on their race, national origin, gender and disabilities. EPA must collect and evaluate information and data necessary to make an informed assessment about the extent to which the Agency is meeting its responsibility to provide employment opportunities for qualified applicants and employees with disabilities, especially those with targeted disabilities.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 28 minutes total. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 32,590 respondents.

Frequency of response: One time completion of questionnaire per respondent.

Estimated total average number of responses for each respondent: 32,590.

Estimated total annual burden hours: 15,209.

Estimated total annual costs: $83,486. This includes an estimated labor burden cost of $83,486 and no capital/start-up or operations and maintenance costs.

Are There Changes in the Estimates From the Last Approval?

No.

What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical persons listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 3, 2007.

Kenneth T. Venuto,

Director, Office of Human Resources, Office of Administration and Resources Management.

[FR Doc. E7–13421 Filed 7–10–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–TRI–2007–0355; FRL–8338–6]

Agency Information Collection Activities, Proposed Collections; Toxic Chemical Release Reporting; Request for Comments on Proposed Renewals of Form R (EPA ICR No. 1363.15, OMB Control No. 2070–0093) and Form A Certification Statement (EPA ICR No. 1704.09, OMB Control No. 2070–0143)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the U.S. Environmental Protection Agency (EPA) is planning to submit a request to the Office of Management and Budget (OMB) to renew existing approved Information Collection Requests (ICRs) for the Toxics Release Inventory (TRI) reporting Form R and the Form A Certification Statement. Both ICRs are scheduled to expire on January 31, 2008. Before submitting the ICRs to OMB for review and approval, EPA is soliciting public comments on the proposed information collections, incorporating proposed minor changes, as described in this notice.

DATES: Comments must be submitted to EPA on or before September 10, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–TRI–2007–0355, by one of the following methods:

(1) U.S. Government Web site for Federal Rulemaking, *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

(2) E-mail: *oei.docket@epa.gov.*

(3) Fax: 202–566–9744.

(4) Mail: Office of Environmental Information (OEI) Docket, U.S. Environmental Protection Agency, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(5) Hand Delivery: Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the docket's normal hours of operations: 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: To submit a comment to the docket, direct your comments to Docket ID No. EPA–HQ–TRI–2007–0355. EPA's policy is that all comments received will be included in the public

docket without change and will be made available online at *http://www.regulations.gov,* including any personal information that has been provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that is considered to be CBI or otherwise protected information through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comments. 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. When preparing electronic files, avoid using special characters or any form of encryption and ensure that the electronic files to be submitted are free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, Toxics Release Inventory Program Division, Office of Information Analysis and Access, Office of Environmental Information, U.S. Environmental Protection Agency, Mail Code 2844T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; phone number, 202–566–0753; fax number, 202–566–0741; e-mail, *vail.cassandra@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket?

EPA has established a public docket for the ICRs described in this notice under Docket ID No. EPA–HQ–TRI–2007–0355, which is available for online viewing at *http://www.regulations.gov.* Go to *http://www.regulations.gov* to obtain a copy of the proposed collections of information, to submit or view public comments, to obtain an index of the docket contents, and to obtain those documents in the public docket that are available electronically. Once in the system, select ''search,'' then enter the docket ID number identified in this document.

The docket is also available for viewing in person at the OEI Docket, EPA Docket Center (EPA/DC), U.S. EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The phone number for the Reading Room is 202–566–1744, and the phone number for the OEI Docket is 202–566–1752.

In Which Information Is EPA Particularly Interested?

Pursuant to section 3506(c)(2)(a) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting the electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

EPA is also particularly interested in comments regarding the changes the Agency is proposing to the TRI reporting forms and instructions. See below for a description of the changes that EPA is proposing to make to the ICRs for TRI (i.e., under section ''Are There Changes in the Burden Estimates from the Last Approval?'').

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

(1) Explain your views as clearly as possible and provide specific examples;

(2) Describe any assumptions that you used;

(3) Provide copies of any technical information and/or data you used that support your views;

(4) If you estimate the potential burden hours or labor costs, explain how you arrived at your estimates;

(5) Offer alternative ways to improve the collection activity;

(6) Make sure to submit your comments by the deadline identified under **DATES**; and

(7) To ensure proper receipt by EPA, identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

This notice provides information on the proposed renewal of two ICRs: One for the TRI Form R (EPA ICR No. 1363.15, OMB Control No. 2070–0093) and the other for the TRI Form A Certification Statement (EPA ICR Number 1704.09, OMB Control Number 2070–0143). Both forms are used extensively throughout the reporting community.

Affected Entities: Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) requires owners/operators of facilities that meet all of the following criteria to report to the TRI Program:

(1) The facility has 10 or more full-time employee equivalents (i.e., a total of 20,000 hours or greater; see 40 CFR 372.3); and

(2) The facility is included in an industry sector that is covered by the statute (based on SIC/NAICS codes); and

(3) The facility manufactures (defined to include importing), processes, or otherwise uses any EPCRA section 313 chemical in quantities greater than the established threshold in the course of the calendar year.

Federal facilities are also required to report to the TRI Program, as indicated in the instructions and requirements for implementing Executive Order 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management.''

Title: Agency Information Collection Activities, Proposed Collections; Toxic Chemical Release Reporting; Request for Comments on Proposed Renewals of Form R (EPA ICR No. 1363.15, OMB Control No 2070–0093) and Form A Certification Statement (EPA ICR Number 1704.09, OMB Control Number 2070–0143).

ICR Status: The ICRs for the TRI Form R and the TRI Form A Certification

Statement are scheduled to expire on January 31, 2008.

Abstract: EPCRA section 313 requires owners and operators of certain facilities that manufacture, process, or otherwise use any of certain listed toxic chemicals and chemical categories in excess of applicable threshold quantities to report annually to EPA and the states in which such facilities are located on their environmental releases and transfers of and other waste management activities for such chemicals. In addition, section 6607 of the Pollution Prevention Act (PPA) requires facilities to provide information on the quantities of the toxic chemicals in waste streams and the efforts made to reduce or eliminate those quantities. Annual reporting under EPCRA section 313 and PPA section 6607 provides the public with a useful picture of the total disposition of chemicals at the community level and helps industrial facilities identify pollution prevention and source reduction opportunities.

This information, commonly known as the Toxics Release Inventory (TRI), is used extensively by EPA programs and the public. EPA program offices use TRI data, along with other data, to help establish programmatic priorities, evaluate potential exposure scenarios, and undertake regulatory and enforcement activities. Environmental and public interest groups also use the data to better understand toxic chemical releases, to inform the public of toxic chemical releases at the community level, and to engage the public and private sectors in taking action to reduce toxic chemical releases. Industrial facilities and industry associations also use the TRI data to evaluate the efficiency of their production processes and to help monitor their progress in achieving pollution prevention goals.

The TRI data are unique in providing a multi-media picture of toxic chemical releases, transfers, and other waste management activities to air, water, and land from the local community level to the national level on a yearly basis. While some media-specific toxic chemical data and related permit data are available from other sources, the chemicals and industry sectors covered, the reporting timeframes, and the degree to which the data are publicly available are not directly comparable to TRI, making it difficult to obtain as comprehensive a picture of toxic chemical releases from other sources as is available from TRI. With TRI, communities, government agencies, and industrial facilities have easy access to quantitative information about the toxic chemicals that are being released, transferred, or otherwise managed as waste at a given location.

Facilities that are subject to the TRI reporting requirements must submit their reports for each calendar year by July 1st of the following year. Responses to the collection of information are mandatory (see 40 CFR part 372). Respondents may claim trade secrecy for a chemical's identity as described in section 322 of EPCRA and its implementing regulations in 40 CFR part 350. EPA will disclose information that is covered by a claim of trade secrecy only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 350 and 40 CFR part 2. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The average time required for calculations, form completion, and recordkeeping for Form R, incorporating all of the proposed changes outlined below, is estimated to be 29.7 hours for a non-PBT chemical and 51.4 hours for a PBT chemical. The average time required for calculations, form completion, and recordkeeping for the Form A Certification Statement for a single TRI-listed chemical, incorporating all of the proposed changes outlined below, is estimated to be 20.6 hours for a non-PBT chemicals and 36.0 hours for a PBT chemical.

Reporter burden is calculated as the total time, effort, and/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; disclosing and providing information; adjusting existing ways to comply with any previously applicable instructions and requirements that have subsequently changed; training personnel to respond to a collection of information; searching data sources; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

Are There Changes in the Burden Estimates From the Last Approval?

OMB approved the ICR for Form R and the ICR for the Form A Certification Statement on March 3, 2006, with an expiration date of January 31, 2008. The ICR for Form R approved at that time reflected a respondent reporting burden of 3,746,590 hours and labor costs of $170,500,000. The ICR for Form A approved at that time reflected a respondent reporting burden of 259,192 hours and labor costs of $11,919,489.

Since the last ICR Renewals, EPA published the final TRI Burden Reduction Rule (71 FR 76932; December 22, 2006), which broadened the eligibility criteria for facilities that can utilize the shorter Form A Certification Statement rather than the longer, more-detailed Form R. The TRI Burden Reduction Rule is thus expected to reduce the number of Form Rs and increase the number of Form A Certification Statements that will be submitted by TRI-regulated facilities.

On February 20, 2007, OMB approved new burden hour and labor cost figures for the Form R and Form A Certification Statement, in response to the final TRI Burden Reduction Rule. OMB's approvals indicated (1) a decrease in the total burden hours for Form R from 3,746,590 to 3,344,292—a decrease of 402,298 hours for Form R; and (2) an increase in the total burden hours for Form A from 259,192 to 538,688—an increase of 279,496 hours for the Form A Certification Statement. OMB's Terms of Clearance stated that the new burden hours reflect ''changes in the TRI Burden Reduction Rule, which expands the eligibility for Form A reporting. The increase of 279,496 hours in Form A is more than offset by a 402,298 hour reduction in Form R, for a net burden reduction of 122,802 hours.'' (Please note that the figures in the 2006–2008 ICRs, approved in March 2006, were based on the number of RY 2002 TRI forms, which was higher than the number of RY 2005 TRI forms; therefore, the current estimates are higher than they would be if all of the calculations had been based on RY 2005 data. The proposed ICRs for 2008–2010 incorporate RY 2005 data in all of the calculations.)

Utilizing the RY 2005 TRI reporting data and updated labor rates throughout the analyses, EPA now estimates the total respondent burden and labor costs for Form R (including the implementation of the TRI Burden Reduction Rule) to be 3,215,715 hours and $160,730,000, not including the proposed changes to the Form R which are outlined below. The changes that the TRI Program is proposing to make to the Form R and reporting instructions are expected to result in a total respondent burden and cost for Form R of 3,216,246 hours and $160,760,000.

Utilizing the RY 2005 TRI reporting data and updated labor rates throughout

the analyses, EPA now estimates the total respondent burden and labor costs for the Form A Certification Statement (including the implementation of the TRI Burden Reduction Rule) to be 515,284 hours and $25,985,056, not including the proposed changes to the form that are outlined below. The changes that the TRI Program is proposing to make to the Form A Certification Statement and reporting instructions are expected to result in a total respondent burden and cost for Form A of 517,311 hours and $26,062,859.

For a detailed explanation of the Agency's estimates of the respondent reporting burden and labor costs, please refer to the proposed Supporting Statements for the Form R and the Form A Certification Statement, which are available in the docket.

EPA is proposing changes to the Form R and Form A Certification Statement to standardize and enhance the utility of the data. More specifically, the changes to the forms and instructions (described below) will help the TRI Program better determine its impact on small businesses, allow facilities to provide more detailed information on how they estimate their data, facilitate efficient contact with the appropriate facility personnel, and determine and better understand the reasons for form revisions or withdrawals.

1. *Collect Small Business Information* (Forms R and A). Add fields to both the Form R and the Form A Certification Statement to collect information on whether the reporting facility's parent company is a small business, as defined by the Small Business Administration (SBA). (If the facility does not have a parent company, small business information would be collected on the facility itself and all of its affiliates considered together.) *Rationale:* EPA strives to achieve an appropriate balance between collecting valuable TRI data and reducing the reporting burden on regulated facilities, including small businesses. To date, it has been a time-consuming process to assess the impact of TRI regulatory changes on small businesses, and in some instances, the data needed to determine whether a facility is a small business have not been available to EPA. By collecting small business information about facilities directly on the TRI reporting forms, the TRI Program will be better able to determine the impacts of potential TRI regulatory changes on small businesses more quickly and accurately.

2. *Provide More Specific ''Basis of Estimate'' Codes* (Form R only). Provide more ''basis of estimate'' codes in the TRI Reporting Forms and Instructions (RFI) for use on Form R which facilities can use to indicate the principal method used to determine the quantities reported to the TRI Program. *Rationale:* Facilities may currently select among four codes to indicate how they calculate their release quantities: The use of monitoring data (code M), mass balance calculations (C), emission factors (E), and other approaches (O). EPA is proposing to provide more specific codes in the RFI which would allow the facilities to provide better information on the ''basis of estimate.'' For example, with the proposed changes, facilities could use a different code for continuous monitoring than for periodic or random monitoring. In addition, the new set of codes would make the TRI ''basis of estimate'' codes comparable to the codes used by the Canadian government, thereby making it easier to analyze and compare data between the United States and Canada.

3. *Enhance the Point of Contact Information* (Form R and/or Form A, as noted below).

a. Provide a field on the Form R and Form A for ''Form Preparer,'' for use by a facility if the form preparer is a different individual than the ''Technical Contact.'' *Rationale:* When questions arise about a facility's data submission, the TRI Program may wish to contact the facility to clarify the information. In a number of instances in the past, TRI Program staff have contacted the ''Technical Contact'' listed on a facility's form and been asked to contact another individual who prepared the form on the facility's behalf. By adding a field for ''Form Preparer,'' the TRI Program staff will be able to contact the appropriate individual depending on the nature of the question or issue. The ''Form Preparer'' does not need to be the same individual as either the ''Technical Contact'' or the individual who certifies and signs the form, and the ''Form Preparer'' does not necessarily need to be someone at the location of the reporting facility.

b. Add an e-mail address field for the ''Public Contact'' to Form R. *Rationale:* Providing an e-mail address will make it easier to contact and follow-up with the ''Public Contact'' if necessary.

c. Add a field for the ''Public Contact Name'' to Form A, along with associated telephone number and e-mail address fields. *Rationale:* Adding a ''Public Contact'' field to the Form A will provide the name of a person who can respond to questions from the public about the Form A Certification Statement. It will also make the Form A contact information more consistent with the information provided on Form R.

4. *Add Boxes for Entering Revision Codes* (Forms R and A). Provide boxes on the Form R and Form A where up to two codes (which will be listed and defined in the Reporting Forms and Instructions) can be entered to indicate the main reason(s) that a form is being revised. *Rationale:* The TRI Program currently receives many form revisions each year, but does not currently collect information on the reasons for the revisions. The new revision codes will allow both the public and the TRI Program to better understand why a facility resubmitted a form. In addition, by analyzing the reasons for revisions, the TRI Program may be better able to address recurring reporting issues or problems that facilities may be facing, ultimately reducing errors and saving time for both the Agency and the reporting facilities.

5. *Provide a Field for Withdrawing a Form, and Add Boxes for Entering Withdrawal Codes* (Forms R and A). Provide a new field, along with boxes where up to two codes can be entered, on the Form R and Form A so that facilities can use the forms to withdraw a previous report, if appropriate, and indicate the main reason(s) for the withdrawal. *Rationale:* Currently, a facility that wishes to withdraw a previously submitted form must submit its request, including the rationale, as a hard copy memo to the TRI Data Processing Center via regular mail, certified mail, or overnight delivery. The addition of a ''Withdrawal'' field and the associated code boxes to the Form R and Form A will make it easier for the TRI Program to automate the withdrawal process and then to analyze the reasons for withdrawals more efficiently.

Taken together, the form changes described above will help the TRI Program better determine its impact on small businesses, enhance the information provided on estimation methods, facilitate contact with the appropriate facility personnel, and better understand and analyze the form revision and withdrawal processes. The total burden increase that would result from the changes outlined above would be relatively small compared to the overall information collection burden, and this small increase would be negligible in comparison to the total burden reduction that resulted from the final TRI Burden Reduction Rule. Based on calculations using RY 2005 data, the total burden hours for the 2008–2010 ICRs (i.e., considering the Forms R and A together) would be (1) reduced by 3.5% due to the final TRI Burden

Reduction Rule and (2) modestly increased by .16% due to the proposed revisions of the reporting forms and instructions.

What Is the Next Step in the Process for These ICRs?

EPA will consider the comments received on the proposed information collections and revise the ICRs as appropriate. The final ICR packages will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will publish another **Federal Register** notice for each ICR pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICRs to OMB and the opportunity for the public to submit additional comments to OMB. If you have any questions about these ICRs or the approval process, please contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 3, 2007.

Mike Flynn,

Office Director, Office of Information Analysis and Access, Office of Environmental Information.

[FR Doc. E7–13425 Filed 7–10–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2007–0378; FRL–8135–2]

Agency Information Collection Activities; Proposed Collection; Comment Request; TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities; EPA ICR No. 1715.09, OMB Control No. 2070–0155

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities'' and identified by EPA ICR No. 1715.09 and OMB Control No. 2070–0155, is scheduled to expire on February 29, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before September 10, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–0378, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2007–0378. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2007–0378. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Doreen Cantor, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0486; fax number: (202) 566–0471; e-mail address: *cantor.doreen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline identified under **DATES**.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Information Collection Activity or ICR Does this Action Apply to?

Affected entities: Entities potentially affected by this action are persons who provide training in lead-based paint activities, persons who are engaged in lead-based paint activities, and state agencies that administer lead-based paint activities.

Title: TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities.

ICR numbers: EPA ICR No. 1715.09, OMB Control No. 2070–0155.

ICR status: This ICR is currently scheduled to expire on February 29, 2008. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection applies to reporting and recordkeeping requirements found in sections 402 and 404 of the Toxic Substances Control Act (TSCA) and applicable regulations at 40 CFR part 745. The purposes of the requirements under TSCA section 402 are to ensure that individuals conducting activities that prevent, detect, and eliminate hazards associated with lead-based paint in residential facilities, particularly those occupied or used by children, are properly trained and certified, that training programs providing instruction in such activities are accredited, and that these activities are conducted according to reliable, effective and safe work practice standards. The TSCA section 404 regulations include reporting and recordkeeping requirements that apply to states and Indian tribes that seek Federal authorization to administer and enforce state and tribal programs that regulate lead-based paint activities based on the TSCA section 402 regulations. The overall goals of the TSCA section 402 and section 404 regulations and the reporting and recordkeeping requirements found therein are to ensure the availability of a trained and qualified workforce to identify and address lead-based paint hazards in residences and to protect the general public from exposure to lead hazards.

Responses to the collection of information are mandatory (see 40 CFR part 745). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to range between 0.28 hours and 80 hours per respondent, depending on the type of respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 25,500.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 774,740 hours.

Estimated total annual costs: $28,792,102. This includes an estimated burden cost of $28,792,102 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are There Changes in the Estimates from the Last Approval?

There is a net increase of 333,927 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's revised estimates of the number of respondents and/or the number of events for which respondents must provide information. Please refer to the Supporting Statement for a detailed explanation of the change in burden. This change is an adjustment.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 2, 2007.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E7–13430 Filed 7–10–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0556; FRL–8138–5]

Copper 8-Quinolinolate Risk Assessment; Notice of Availability and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessment, and related documents for the pesticide copper 8-quinolinolate, and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for copper 8-quinolinolate through a modified, 4-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. Through this program, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before September 10, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0556, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0556. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: K. Avivah Jakob, Antimicrobials Division (7501P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–1328; fax number (703) 308–8481; e-mail address:*jakob.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI

must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for copper 8-quinolinolate, and soliciting public comment on risk management ideas or proposals. Copper 8-quinolinolate is currently registered as an active ingredient and is used as an algaecide, bactericide and fungicide. EPA developed the risk assessment and risk characterization for copper 8-quinolinolate through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Copper 8-quinolinolate is used as a materials preservative and as a wood preservative. The following materials contain copper 8-quinolinolate as a preservative: Industrial textiles intended for the treatment of webbing, tenting, rope, canvas, leather, industrial cotton, industrial fabrics and clothing worn by the military. These textile uses are intended for military use. Other material preservation uses include in-can paint preservation, pulp and paperboard, kraft paper, adhesives and glues. Copper 8-quinolinolate is used as an industrial wood preservative to control sapstain and to protect against mold and mildew in soft-wood or hard-wood lumber. It can also protect against insect damage for wood used mainly above ground. As a wood preservative copper 8-quinolinolate is used as a wood surface coating (e.g., water repellents applied via brush, roller or spray). Copper 8-quinolinolate is impregnated into wood via non-pressure (e.g., non-pressure dipping/immersion) and pressure techniques (vacuum/empty-cell). The products can be used on many different types of wood including green or fresh cut/debarked lumber, poles, posts, and timbers; manufactured wood products such as logs (e.g., log home construction), plywood and particle board (wood composites); dry lumber; and finished wood products such as millwork, shingles, siding, plywood and structural lumber. The majority of the products are intended for use at wood treatment facilities.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessment for copper 8-quinolinolate. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as wood leaching data; confirmatory data to support wood treatment use; confirmatory inhalation toxicity data; or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for copper 8-quinolinolate. Risks of concern associated with the use of copper 8-quinolinolate are: Occupational handler exposure and risks of concern resulting from wood preservation (via brush, low pressure sprayer and liquid pump), paper preservation (via liquid pump and liquid pour), textile preservation (via liquid pour) and application of treated paint (via airless sprayer); residential application of treated paint (via airless sprayer); residential post-application risks of concern resulting from treated tents; residential post-application aggregate exposure and risks of concern resulting from treated outdoor surfaces, treated textiles and treated wood products. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to copper 8-quinolinolate, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For copper 8-quinolinolate, a modified, 4-Phase process with 1 comment period and ample opportunity for public consultation seems appropriate in view of its refined risk assessment. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for copper 8-quinolinolate. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering

products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review was completed by August 3, 2006.

List of Subjects

Environmental protection, Antimicrobial, Cooper 8-quinolinolate, Pesticides and pests.

Dated: July 2, 2007.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E7–13333 Filed 7–10–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0134; FRL–8121–8]

Aliphatic Alcohols Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide aliphatic alcohols, and opens a public comment period on this document. The Agency's risk assessments and other related documents also are available in the aliphatic alcohols Docket. The aliphatic alcohols subject to this RED include 1-hexanol, 1-octanol, 1-decanol and 1-dodecanol, and are used as a growth regulator for tobacco sucker control, and as a Lepidopteran pheromone in apple and pear orchards. EPA has reviewed aliphatic alcohols through a modified, 1-phase, low risk process with a public comment period following the publication of the RED. Through this process, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before September 10, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0134, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0134. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Kevin Costello, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8005; e-mail address: *costello.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the

public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide, aliphatic alcohols under section 4(g)(2)(A) of FIFRA. The aliphatic alcohols subject to this RED include 1-hexanol, 1-octanol, 1-decanol and 1-dodecanol, and are used as a growth regulator for tobacco sucker control, and as a Lepidopteran pheromone in apple and pear orchards. EPA has determined that the data base to support reregistration is substantially complete and that products containing aliphatic alcohols are eligible for reregistration, provided the label amendments described in the RED are implemented. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing aliphatic alcohols.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, low human health and ecological risks, and other factors, the aliphatic alcohols were reviewed through a modified, 1-phase, low risk process.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency is issuing the aliphatic alcohols RED for public comment. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for aliphatic alcohols. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the aliphatic alcohols RED will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 2, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–13332 Filed 7–10–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0181; FRL–8118–4]

Notice of Hearing on Request to Reduce Pre-Harvest Interval (PHI) for EBDC Fungicides on Potatoes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Hearing.

SUMMARY: The EPA is issuing this Hearing Notice under the authority set forth in 40 CFR part 164 subpart D (subpart D hearing). A subpart D hearing is required when a registrant wants to modify an existing cancellation order that was issued after the opportunity for a hearing. In 1992, EPA issued a Notice of Intent to Cancel (NOIC) registrations containing EBDCs for use on certain crops. The crop at issue for this hearing notice is potatoes. The NOIC stated that use of EBDCs on potatoes would be canceled unless the registrants modified their pesticide product labels. At issue in this notice is the 1992 requirement to extend the preharvest interval (PHI) to reduce the dietary risk. EPA issued the 1992 NOIC with an opportunity for a hearing. EPA and the registrants reached a settlement, including the agreement to amend labels to extend the PHI to 14 days. The purpose of this notice is to announce that EPA has determined that the petition requesting a modification of the cancellation order has merit and to announce an opportunity for a hearing.

DATES: Requests to participate in the hearing announced by this notice must be received by the Office of the Hearing Clerk at the address given below by August 10, 2007. A pre-hearing conference will be held and the evidentiary hearing will commence as soon thereafter as practicable, according the schedule outlined herein.

ADDRESSES: Submit your request to participate in the hearing, identified by docket identification (ID) number EPA–HQ–OPP–2007–0181, by the following method:

- Mail: Office of Hearing Clerk, USEPA, 1200 Pennsylvania Ave., N.W., Washington, DC 20460.
- Hand delivery: Office of the Hearing Clerk, 1099 14th St., NW., Suite 350, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kevin Costello, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–7070; e-mail address: *costello.kevin@epa.gov* or Michele Knorr, Office of General Counsel, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–5631; fax number: e-mail address: *knorr.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

The EPA is issuing this Hearing Notice under the authority set forth in 40 CFR part 164 subpart D (subpart D hearing). A subpart D hearing is required when a registrant wants to modify an existing cancellation order that was issued after the opportunity for a hearing. In 1992, EPA issued a NOIC registrations containing EBDCs[1] for use on certain crops. The crop at issue for this hearing notice is potatoes. The NOIC stated that use of EBDCs on potatoes would be canceled unless the registrants modified their pesticide product labels. At issue in this notice is the 1992 requirement to extend the preharvest interval (PHI)[2] to reduce the dietary risk. EPA issued the 1992 NOIC with an opportunity for a hearing. EPA and the registrants reached a settlement, including the agreement to amend labels to extend the PHI to 14 days.

On December 26, 1996, the EBDC/ETU Task Force[3] (Task Force) submitted its first request to modify the existing cancellation order for the use of three products containing EBDC on potatoes: mancozeb, maneb, and metiram. In order to reduce otherwise-unacceptable dietary risks, the cancellation order restricted the PHI for potatoes to 14 days in 37 States.

In this request, the Task Force requested that the PHI be reduced from 14 days to 3 days nationwide to address the spread of the late blight disease (Phytophthora infestans) in potatoes. Late blight is a fungal disease that caused the infamous ''Irish Potato Famine'' in the 1840s. If not adequately controlled, this disease is capable of totally destroying the crop in the field (foliar blight phase) and/or in storage (tuber rot phase). For the foliar phase of the disease, the primary source of inoculum is infected tubers, which are present in cull piles, or remain in the soil after harvest, or are used as seed-pieces for new plantings. Spores produced on foliage and stems during the foliar phase of the disease serve as the primary inoculum for tuber infections, which generally occur prior to harvest. Infected potatoes placed in storage lots can then serve as a source of inoculum for the storage rot phase of the disease.

On August 25, 2003, the Task Force resubmitted its request to the Agency as part of the EBDC reregistration process. Subsequently, the Agency informed the Task Force that EPA had to consider the impact of the Food Quality Protection Act of 1996 (FQPA) amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) before any action could be taken on the request. The Agency decided to consider the request after completion of the Reregistration Eligibility Decision (RED) process for the EBDCs[4]. To date, EPA has not taken any substantial actions on the Task Force request. This Notice represents EPA's determination that the 2003 request to modify the existing cancellation order merits a subpart D hearing.

Under subpart D of 40 CFR part 164, the Task Force submission constitutes a petition to modify the final cancellation order concerning EBDC pesticide products. Such a petition may not be granted without an opportunity for a formal adjudicatory hearing in front of an Administrative Law Judge. EPA has concluded that the submissions by the Task Force provide a basis for modification of the order canceling EBDC products. This Notice (1) announces that EPA has decided to hold a hearing regarding the petition to modify the existing cancellation order as it applies to the use of products containing EBDCs (mancozeb, maneb, and metiram) on potatoes and the allowance of a 3–day, rather than a 14–day PHI, (2) specifies the issues of fact and law to be considered at that hearing, (3) identifies what steps interested persons need to take if they wish to participate in the hearing, and (4) establishes a schedule for the hearing.

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2007–0181. Publicly Available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

II. Background

A. What Action is the Agency Taking?

The purpose of this document is to announce that the Agency has determined that the petition requesting a modification of the cancellation order has merit and that an opportunity for a hearing is being announced.

B. What is the Agency's Authority for Taking this Action?

When the Agency receives an application to permit use of a pesticide in a manner inconsistent with a cancellation order issued after a cancellation proceeding has commenced (i.e., after publication of a notice of intent to cancel and receipt of a request for a hearing on that notice), that application will be treated by the Agency as a petition to modify the cancellation order. Because of the opportunity for a formal adjudicatory hearing, which precedes entry of such a final cancellation order, EPA has

[1] EBDC refers to products containing ethylene bisdithiocarbamate.

[2] PHI refers to the number of days between the last application of a pesticide and when the crop can be harvested.

[3] The EBDC Task Force represents registrants who hold EBDC registrations. The current members of the Task Force are Dow AgroSciences, DuPont, Griffin, Cerexagri, and BASF.

[4] Mancozeb was first registered in 1948. Maneb was first registered in 1962. Metiram was first registered in 1948.

determined that such an order should not be modified or rescinded without affording interested parties a similar notice and opportunity for hearing concerning such modification or rescission. The procedures governing all applications to modify or reverse a previous final cancellation order are set forth in 40 CFR part 164, subpart D, § 164.130 through 164.133.

The Administrator has determined that the applicant has met the criteria for a subpart D hearing. This notice sets forth the determination, the rationale for that determination, a description of the issues of fact and law to be adjudicated in the hearing, and a schedule for the hearing.

III. Regulatory History

EBDC fungicides currently registered under FIFRA for food uses include mancozeb, maneb, and metiram. The following is a summary of the regulatory history of the EBDCs.

In 1977, the Agency initiated a Rebuttable Presumption Against Registration[5] (RPAR), which later became the Special Review Program, based on concerns that EBDCs and ethylene thiourea (ETU) posed potential significant risks to humans and the environment. In 1982, EPA concluded the RPAR and announced measures designed to mitigate potential unreasonable adverse effects pending the development of additional data. At that time, EPA deferred a decision on one risk of concern, carcinogenicity. The decision was deferred to allow for the development of residue data in order to better characterize the risk. (See 61 FR 42244, August 14, 1996).

In 1987, the Agency placed the EBDCs into Special Review because of concerns that the common metabolite, ETU, could cause carcinogenic and adverse developmental and thyroid effects in humans. The EBDCs metabolize to ETU in the body and all degrade to ETU in the environment. (See 52 FR 27172, July 17, 1987).

In response to the Agency placing the EBDCs in Special Review, the four technical registrants of mancozeb, maneb and metiram requested that registrations be maintained for only 13 of the 55 food uses registered at that time and that all other uses be canceled. (See 54 FR 50020, December 4, 1989) Shortly thereafter, the Agency approved the requested amendments.

After the approval of the amendments, the Agency issued a Notice of Preliminary Determination[6] (PD 2/3) that proposed canceling the uses on an additional three crops, including potatoes. The Agency received comments in response that recommended mitigation options to allow continued use of EBDCs on potatoes. Among these mitigation options was to ''(e)xtend the preharvest interval to 14 days as most growers already observe a 14–day interval,'' noting that ''(t)he 0–day preharvest interval invites contamination of tubers with fungicide residues,'' which could result in unacceptable dietary risks. (See 54 FR 52158, December 20, 1989). As a result of the PD 2/3, the EPA also issued a proposal to revoke and reduce tolerances for the 42 deleted uses plus the additional three uses proposed for cancellation. (See 55 FR 20416, May 16, 1990).

On March 2, 1992, the Agency issued the ''Notice of Intent to Cancel and Conclusion of Special Review'' (PD 4)[7] concluding that the relatively high estimated dietary risk outweighed the relatively low benefits of the use of EBDCs on potatoes. (See 57 FR 7484, March 2, 1992). In order to allow the use on potatoes to remain, the Agency required certain mitigation language to be included on the label. This included the 14–day PHI for all but nine potato-producing states. Because of the presence of late blight in certain states (Connecticut, Florida, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Vermont, and Wisconsin), a 3–day PHI for use of EBDCs on potatoes was allowed in those states. The Agency allowed the 3–day PHI in these states because the data on late blight, efficacy of possible alternatives, and residue data allowed EPA to find that the benefits outweighed the risks. (See 57 FR 7484, 7526, March 2, 1992).

The adoption of the 14–day PHI was intended to be consistent with common practice in the other potato growing states at the time. (Ref. 1). The tolerance for the EBDC fungicides was based on EBDC and ETU residues detected in the Market Basket Survey[8] (MBS) of 1989–1990. As part of the Special Review, and in order to conduct a highly refined dietary exposure assessment, the EBDC registrants conducted a large-scale MBS to determine EBDC and ETU residues in a variety of foods as close to the point of consumption as possible (i.e., grocery stores and small markets). The survey was completed in 1990 and used in the Special Review PD 4, which was completed in 1992. The distribution of 14–day and 3–day PHIs was designed to best replicate the conditions under which the residues detected in the MBS occurred. (See 57 FR 7484, March 2, 1992).

Subsequently in 1996, the Agency allowed a 3–day PHI for use of EBDCs on potatoes in four additional states (Delaware, Michigan, Ohio, and Rhode Island). At the time the 1992 NOIC[9] was issued, the Agency had no information suggesting that Delaware, Michigan and Ohio had a late blight problem and included those states among the states subject to a minimum 14–day PHI. Subsequent to the NOIC being issued, a group of registrants and growers submitted to the Agency information on late blight supporting a minimum 3–day PHI for Delaware, Michigan, and Ohio. This group requested a hearing to add these three states to the list of states for which a 3–day PHI was permitted. Additionally, at the time the Agency issued the NOIC, EPA believed that the ''New England'' states as well as some other states had a late blight problem and allowed a minimum 3–day PHI for those states. Rhode Island was erroneously omitted from the list of states. The Agency determined that in the states with substantial late blight occurrence, the benefits outweighed the risks associated with a 3–day PHI and amended the cancellation order. (See 61 FR 42244, August 14, 1996).

During the reregistration process, EPA evaluated the 14– and 3–day PHIs as part of the mancozeb, maneb, and metiram REDs, which were completed by September 2005 as part of the FIFRA reregistration process. (Refs. 2, 3, and 4)[10]. The REDs noted receipt of the

[5] RPAR was a regulatory review process used prior to Special Review to consider potential risks that might warrant the cancellation of the registration. The regulations were changed in the mid-1980's to review pesticide products (leading to an ultimate determination of whether their use or uses pose unreasonable adverse effects to humans or the environment) and the procedures for the Special Review process. The regulatory changes were based primarily on changes made to FIFRA in 1978 and on the experience acquired by EPA in regulating pesticides pursuant to the RPAR process. See 40 CFR part 154 for the procedures associated with Special Review.

[6] The PD 2/3 is the Notice of Preliminary Determination, which was based on information on risks and benefits received in public comments and on additional analyses performed since the Special Review process began. See 40 CFR 154.31.

[7] A PD 4 is issued in accordance with 40 CFR 154.33.

[8] Samples were purchased at consumer retail outlets and shoppers were instructed to select blemish free commodities in amounts similar to those purchased by typical consumers. The study was conducted over a 1–year period to ensure that seasonal differences in residues would be addressed. The samples were analyzed using methods that are still in use at this time.

[9] See, Settlement Agreement in In re: American Food Security Coalition (AFSC) et al., FIFRA Docket Nos. 646, et al.

[10] FIFRA section 4 requires EPA to make reregistration eligibility determinations for all older chemicals (those registered before November 1,

Continued

petition to allow for a 3–day PHI in all states, but the Agency did not address whether the petition warranted a subpart D hearing or if the registration amendment requests would be granted. Through the reregistration process, EPA determined that the exposure that would result from a nationwide 3–day PHI for potatoes would be safe under the FFDCA reasonable certainty of no harm standard (Refs. 5, 6, and 7). In that analysis, the Agency assumed 67% crop treated for the use of EBDCs on potatoes. The 67% crop treated is a conservative overestimate for the actual crop treated. Even assuming a greater conservative and unlikely scenario of 100% crop treated, EPA believes the risk increase would be insignificant.

IV. Statutory and Regulatory Background

A. Standards for Granting or Maintaining a Registration

A pesticide product may be registered or remain registered only if it performs its intended pesticidal function without causing ''unreasonable adverse effects on the environment.'' (FIFRA section 3(c)(5)). ''Unreasonable adverse effects on the environment'' is defined as ''(1) any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide, or (2) a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the [FFDCA].'' (FIFRA section 2(bb)).

Under FIFRA section 6, the Agency may issue a NOIC the registration of a pesticide product whenever it is determined that the product no longer satisfies the statutory criteria for registration. The Agency may specify particular modifications in the terms and conditions of registration, such as deletion of particular uses or revisions of labeling, as an alternative to cancellation. If an adversely affected person requests a hearing, the final order concerning cancellation of the product is not issued until after a formal administrative hearing.

B. Subpart D Proceedings

When the Agency receives an application to permit use of a pesticide in a manner inconsistent with a cancellation order issued after a cancellation proceeding has commenced (i.e., after publication of a NOIC and receipt of a request for a hearing on that notice), that application will be treated by the Agency as a petition to modify the cancellation order. Because of the opportunity for a formal adjudicatory hearing, which precedes entry of such a final cancellation order, EPA has determined that such an order should not be modified or rescinded without affording interested parties a similar notice and opportunity for hearing concerning such modification or rescission. The procedures governing all applications to modify or reverse a previous final cancellation order are set forth in 40 CFR part 164, subpart D, § 164.130 through 164.133.

As stated previously, 40 CFR 164.131(a) provides that the Administrator will consider modifying a prior final cancellation order when he finds that:

(1) The applicant has presented substantial new evidence which may materially affect the prior cancellation or suspension order and which was not available to the Administrator at the time he made his final cancellation or suspension determination and, (2) such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation or suspension proceeding prior to the issuance of the final order.

In deciding whether or not to initiate a hearing, the Administrator does not need to determine that the evidence submitted by the Task Force would in fact justify modification of the prior order. Rather, a decision to initiate a hearing means only that the Administrator has determined that the evidence submitted, if substantiated on the record in the hearing, may ''materially affect'' the evidentiary rationale upon which the prior order was based. On the other hand, if the evidence submitted, even if substantiated on the record, would be unlikely to provide a basis for modification of the prior order, then a hearing would serve no purpose.

If the Administrator determines that an applicant has met the criteria for a subpart D hearing, the Administrator then publishes a notice in the **Federal Register** setting forth the determination, the rationale for that determination, a description of the issues of fact and law to be adjudicated in the hearing, and a schedule for the hearing. The purpose of the hearing is to determine whether: (1) Substantial new evidence exists and (2) such substantial new evidence requires reversal or modification of the existing cancellation order. For purposes of any decision in the hearing, those portions of the substantive rationale for the existing order concerning which the applicant did not submit substantial new evidence are assumed to be correct. Thus, the scope of any subpart D hearing is intrinsically narrower than the original cancellation proceeding.

If a hearing is requested, a notice of the hearing will be published in the **Federal Register** announcing the formal public hearing to be held in accordance with 5 U.S.C. 554. In such a hearing, the Administrative Law Judge transmits a recommended decision to the Administrator, who then issues a final decision retaining, modifying, or reversing the existing order. (See 40 CFR 164.131).

V. Submissions - Substantial New Evidence Provided by Task Force

As stated above, the Task Forces submission constitutes a petition to modify the EBDC cancellation order. In order for the Agency to find that a subpart D hearing is warranted, it must determine:

(1) The applicant has presented substantial new evidence which may materially affect the prior cancellation or suspension order and which was not available to the Administrator at the time he made his final cancellation or suspension determination and, (2) such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation or suspension proceeding prior to the issuance of the final order. (See 40 CFR 164.131(a)).

The Task Forces 2003 petition to reduce the PHI for use of EBDCs on potatoes from 14 days to 3 days nationwide included a number of points described as ''substantial new evidence'' that could not have been known at the time of the cancellation order. The asserted ''substantial new evidence'' includes information on the spread of late blight to additional potato-growing states, field trial data for mancozeb and maneb use on potatoes and the Agency's revision of the cancer endpoint for EBDC breakdown product, ETU.

A. Spread of Late Blight

The Agency has determined that the information submitted by the Task Force concerning the spread of late blight fungal disease nationally is substantial new evidence which supports the adoption of a nationwide 3–day PHI for EBDCs on potatoes beyond the 13 states in which the 3–day PHI is currently in effect. Late blight is a severe fungal disease, which attacks leaves of potato plants in the field, killing the leaves and decreasing the size and number of potato tubers. Late blight also attacks tubers in storage, causing them to rot. Late blight was once controlled by metalaxyl, until metalaxyl resistant strains developed.

1984). The Agency announced these determinations through REDs.

The disease spreads rapidly by spores, with a new disease cycle occurring every 4 to 6 days. As mentioned above, the Agency was aware of the presence of late blight in nine states when the NOIC was published, and was made aware of its presence in four additional states soon thereafter (Ref. 7), and consequently the Agency determined that it was appropriate to reduce the PHI in those four states as well. The Task Force has since submitted new information that late blight has now spread nationwide. The following is background information on the spread of late blight and why this information is material to allowing a modification to the cancellation order.

Until 1989, late blight was very rarely of concern in any potato producing state, due primarily to the fact that metalaxyl products provided virtually 100% control of the foliar phase of the disease. (Ref. 8). The Task Force indicated that by 2003, the Agency had granted FIFRA section 18 emergency exemptions for the use of products to control late blight in 23 states to which the disease had spread since the issuance of the NOIC (Ref. 9). Pesticides for which exemptions were granted included dimethomorph, cymoxanil, and propamocarb hydrochloride. State crop specialists documented the distribution of metalaxyl-resistant forms and grower crop damage incidents associated with the failure of metalaxyl to provide adequate disease control (Refs. 8 and 10). Metalaxyl was thus no longer regarded as an effective control for late blight in potatoes.

If late blight is not adequately controlled, this disease is capable of totally destroying a crop of potatoes in the field (foliar blight phase) and\or in storage (tuber rot phase). Generally speaking, the number of infected tubers present at harvest is primarily a function of the level of foliar disease control attained during the growing season, especially during the latter half of the season. At present, even when low levels of tuber infection are detected in a field at harvest, growers typically need to sell potatoes right away, rather than store them and risk losing a large number of stored potatoes (Refs. 8 and 10).

Once plants are initially infected, the foliar phase of the disease can rapidly progress by producing multiple generations of spores, which can be transported up to 150 miles in the air as well as locally in water or air. One spore cycle can occur in a 4– to 6–day period. In addition to destroying aboveground plant parts, the foliar blight phase of the disease can cause a significant decrease in the size and number of marketable potatoes. Accordingly, even the planting of a single infected tuber can quickly result in extensive crop losses and a high percentage of tuber infections over a large area (Refs. 8 and 10).

The foliar phase of the disease is favored by cool and moist conditions, which commonly occur in most potato production states. Long periods of high relative humidity (over 90%) with night temperatures of 50 to 60° F and day temperatures of 60 to 80° F are favorable for disease development. The spread and control of this disease is complicated by the fact that most fungal forms are also capable of infecting and reproducing on tomatoes as well as certain other solanaceous plants (including certain weeds). It is suspected that the new, sexually reproducing forms of late blight were introduced to the United States through the importation of infected tomatoes from Mexico (Ref.11). The potential for spreading the disease via infected tomato transplants or fruits is of particular concern, in light of the widespread homeowner gardening and composting practices associated with tomatoes.

Most of the harvested potatoes in the United States go directly into storage and are gradually released into the marketplace over a period of 1 to 10 months. Many of the existing storage facilities are conducive to the rapid spread of tuber rot, especially during wet or humid weather. Potato late blight specialists agree that, under these storage conditions, even if only a small percentage of any lot of stored potatoes is infected with tuber rot, it is likely that the majority of them will spoil prior to their release into the marketplace. When this occurs, the whole lot is generally considered unmarketable. The stored tuber spoilage problem can be due solely to late blight, or to a series of tuber rots initiated by late blight infected tubers and followed by bacterial soft rots, which develop in response to the anaerobic conditions created by the development of late blight tuber rot (Refs. 8 and 10).

B. Field Trial Data

As mentioned above, the potential exposure to humans that could result from the use of EBDCs on potatoes was considered during reregistration and was found to meet the standard for reregistration. EPA was able to make this determination because of the new information submitted by the Task Force as well as revised risk assessment methodologies. The residues detected in the 1989–1990 MBS were considered to reflect common practices that included either 14–day or 3–day PHIs for potatoes treated with EBDC fungicides. Additional field trial data submitted by the Task Force in support of its 2003 petition are available for two of the three EBDCs, which further support the establishment of a nationwide 3–day PHI. The following describes the field trial data available for each EBDC chemical.

1. Mancozeb. The Mancozeb Task Force conducted residue trials on potatoes in 1995–1996. A summary of relevant residue data for mancozeb and ETU are presented in Table 1 below. The maximum mancozeb value found in residue studies using the maximum seasonal rate for mancozeb on potatoes with a 3–day PHI was 0.1 parts per million (ppm) and for a 14–day PHI was 0.02 ppm. The average mancozeb value with a 3–day PHI was 0.02 ppm and with a 14–day PHI was 0.01 ppm.

From this newly submitted data, the Agency has now determined that reduction of the PHI to 3 days for the entire United States would not result in mancozeb residues exceeding the reassessed tolerance of 0.2 ppm for potatoes. A separate dietary risk assessment was not required to support the PHI change request because existing dietary assessments used for the EBDC REDs showed no appreciable differences in the residue levels at different pre-harvest intervals. Additionally, as stated earlier, even if the percent crop treated rose from 67% to 100% the resulting increase in risk would be insignificant. Therefore, the Agency found that the use of EBDCs on potatoes with a 3–day PHI would meet the FFDCA safety determination (Ref. 12).

EPA used monitoring data from the MBS in the dietary risk assessment for the reregistration eligibility decision. Based on these new field trial data, EPA has now determined that the MBS is representative of the residues that may be expected in potato tubers at PHIs ranging from 3 to 14 days.

Low residues are expected because mancozeb is applied to the foliage, and metabolism studies have not shown translocation of mancozeb throughout the plant (Ref. 6). Therefore, it is not surprising that there are minimal residues on the day of application, as the residues would not transport from the potato leaves to the tubers below the ground. The minimal residues that are present on the tubers may be from some soil that adhered to the tuber when harvested.

TABLE 1.— SUMMARY OF MANCOZEB RESIDUE DATA FOR POTATOES (MRIDS 44167901, 40913301, AND 41091601)

Location	Single Application Rate, lb ai/A	No. of Applications	Seasonal Application Rate, lb ai/A	Pre-harvest Intrerval, days	Residues Found, ppm	
					Mancozeb	ETU
CA	1.6 + 2.4	5	11.2	0	<0.05	<0.01
CA	1.6 + 2.4	5	11.2	0	<0.05	<0.01
WI	1.6	7	11.2	3	<0.02	<0.01
FL	1.6	7	11.2	3	0.03	<0.01
FL	1.6	7	11.2	3	0.03	<0.01
PA	1.6	7	11.2	3	<0.02	<0.01
PA	1.6	7	11.2	3	<0.02	<0.01
MO	1.6	7	11.2	3	0.02	<0.01
MO	1.6	7	11.2	3	<0.02	<0.01
MO	1.6	7	11.2	3	0.1	<0.01
MO	1.6	7	11.2	3	0.03	<0.01
NY	1.6	7	11.2	3	<0.02	<0.01
MN	1.6	7	11.2	4	<0.02	<0.01
MN	1.6	7	11.2	4	<0.02	<0.01
CA	1.6 + 2.4	5	11.2	5	<0.05	0.01
CA	1.6	5	11.2	5	<0.05	0.02
CA	1.6	7	11.2	14	<0.02	0.02
CA	1.6	7	11.2	14	0.02	<0.01
WA	1.6	7	11.2	14	<0.02	<0.01
CA	1.6	7	11.2	14	<0.02	0.02
UT	1.6	7	11.2	14	<0.02	<0.01
UT	1.6	7	11.2	14	<0.02	<0.01
ID	1.6	7	11.2	14	<0.02	<0.01
ID	1.6	7	11.2	14	<0.02	<0.01
CA	1.6 + 2.4	5	11.2	15	<0.05	0.03
CA	1.6 + 2.4	5	11.2	15	<0.05	0.02

2. *Maneb*. In response to EPA's requests for data in the late 1980s and early 1990s, one registrant, Elf Atochem North America, Inc. submitted data in 1994 pertaining to the magnitude of maneb residues in or on potatoes. The data were determined to be insufficient to fulfill the total field trial requirement, because ''field trials were not conducted in states where a 3–day PHI is allowed.'' However, they did indicate that residues of maneb and ETU from maneb will not exceed the established tolerance of 0.1 ppm in or on potatoes harvested 1 day following the last of eight foliar applications of the dry flowable formulation for a total seasonal rate of 12.8 lb active ingredient/Acre (ai/A) because the combined residues of maneb and its metabolite ETU were nondetectable (<0.06 to <0.08 ppm) in or on potatoes (Refs. 13, 14 and 5).

Available field trial data for maneb and ETU in or on potatoes were among the data used in conjunction with MBS from 1989–1990 to assess acute and chronic dietary (food) risk in the 2005 maneb RED. In the 2005 RED, EPA determined that the overall aggregate risk from residues of maneb and ETU on food was determined to be below the Agency's levels-of-concern. The reduction in PHI to 3 days will not change this determination.

3. *Metiram*. The Task Force did not provide new evidence to support a 3–day PHI for use of metiram on potatoes because such data had previously been submitted to the Agency in 1988. This earlier data involved field trials performed in 1987 in seven states to measure the magnitude of metiram and ETU residues on potatoes. The review of these studies shows that ''(t)he 80% WP metiram formulation was foliarly applied 10 times (with a 5– to 21–day retreatment interval), to potato plants at 1.6 lb ai/A/application (1x) using

ground equipment. Individual residues of metiram and ETU were <0.10 ppm (nondetectable) and <0.01(nondetectable) to 0.02 ppm, respectively, in or on treated potato tuber samples harvested immediately (0–day) following the last of the above treatment schedule. The maximum residues of metiram in or on potato tubers following treatments at 1x were <0.10 ppm which is below the established tolerance of 0.5 ppm'' (Ref. 10). The tolerance was later reassessed and set at 0.2 ppm, which met the FFDCA safety finding as well allowing the Agency to harmonize the tolerance with the Codex maximum residue limit (MRL) for EBDCs in or on potatoes.

Since residues of metiram measured in or on potatoes were below the tolerance level for potatoes harvested immediately after the final treatment, potatoes harvested 3 days after treatment should have residues that are lower and also below the tolerance level. As was stated in the maneb discussion, overall risk from residues of metiram and ETU on food was determined to be below the Agency's levels of concern, and would be expected to remain so if a 3–day PHI for potatoes were established nationwide (Ref. 10).

C. Revision of the Cancer Endpoint for ETU

The Task Force notes in its 2003 petition that the Q1*[11] for ETU has changed since the 1992 NOIC. If there is evidence, such as tumor formation, and the pesticide is classified as a carcinogen, a quantitative assessment is conducted using a Q1* (non-threshold) or a Margin of Exposure (threshold) approach. The Agency evaluated the risk from ETU in the NOIC using a Q1* of 0.11 milligrams/kilogram/day (mg/kg/day)$^{-1}$. The Agency subsequently recalculated the ETU Q1* in 1995, resulting in a Q1* of 0.06 mg/kg/day^{-1}. As a result of this new assessment endpoint, the Task Force suggests that the reduction in the PHI for use of EBDCs on potatoes would be even less likely to result in exceedances of the Agency's levels of concern. In its reregistration decisions for the EBDCs, using the lower Q1*, EPA found that the level of concern for cancer risk was not exceeded.

The reduction of the Q1* for ETU was significant new evidence that allowed the Agency to make a safety finding for the reregistration of EBDC fungicides. It is important to note that the field trial data alone indicate that residues of ETU on potatoes from application of EBDCs would not be significantly different for PHIs of 3 and 14 days. Therefore, the reduction of the Q1* for ETU is a less compelling argument for reducing the PHI to 3 days as exposure levels show that there are no risks of concern.

VI. Risk-Benefit Assessment

A. Significance of Substantial New Evidence

When the Agency issued the cancellation order for EBDC fungicides in 1992, it allowed a shorter, 3–day PHI for EBDCs on potatoes in nine states in which late blight disease occurred. The Agency was made aware soon thereafter that late blight disease was also present in four states not identified in the cancellation order, and the 3–day PHI was extended to those states to afford the same protection against late season onset of late blight disease through amendments to the cancellation order. The evidence presented by the Task Force that late blight has since spread to almost all potato-growing states, when combined with the scientific finding that the resulting exposures would still meet the ''reasonable certainty of no harm'' standard set forth in section 408 of the FFDCA, is a compelling justification for extending the 3–day PHI to all states in which EBDCs could be applied to potatoes.

It is important to keep in mind that there are also residue data for mancozeb and maneb on potatoes submitted since the cancellation order that support the nationwide adoption of the 3–day PHI. As shown above, the mancozeb field trial data indicate that mancozeb and ETU residues from the use of mancozeb on potatoes were insignificant, and that the concentrations of mancozeb and ETU residues reflecting a 3–day PHI were not significantly different than those reflecting a 14–day PHI. Similarly, maneb field trial data submitted since the cancellation order indicate that ETU residues were undetectable for treated potatoes after both 1–day and 7–day PHIs. These data, in conjunction with previously submitted metiram data showing no ETU residues on potatoes harvested the day of treatment, indicate that adoption of a 3–day PHI nationwide will not meaningfully increase exposure to ETU in or on potatoes.

Although the requirements for additional field trials for use of maneb on potatoes are still outstanding because geographic representation was inadequate, the Agency believes it unlikely that the residues resulting from a 3–day PHI in other regions would be sufficiently different to be of concern, based on similar data for mancozeb on potatoes. In modifying the Cancellation Order to change the 14–day PHI from the use of EBDCs on potatoes to 3 days nationwide, the Agency would condition the registration with a requirement that the registrants provide the confirmatory data to fulfill the field trial data requirement (OPP guideline 171–4(k); OPPTS guideline 860.1500).

As described above, the reduction of the Q1* for ETU was also ''substantial new evidence'' but a less compelling argument for modifying the cancellation order because the exposure levels to ETU were not of concern.

B. Alternative Control Measures

As stated earlier, EBDCs are needed to control the nationwide spread of late blight, because the alternative products that are registered to address late blight are not adequate (Ref. 2).

VII. Subpart D Determination

Under 40 CFR 164.131(a), the Administrator is to provide a hearing to modify a prior final cancellation decision only if it is determined that certain criteria have been met. Having concluded that the EBDC Task Force has presented substantial new evidence concerning the request to provide for a 3–day PHI nationwide which was not available when the final cancellation order went into effect, the Administrator must now determine whether that evidence ''may materially affect'' that order. The Administrator has concluded that the new information materially affects whether the cancellation order should be modified because this information allows the Agency to find that a nationwide 3–day PHI meets the FIFRA standard for registration. Thus, the first criterion in 40 CFR 164.131(a) has been met.

Information provided by the Task Force on the late blight spread nationwide could not have ''through the exercise of due diligence'' been obtained before the 14–day restriction was in place as late blight had not yet spread nationwide. When information existed concerning the spread of late blight nationwide and the need for additional tools to combat it, the Task Force submitted the newly obtained information. Therefore, the second criterion in 40 CFR 164.131(a) has also been met.

Based on the above analysis and because the Agency believes it is appropriate under this circumstance to modify the cancellation order to allow a 3–day PHI, the Administrator has decided to issue this notice under

[11] The Q1*, or cancer slope factor, is an upper bound estimate of the increased cancer risk from a lifetime exposure to an agent. Upper bound in this context is a plausible upper limit to the true probability.

subpart D to provide an opportunity for a hearing.

Since EPA issued its NOIC in 1992, substantial new evidence has been presented to the Agency that supports amendment of the cancellation order to allow all states to have a 3–day PHI for potatoes. The new information focuses on the need for the EBDCs to combat the late blight problem in the United States. For example, metalaxyl-resistant strains of late blight were reported in at least 32 states, which means that resistant strains are currently present in virtually all potato producing states. Additionally, since the pest problem can spread long distances via airborne spores and virtually all states that produce planting stock (seed-potatoes) have documented the presence of metalaxyl-resistant strains; all production states have a high probability of encountering metalaxyl-resistant late blight strains in any given year. Based on the information reviewed, a 3–day PHI is likely to reduce the number of tubers that become infected just prior to harvest and will therefore increase the number of tubers that can be stored.

Pursuant to 40 CFR 164.131(c), the Administrator is specifying those issues of fact and law to be adjudicated in the hearing convened pursuant to this notice. Because the purpose of such a hearing is only to consider whether to modify certain aspects of the Administrator's prior cancellation decision and because a prompt conclusion to the hearing is a requisite of meaningful relief for the applicant, the evidentiary presentation in the hearing shall be strictly confined to the issues of fact and law which the Administrator has determined are presented by the Task Force submission.

1. *Issues of fact*. The issues of fact to be adjudicated are:

i. What is the current status (nationwide) of late blight on potatoes?

ii. Has the occurrence of late blight changed since the initial cancellation order issued in 1992?

iii. Are EBDCs necessary to respond to late blight?

iv. What are the dietary risks associated with EBDC use on potatoes?

2. *Issues of law*. The issues of law to be adjudicated are:

i. Has substantial new evidence been presented pertaining to the request to reduce the nationwide PHI on potatoes to 3 days?

ii. If it is substantial new evidence, could the applicant, through due diligence, have discovered this information prior to issuance of the cancellation order?

iii. Does the 3–day PHI meet the FIFRA 2(bb) standard?

The sole objective of this hearing is to determine whether or not the order canceling all sale, distribution, and use of pesticide products containing EBDCs that do not comply with the current label restriction on the PHI for potatoes should be modified to permit a nationwide 3–day PHI.

B. Hearing Requests

The applicant and the Agency shall automatically be parties in the hearing. Any other person or party who seeks to participate in the hearing must submit a written hearing request describing the interest of that person or party in the proceeding and the nature and purpose of the participation sought. All requests for a hearing must be received by the Office of the Hearing Clerk within 30 calendar days from the date of publication of this Notice in the **Federal Register**. Such requests must include an identification of the requestor's interest in the proceeding, the hearing issues the requestor wishes to participate in, and the requestor's position with respect to such issue(s). Requests for a hearing must be submitted to: Office of Hearing Clerk, U.S. EPA, 1200 Pennsylvania Ave, N.W., Washington, D.C. 20460. Requests may be hand delivered to the Office of the Hearing Clerk at: 1099 14th St., NW., Suite 350, Washington, DC.

C. Scheduling

As required by 40 CFR 164.131(c), the Administrator is specifying a schedule for this hearing. In recognition of the narrow scope of the proceeding, the Administrator is establishing the following schedule. However, if no other interested party requests a hearing, the Agency intends to file a motion pursuant to 40 CFR 164.60 requesting that the Administrative Law Judge issue an accelerated decision pursuant to 40 CFR 164.91(a)(8) in favor of modifying the cancellation order as requested.

The Chief Administrative Law Judge shall appoint an Administrative Law Judge to preside at this proceeding within 20 calendar days from date of publication of this Notice in the **Federal Register**. The hearing shall commence in Washington, DC as soon thereafter as practicable but in no event later than 40 calendar days from the date of publication of this Notice in the **Federal Register**. The presiding Administrative Law Judge shall transmit recommended findings of fact and conclusions of law and the hearing record to the Administrator within 70 calendar days from the date of publication of this Notice in the **Federal Register**. The parties shall submit any objections to the recommended findings of fact and conclusions of law to the Administrator within 10 business days after issuance, and the Administrator will enter a final order as soon thereafter as practicable.

D. Separation of Functions

EPA's Rules of Practice forbid anyone who may take part in deciding this case at any stage of the proceeding, from discussing the merits of the proceeding ex parte with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of his or her representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are designated as the judicial staff of EPA in any administrative hearing on this issue: the Office of Administrative Law Judges, the Environmental Appeals Board, the Deputy Administrator, and the members of the staff in the immediate office of the Deputy Administrator, and the Administrator and the members of staff in the immediate office of the Administrator. The following offices are designated as the trial staff in any proceeding which may arise under this Notice: The Office of General Counsel, the Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances and immediate staff, the Office of Pesticide Programs, and the Office of Compliance Monitoring. None of the persons designated as the judicial staff may have any ex parte communications with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

IX. References

1. USEPA, 1992. Ethylene Bisdithiocarbamate (EBDCs); Notice of Intent to Cancel and Conclusion of Special Review [57 FR 7484].

2. USEPA, 2005e. Reregistration Eligibility Decision (RED) for Mancozeb.

3. USEPA, 2005d. Reregistration Eligibility Decision (RED) for Maneb.

4. USEPA, 2005c. Reregistration Eligibility Decision (RED) for Metiram.

5. USEPA, 1998. Maneb (014505) and Mancozeb (014504) on Onions and Potatoes: Reregistration. Memo from Susan Hummel to R. B. Perfetti, January 6, 1998.

6. USEPA, 2003. Reregistration of Mancozeb: Request to Reduce Pre-Harvest Interval for Potatoes and Waive Processing Study. Memo from C.

Olinger to Tawanda Spears, September 7, 2003.

7. USEPA, 2005a. Assessment of the EBDC/ETU Task Forces Request to Reduce the EBDC Fungicides PHI on Potatoes from 14 to 3 Days. Memo from R. Michell and T. Kiely to Tawanda Spears, April 7, 2005.

8. USEPA, 1995. New York State Department of Environmental Conservation Emergency Exemption Requests For The Use of Dimethomorph and Cymoxanil Package Mixtures With Mancozeb (Acrobat M2, Curzate M-8) For Control of Potato Late Blight (95–NY–06, 95–N&Y–07). Memo from J. Hogue and R. Michell to L. Pemberton.

9. EBDC/ETU Task Force, 2003. Re: Amendments to the Registrations of Products Containing Ethylene Bidisthiocarbamates (''EBDCs'') as an Active Ingredient to Change the Preharvest Interval (''PHI'') for Potatoes. Memo from Edward Ruckert to James Jones, August 25, 2003.

10. USEPA, 2005b. Metiram (Chemical ID No. 014601, Case No. 0644) Revised Residue Chemistry Chapter for the Reregistration Eligibility Decision (RED) Document. Memo from C. Olinger to Tawanda Spears, June 23, 2005.

11. Bookbinder, M. (1988) Metiram and Ethylene Thiourea: Magnitude of the Residue in Potatoes Treated by Ground Equipment in Colarado, Idaho, Maine, Michigan, North Dakota, Oregon, and Wisconsin, 1987. Unpublished study prepared by Enviro-Bio-Tech, Ltd. 223 p.

12. USEPA, 2001. Reregistration of Mancozeb: Potato Crop Field Trial and Corn Processing Studies. Memo from C. Olinger to Anne Overstreet, March 15, 2001.

13. USEPA, 1988. Reregistration Standard for Maneb. November 10, 1988.

14. USEPA, 1996. Maneb (014505) and Mancozeb (014504) on Onions and Potatoes: Reregistration. Memo from S. Hummel to K. Boyle, September 6, 1996.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 2, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs

[FR Doc. E7–13471 Filed 7–10–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0395; FRL–8136–1]

Notice of Filing of Pesticide Petition for Residues of Silver as Component of Food Contact Surface Sanitizing Solution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the amendment of regulations at 40 CFR 180.190(a) for residues of antimicrobial pesticide formulation containing silver compounds applied to food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils.

DATES: Comments must be received on or before August 10, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0395 and pesticide petition number (PP 7F7178), by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0395. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Marshall Swindell, PM 33, Antimicrobials Division (7510P), Office of Pesticide Programs, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6341, e-mail address: *swindell.marshall@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov/*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

Amendment to Existing Tolerance

PP 7F7178. ETI H2O., 1725 Gillespie Way, El Cajon, CA 92020, proposes to amend 40 CFR 180.940 (a) to include residues of silver applied as a food contact sanitizing solution at a maximum in-use concentration of 50 parts per million to food contact surfaces in or on public eating places, dairy processing equipment, food processing equipment and utensils. The analytical method being used is entitled, ''Determination of Silver, Sodium Lauryl Sulfate (SLS), Citric Acid, and Water is Silver Citrate Solutions using Inductively coupled Plasma Chromatography, HPLC, and Weight Loss Upon Drying Techniques.'' Contact: Marshall Swindell, Product Manager 33, telephone number: (703) 308–6341, *swindell.marshall@epa.gov*.

List of Subjects

Environmental protection, Food Contact Sanitizers, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 27, 2007.

Betty Shackleford,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E7–13470 Filed 7–10–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notices

PREVIOUSLY SCHEDULED DATE AND TIME: Tuesday, July 10, 2007, meeting closed to the public. This meeting has been rescheduled to Thursday, July 12, 2007, to begin at the conclusion of the open meeting.

DATE AND TIME: Thursday, July 12, 2007, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA: Report of the Audit Division on DeMint for Senate Committee, Inc.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07–3404 Filed 7–9–07; 3:07 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011527–013.

Title: East Coast Americas Service.

Parties: Hanjin Shipping Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; and Yang Ming Marine Transport, Corp.

Filing Party: Howard A. Levy, Esq.; 80 Wall Street; Suite 1117; New York, NY 10005–3602.

Synopsis: The amendment adds Hyundai Merchant Marine Co., Ltd. effective July 17, 2007; and reflects the contribution of one vessel to the service by Hyundai and the allocation of projected vessel capacity among the parties.

Agreement No.: 012005.

Title: CSCL/CMA CGM Cross Slot Charter Agreement.

Parties: China Shipping Container Lines Co., Ltd.; China Shipping Container Lines (Hong Kong) Co., Ltd.; and CMA CGM, S.A.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vengrow & Textor, LLP; 61 Broadway; Suite 3000; New York, NY 10006–2802.

Synopsis: The agreement authorizes the parties to exchange slots on separate services operating between ports on the U.S. Atlantic and Gulf coasts, and ports in Northern Europe, the Mediterranean, and Mexico.

By Order of the Federal Maritime Commission.

Dated: July 6, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–13423 Filed 7–10–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Service Galopando Corp., 3190 South State Road 7, Bay #5, Miramar, FL 33023, Officers: Candido Montero, President (Qualifying Individual), Jorge A. Montero, Vice President.

Cargo Alliance Logistics Inc., 182–30 150th Rd., Suite 128, Jamaica, NY 11413, Officer: Ming Wu, President (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant:

Rodrimar Int'l Freight, Inc., 10832 NW 27th Street, Doral, FL 33172, Officers: Jeanete T. Essu, Corporate Officer (Qualifying Individual), Luis Gustavo Avesant-Moura, President.

Dated: July 6, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–13422 Filed 7–10–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 26, 2007.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. The First Neighborhood Bank Employee Stock Ownership Plan by its Trustees Garlan Miller, Richard E. Bowlby, and Charles L. Staats all of Spencer, West Virginia, and Jeanette Atkinson, Reedy, West Virginia,; to retain control West–Central Bancorp, Inc., Spencer, West Virginia, and thereby retain control of First Neighborhood Bank, Inc., Spencer, West Virginia.

B. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. John Charles Simpson, Jr., Trust, the Angela Katherine Simpson Trust (the Trusts), and Simeon A. Thibeaux, Jr., as trustee of the Trusts, all of Alexandria, Louisiana; to collectively acquire additional voting shares of Red River Bancshares, Inc., and thereby indirectly collectively acquire additional voting shares of Red River Bank, both of Alexandria, Louisiana.

Board of Governors of the Federal Reserve System, July 6, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–13406 Filed 7–10–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 6, 2007.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Fifth Third Bancorporation, and its wholly–owned subsidiary, Fifth Third Financial Corporation, both of Cincinnati, Ohio; to acquire 100 percent of the voting shares of R–G Crown Bank, National Association, Augusta, Georgia, upon the conversion of R–G Crown Bank, FSB, to a bank.

In connection with this proposal, Fifth Third Bancorp, and Fifth Third Financial Corp, also have applied to acquire 100 percent of the voting shares of R–G Crown Bank, FSB, Casselberry, Florida, and thereby engage in owning and operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King,

Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. John T. Vucurevich Foundation, Rapid City, South Dakota; to become a bank holding company by acquiring 84.48 percent of the Class B common stock and 11.85 percent of the Class A common stock of United Bancorporation, and thereby indirectly acquire United Bank, both of Osseo, Wisconsin; Cambridge State Bank, Cambridge, Wisconsin; Lincoln Community Bank, Merrill, Wisconsin; Bank of Poynette, Poynette, Wisconsin; Clark County State Bank, Osceola, Iowa; Farmers State Bank, Stickney, South Dakota; and Farmers & Merchants State Bank, Iroquois, South Dakota.

C. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. The Protection Bank Holding Company, Inc., Protection, Kansas; to acquire up to 100 percent of the voting shares of Citizens State Bank of Ashland, Kansas.

Board of Governors of the Federal Reserve System, July 6, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–13404 Filed 7–10–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E7-12775) published on pages 36455-36456 of the issue for Tuesday, July 3, 2007.

Under the Federal Reserve Bank of Chicago heading, the entry for Metropolitan Bank Group, and Alpha Bancorp, Inc., both of Chicago, Illinois, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Metropolitan Bank Group, Inc.; Alpha Bancorp, Inc.; Metropolitan Bancorp, Inc.; and Plaza Bancorp, Inc., all of Chicago, Illinois; to acquire 100 percent of the voting shares of Oswego Bancshares, Inc., and thereby indirectly acquire voting shares of Oswego Community Bank, both of Oswego, Illinois.

Comments on this application must be received by July 26, 2007.

Board of Governors of the Federal Reserve System, July 6, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–13405 Filed 7–10–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (Eastern Time), July 16, 2007.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the June 19, 2007 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director:
   a. Monthly Participant Activity Report.
   b. Legislative Report.
3. Quarterly Reports:
   a. Investment Policy Review.
   b. Vendor Financial Reports.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: July 9, 2007.

Thomas K. Emswiler,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 07–3391 Filed 7–9–07; 11:33 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 15th meeting of the American Health Information Community in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.) The American Health Information Community will advise the Secretary and recommend specific actions to achieve a common interoperability framework for health information technology (IT).

DATES: July 31, 2007, from 8:30 a.m. to 3 p.m. (EDT)

ADDRESSES: Hubert H. Humphrey building (200 Independence Avenue, SW, Washington, DC 20201), Conference Room 800

FOR FURTHER INFORMATION: visit *http://www.hhs.gov/healthit/ahic.html*.

SUPPLEMENTARY INFORMATION: The meeting will include a presentation by the Personalized Healthcare Workgroup on Recommendations; an update on activities of the Certification Commission for Health Information Technology; a presentation on use cases and the 2008 AHIC priorities for the national HIT agenda; a report from the AHIC Standing Committee of the Whole on the AHIC Successor; and a report from the Health Information Security and Privacy Collaborative.

A Web cast of the Community meeting will be available on the NIH Web site at: *http://www.videocast.nih.gov/*.

If you have special needs for the meeting, please contact (202) 690–7151.

Dated: July 2, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–3364 Filed 7–10–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice of a decision to designate a class of employees at the Dow Chemical Company, Madison, Illinois, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On June 22, 2007, the Secretary of HHS designated the following class of employees as an addition to the SEC:

Atomic Weapons Employer (AWE) employees who were monitored or should have been monitored for exposure to thorium radionuclides while working at the Dow Chemical Company site in Madison, Illinois for a number of work days aggregating at least 250 work days from January 1, 1957 through December 31, 1960, or in combination with work days within the parameters established for one or more other classes of employees in the special Exposure Cohort.

This designation will become effective on July 22, 2007, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: July 6, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 07–3363 Filed 7–10–07; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Medicare Prescription Drug, Improvement, and Modernization Act of 2003 Section 1013: Request for Nominations—The Effective Health Care Stakeholder Group

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of invitation to submit nominations for the Effective Health Care Stakeholder Group.

SUMMARY: The DHHS Agency for Healthcare Research and Quality (AHRQ) invites nominations from interested organizations and knowledgeable individuals for a Stakeholder Group to support the work of the Effective Health Care Program, funded under Section 1013 of the Medicare Prescription Drug, Improvement and Modernization Act (MMA) of 2003. The goals of this program are to develop evidence on the effectiveness and comparative effectiveness of different treatments and health care interventions of importance to the Medicare, Medicaid, and State Child Health Insurance. To achieve these goals, AHRQ is supporting projects to review, synthesize, generate and translate published and unpublished scientific evidence, as well as identify important issues for which existing scientific evidence is insufficient to inform decisions about health care. This evidence will be made readily available to all heath care decision-makers. The Stakeholder Group is critical to the success of this project, providing input to the program in collaboration with the Effective Health Care Scientific Resource Center (currently based at the Oregon Evidence-based Practice Center).

The role of the Stakeholder Group will be to:

- Provide input on critical research information gaps for practice and policy and on identifying and developing the key research questions to address these gaps.
- Provide input on implementation issues for Effective Heath Care program reports and findings.
- Define information needs and identify types of projects that will be most useful.
- Provide feedback from report users.
- Provide guidance on the program as a whole for quality improvement.
- Provide guidance on how the program can have more of an impact with users.

Members will serve as volunteers for a two-year period from October 2007 through September 2009. Stakeholder Group members will attend 3–4 meetings per year as part of this process. Meetings will be held in Rockville, MD and Portland, Oregon. Meetings will be 1-2 days in length. The Scientific Resource Center (SRC) will make the travel arrangements. The first meeting will be held on October 26, 2007, in Rockville, MD.

Members are expected to actively participate in meetings and to engage in related activities by phone and e-mail between meetings. Between-meeting work may include assisting with agenda planning and session preparation for Stakeholder meetings, consulting with SRC or AHRQ staff on constituency issues, and serving as a resource to the Effective Health Care Program. It is anticipated that the Stakeholder Group member time commitment between meetings will not exceed 10 hours.

The Stakeholder Group will be composed of up to 15 members. The group will represent several broad constituencies of stakeholders and decision-makers at the policy, system, and clinical levels, which will include:

- Third party healthcare payers (including, but not limited to public State or Federal Medicare or Medicaid programs, and private insurance health plans and Health maintenance Organizations).
- Employers and health-related business groups.
- Pharmacy and therapeutic committees.
- Healthcare providers.
- Patient/consumer organizations.
- Consumers of Federal and State beneficiary programs.
- Healthcare industry professional organizations.
- Academic researchers (including, but not limited to those with expertise in evidence-based methods and effectiveness and translational research).

Self-nominations are encouraged. Materials to be submitted are a cover letter and curriculum vitae or similar supportive documentation. The cover letter will provide information on how the nominee's experience, skills and roles fit with the composition and goals of the Stakeholder Group as described above. Specific information on nominee experience in the constituency groups described above is required. Nominees chosen for the Stakeholder Group will be required to declare and submit conflict of interest documentation. This will not necessarily preclude service. Nominees may indicate their willingness to be considered in subsequent calls for nominations if not selected for this Stakeholder Group in their supporting documentation.

All nominations received by submission deadline will be reviewed by a committee composed of representatives from AHRQ and the SRC. Nominees who best represent the broad constituencies described as the goal for composition of the Stakeholder Group will be selected and notified by September 28, 2007. In addition, AHRQ is interested in fostering diversity and including representatives of, or individuals with expertise regarding, populations experiencing health care disparities and in this case individuals with expertise regarding chronic conditions and health care needs of the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) populations.

DATES: Nominations for the Effective Health Care Stakeholder Group must be received by August 31, 2007.

ADDRESSES: Nominations for consideration may be e-mailed to *EffectiveHealthCare@ahrq.gov.*

FOR FURTHER INFORMATION CONTACT: Effective Health Care Program at (301) 427–1502 or *EffectiveHealthCare@ahrq.gov.*

More information about the Effective Health Care Program is available at *http://www.EffectiveHealthCare.ahrq.gov.*

SUPPLEMENTARY INFORMATION: Nominees not selected for the Stakeholder Group

are invited to participate in the Effective Healthcare Program by making suggestions for research and providing comment on key questions and draft reviews. In addition, a listserv has been established and those interested may join to be notified when items of interest become available for review or public comment. Opportunities for involvement in the Effective Health Care Program are described at *http://www.EffectiveHealthCare.ahrq.gov.*

Dated: July 3, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–3360 Filed 7–10–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: ANA Consultant and Evaluator Qualifications Form.

OMB No.: 0970–0265.

Description: The ANA Consultant and Evaluator Qualifications Form is used to collect information from prospective proposal reviewers in compliance with 42 U.S.C. 2291d–1. The form will allow the Commissioner of ANA to select qualified people to review grant applications for Social and Economic Development Strategies (SEDS), Native Language Preservation and Maintenance, Environmental Regulatory Enhancement, and Environmental Mitigation. The panel review process is a legislative mandate in the ANA grant funding process.

Respondents: Native Americans, Native Alaskans, Native Hawaiians and other Pacific Islanders.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ANA Consultant and Evaluator Qualifications Form	300	1	1	300

Estimated Total Annual Burden Hours: 300.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: July 5, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–3351 Filed 7–10–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006P–0218]

Determination That ARISTOCORT FORTE Injectable Suspension (Triamcinolone Diacetate), 40 Milligrams per Milliliter, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that ARISTOCORT FORTE Injectable Suspension (triamcinolone diacetate), 40 milligrams (mg) per milliliter (mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for triamcinolone diacetate suspension, 40 mg/mL.

FOR FURTHER INFORMATION CONTACT: Elizabeth Sadove, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is typically a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under 21 CFR 314.161(a)(1), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

ARISTOCORT FORTE Injectable Suspension (triamcinolone diacetate), 40 mg/mL, is the subject of approved NDA 12–802 currently held by Sandoz Canada Inc., a Novartis AG company (Sandoz). Triamcinolone diacetate suspension (40 mg/mL) is a synthetic glucocorticoid for use as an anti-inflammatory or immunosuppressant agent. Sandoz ceased manufacturing ARISTOCORT FORTE Injectable Suspension (triamcinolone diacetate), 40 mg/mL, in March 2004. West-ward Pharmaceutical Corp. submitted a citizen petition dated May 22, 2006 (Docket No. 2006P–0218/CP1), under 21 CFR 10.30, requesting that the agency determine whether triamcinolone diacetate suspension, 40 mg/mL, was withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that ARISTOCORT FORTE Injectable Suspension (triamcinolone diacetate), 40 mg/mL, was not withdrawn from sale for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that triamcinolone diacetate suspension, 40 mg/mL, was withdrawn for reasons of safety or effectiveness. FDA has independently evaluated relevant literature and data for possible postmarketing adverse events and has found no information that would indicate this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing agency records, FDA determines that for the reasons outlined previously in this document, ARISTOCORT FORTE Injectable Suspension (triamcinolone diacetate), 40 mg/mL, was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list ARISTOCORT FORTE Injectable Suspension (triamcinolone diacetate), 40 mg/mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to ARISTOCORT FORTE Injectable Suspension (triamcinolone diacetate), 40 mg/mL, may be approved by the agency as long as they meet all relevant legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: June 28, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–13416 Filed 7–10–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Funding Opportunity Number: HHS–2007–IHS–UIHP–000I

Office of Urban Indian Health Programs; Announcement Type: Competitive Supplemental Grant Announcement

Catalog of Federal Domestic Assistance Number: 93.193

Key Dates: Application Deadline Date: August 13, 2007.

Review Date: August 16, 2007.

Earliest Anticipated Start Date: August 24, 2007.

I. Funding Opportunity Description

The Indian Health Service (IHS), Office of Urban Indian Health Programs (OUIHP) announces competitive 4-in-l Title V grant supplements responding to an Office of Minority Health, HIV/AIDS Initiative. This program is authorized under the authority of the Snyder Act and 25 U.S.C. 1652, 1653 of the Indian Health Care Improvement Act, Public Law 94–437, as amended. This program is described at 93.193 in the Catalog of Federal Domestic Assistance (CFDA).

This competitive supplement seeks to expand OUIHP's existing Title V grants to increase the number of American Indians/Alaska Natives (AI/AN) with the awareness of his/her HIV status. This will provide routine and/or rapid HIV screening, prevention, pre and post test counseling, case management (if available) and data collection. Enhancement of urban Indian health program HIV/AIDS activities is necessary to reduce the incidence of HIV/AIDS in the urban Indian communities.

The purpose of the announcement is to respond to the fact that communities of color have been disproportionately affected by HIV and the need exists for access to early testing, diagnosis, treatment and prevention services. Over the past decade, the AI/AN community has developed and maintained a higher rate of HIV than Caucasians. It has also been demonstrated that AI/ANs have a decreased longevity once diagnosed compared to other races/ethnicities. These supplements will be used to enhance HIV testing, including rapid testing and/or standard HIV antibody testing and to provide a more focused effort to address HIV/AIDS prevention targeting some of the largest urban Indian populations in the United States.

The nature of these projects will require collaboration with the OUIHP to: (1) Coordinate activities; (2) participate in projects in other operating divisions of the Department such as CDC, SAMHSA, HRSA and the Office of Minority Health; and (3) submit and share data on HIV/AIDS testing, treatment and education.

II. Award Information

Type of Award: Title V Grant Supplements.

Estimated Funds Available: The total amount identified for Fiscal Year (FY) 2007 is seven supplement awards totaling $316,000. The award is for one year in duration and the average award, per program is approximately $45,142. Awards under this announcement are subject to the availability of funds.

Anticipated Number of Awards: Seven grant supplements will be made under the Program.

Project Period: April 1, 2007–March 31, 2008.

Award Amount: $316,000.

A. Requirements of Recipient Activities

In FY 2007 each grantee's attempted goal shall include screening as many individuals as possible; however, increasing screening 10% or to a minimum of 200 American Indians/Alaska Natives (AI/AN) tested per program funded—adjusted due to variations in size of facility and user population may be required. This does not include counts of re-testing individuals in the same year. Each program shall also collect evidence, as part of the testing process, to potentially address utility and barriers of increased routine HIV screening within this population.

III. Eligibility Information

1. *Eligible Applicants:* Urban Indian organizations, as defined by 25 U.S.C. 1603(h), limited to Urban Indian organizations which meet the following criteria:

a. Received State certification to conduct HIV rapid testing;

b. Health professionals and staff have been trained in the HIV/AIDS screening tools, education, prevention, counseling, and other interventions for American Indians/Alaskan Natives;

c. Attuned to the risk factors driving the HIV/AIDS epidemics among urban American Indians/Alaskan Natives;

d. Developed programs to address community and group support to sustain risk-reduction skills;

e. Implemented HIV/AIDS quality assurance and improvement programs; and

f. Must provide proof of non-profit status with the application.

2. Cost Sharing or Matching—This program does not require matching funds or cost sharing.

3. If the application budget exceeds $45,142 it will not be considered for review.

IV. Application and Submission Information

1. *Applicant package may be found in Grants.gov (www.grants.gov) or at: http://www.ihs.gov/NonMedicalPrograms/gogp/gogp__funding.asp.*

Information regarding the electronic application process may be directed to Michelle G. Bulls at (301) 443–6290.

2. *Content and Form of Application Submission:*

- Be single spaced.
- Be typewritten.
- Have consecutively numbered pages.
- Use black type not smaller than 12 characters per one inch.
- Contain a narrative that does not exceed 25 typed pages that includes the other submission requirements below. The 25 page narrative does not include the work plan, standard forms, table of contents, budget, budget justifications, narratives, and/or other appendix items.

Public Policy Requirements: All Federal-wide public policies apply to IHS grants with the exception of the Lobbying and Discrimination public policy.

3. *Submission Dates and Times:*

The application from each Urban Indian organization must be submitted electronically through Grants.gov by 12:00 midnight Eastern Standard Time (EST).

If technical challenges arise and the urban Indian organizations are unable to successfully complete the electronic application process, each organization must contact Michelle G. Bulls, Grants Policy Staff *fifteen days* prior to the application deadline and advise of the difficulties that they are experiencing. Each organization must obtain prior approval, in writing (e-mails are acceptable), from Ms. Bulls allowing the paper submission. If submission of a paper application is requested and approved, the original and two copies may be sent to the appropriate grants contact that is listed in Section IV. 1 above. Applications not submitted through Grants.gov, without an approved waiver, may be returned to the organizations without review or consideration.

A late application will be returned to the organization without review or consideration.

4. *Intergovernmental Review:* Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. *Funding Restrictions:*

A. Pre-award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR part 74, all pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason any of the Urban Indian organizations do not receive an award or if the award to the recipient is less than anticipated.

B. The available funds are inclusive of direct and appropriate indirect costs.

C. Only one grant supplement will be awarded to each organization.

D. IHS will acknowledge receipt of the application.

6. *Other Submission Requirements:*

Electronic Submission—Each Urban Indian organization must submit through Grants.gov. However, should any technical challenges arise regarding the submission, please contact Grants.gov Customer Support at 1–800–518–4726 or *support@grants.gov.* The Contact Center hours of operation are Monday-Friday from 7 a.m. to 9 p.m. EST. If you require additional assistance please call (301) 443–6290 and identify the need for assistance regarding your Grants.gov application. Your call will be transferred to the appropriate grants staff member. Each organization must seek assistance at least fifteen days prior to the application deadline. If each organization doesn't adhere to the time-lines for Central Contractor Registry (CCR), Grants.gov registration and request timely assistance with technical issues paper application submission may not be granted.

To submit an application electronically, please use the *Grants.gov* Web site. Download a copy of the application package on the Grants.gov Web site, complete it offline and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to IHS.

Please be reminded of the following:

- Under the new IHS application submission requirements, paper applications are not the preferred method. However, if any Urban Indian organization has technical problems submitting the application on-line, please directly contact Grants.gov Customer Support at: *http://www.grants.gov/CustomerSupport.*
- Upon contacting Grants.gov, obtain a Grants.gov tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver request from Grants Policy must be obtained. If any of the organizations are still unable to successfully submit the application on-line, please contact Michelle G. Bulls, Grants Policy Staff at (301) 443–6290 at least fifteen days prior to the application deadline to advise her of the difficulties you have experienced.
- If it is determined that a formal waiver is necessary, each organization must submit a request, in writing (emails are acceptable), to *Michelle.Bulls@ihs.gov* providing a justification for the need to deviate from the standard electronic submission process. Upon receipt of approval, a hard-copy application package must be downloaded from Grants.gov, and sent directly to the Division of Grants Operations (DGO), 801 Thompson Avenue, TMP 360, Rockville, MD 20852 by August 13, 2007.
- Upon entering the Grants.gov Web site, there is information available that outlines the requirements to each Urban Indian organization regarding electronic submission of application and hours of operation. We strongly encourage that each organization does not wait until the deadline date to begin the application process as the registration process for CCR and Grants.gov could take up to fifteen working days.
- To use Grants.gov, each Urban Indian organization must have a Dun and Bradstreet (DUNS) Number and register in the CCR. Each organization should allow a minimum of ten working days to complete CCR registration. See below on how to apply.
- Each organization must submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by IHS.
- Each organization must comply with any page limitation requirements described in the program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGO will retrieve your application from Grants.gov. The DGO will notify each organization that the application has been received.
- You may access the electronic application for this program on Grants.gov.

• You may search for the downloadable application package using either the CFDA number or the Funding Opportunity Number. Both numbers are identified in the heading of this announcement.

• To receive an application package, each Urban Indian organization must provide the Funding Opportunity Number: HHS–2007–IHS–UIHP–0001.

E-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the CCR. A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling 1–888–227–2423. Please review and complete the CCR ''Registration Worksheet'' located on *http://www.grants.gov/CCR* Register.

More detailed information regarding these registration processes can be found at Grants.gov.

V. Application Review Information

1. Criteria

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The narrative should include the first year of activities; information for multi-year projects should be included as an appendix (see E. ''Categorical Budget and Budget Justification'') at the end of this section for more information. The narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the Urban Indian organization. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully.

A. Understanding of the Need and Necessary Capacity (30 Points.)

1. Understanding of the Problem.

a. Define the project target population, identify their unique characteristics, and describe the impact of HIV on the population.

b. Describe the gaps/barriers in HIV testing for the population.

c. Describe the unique cultural or sociological barriers of the target population to adequate access for the described services.

2. Facility Capability.

a. Briefly describe your clinic programs and services and how this initiative complements and/or expands existing efforts.

b. Describe your clinic's ability to conduct this initiative through:

• Your clinic's own resources.

• Describe collaboration with other providers.

• Identify and describe partnerships established to accept referrals for counseling, testing, and referral and confirmatory blood tests and/or social services for individuals who test HIV positive.

• Identify and describe partnerships established to refer out of your clinic for specialized treatment, care, confirmatory testing (if applicable) and counseling services.

B. Work Plan (40 Points)

1. Project Goal and Objectives.

Address all of the following program goals and objectives of the project. The objectives must be specific as well as quantitatively and qualitatively measurable to ensure achievement of goal(s).

• President's Initiative for HIV/AIDS. Explain how the continuation program addresses the President's Initiative for HIV/AIDS objective requiring testing of those who do not know their status. For a more direct and relevant program initiative, this proposal will be enumerated in the development of the new IHS HIV/AIDS Strategic Plan.

• HHS Strategic Plan Support. Describe how implementing, expanding and making routine HIV/AIDS direct service opportunities in your clinic ensures an innovative approach towards achievement of the two most critical HHS Strategic Plan Objectives relative to the health status of AI/AN:

Objective 3.4—Eliminate racial and ethnic health disparities.

Objective 3.6—Increase access to health services for AI/AN.

• Office of the Secretary Minority AIDS Initiative.

Address how the Minority AIDS Initiative Goals/Objectives will be supported. If a goal/objective is not applicable to your program, explain why it is not applicable. Provide quantitative and qualitative objectives for each of the following:

1. Expand Services.

a. Increase the number of clients receiving services;

b. Increase the number of clients that receive an HIV test and are provided results and know their status; and

c. Increase the number of clients treated and/or referred into the system for medical care.

2. Build Capacity.

a. Identify the number of providers that have expanded their:

• Knowledge of HIV screening methods;

• Knowledge of streamlining procedures; and

• Collaboration with outside entities such as CDC, HRSA, and/or State health departments.

3. Best Practices Models.

a. Identify best practice models of implementation of expanded services.

4. Enumerate lessons observed and address barriers to care.

• IHS Strategic Plan Support.

Describe how this project integrates with the IHS Strategic Plan which includes concepts surrounding:

1. Building and sustaining healthy communities,

2. Providing accessible, quality health care, and

3. Fostering collaboration and innovation across the Indian health network.

• IHS HIV/AIDS Administrative Work Plan Goals.

Describe how the IHS HIV/AIDS Administrative work plan goals will be supported. If a goal is not applicable to your program, explain why it is not applicable.

1. Assist AI/AN in becoming aware of serostatus;

2. Reduce the transmission of HIV through behavior change, prevention education and open discussion;

3. Ensure access (and linkages) to services for those living with HIV/AIDS and those at risk;

4. Make routine HIV/AIDS services and ensure quality HIV/AIDS care is delivered within the Indian health system;

5. Reduce stigma and discrimination surrounding HIV/AIDS; and

6. Form sustainable collaborations and integrative approaches (i.e. STD and HIV integration) to build capacity and maximize resources for surveillance, prevention, treatment and mitigation.

• Implementation Plan.

1. Identify the proposed program activities and explain how these

activities will meet the needs of the target population.

2. Describe any anticipated outcomes that may be achieved from this project plan.

3. Provide a timeline for implementation.

4. Has the program identified and agreed to follow the State regulations for HIV testing in their state?

5. How will individuals be selected for testing to identify selection criteria and which group(s)—if any—will you be able, via State regulations to offer testing in an opt-out format?

6. How will you ensure that clients receive their test results, particularly clients who test positive?

7. How will you ensure that individuals with initial HIV-positive test results will receive confirmatory tests? If you do not provide confirmatory HIV testing, you must provide a letter of intent or MOA with an external laboratory documenting the process through which initial HIV-positive test results will be confirmed.

8. What are your strategies for linking potential seropositive patients to care?

9. What are your quality assurance strategies?

10. How will you train, support and retain staff providing counseling and testing?

11. How will you ensure client confidentiality?

12. How will you ensure that your services are culturally sensitive and relevant?

• Staffing Plan.

Describe the existing or proposed positions to be funded and provide names and roles of the key position(s) carrying out this project, their qualifications and how they relate to the organizations, with regard to supervision and quality control.

C. Project Evaluation (10 Points)

1. Evaluation Plan.

The grantee shall provide a plan for monitoring and evaluating the HIV rapid test and/or standard HIV antibody test.

2. Reporting Requirements.

The following quantitative and qualitative measures shall be addressed:

• Indicators (quantitative).

1. Number of tests offered and number of test refusals

2. Number of clients who refused due to prior knowledge of status.

3. Number of individuals tested with breakdown of rapid versus standard antibody test.

4. Number of negative results.

5. Number of false negatives and/or false positives after confirmatory testing.

6. Number of reactive tests and confirmed seropositive (actual and proportion).

7. Number of individuals receiving their confirmatory test results.

8. Number of clients linked to care/treatment or referrals for prevention counseling.

9. Number of post-test counseling sessions.

10. Number of pre-test counseling sessions (brief).

11. Number of prevention counseling sessions (more depth) due to higher risk populations.

12. Number of missed follow up after rapid test is reactive.

13. Transmission category (if known).

14. Measures in place to protect confidentiality.

• Qualitative Information.

1. Identify Testing Methodology.

a. Will testing be rapid or standard?

b. Opt-out fonnat should be utilized. Unless otherwise detennined by State regulations—please explain.

c. Is your methodology based on risk-based screening? Based on what risk criteria? Are you offering more routine screening? What are the criteria for offering tests if any?

2. Identify barriers of implementation.

• Plan for obtaining knowledge, attitudes, and behavior data.

D. Organizational Capabilities and Qualifications (10 Points)

This section outlines the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the chain of responsibility for successful completion of the project outlined in the work plan.

1. Describe the organizational structure.

2. Describe the ability of the organization to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other grants and projects successfully completed.

3. Describe what equipment (*i.e.*, phone, websites, etc.) and facility space (*i.e.*, office space) will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased throughout the agreement.

4. List key personnel who will work on the project.

• Identify existing personnel and new program staff to be hired.

• In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties indicating desired qualifications, experience, and requirements related to the proposed project and how they will be supervised. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities and who will determine if the work of a contractor is acceptable.

• Note who will be writing the progress reports.

• If a position is to be filled, indicate that information on the proposed position description.

• If the project requires additional personnel beyond those covered by the supplemental grant, (*i.e.*, IT support, volunteers, interviewers, etc.), note these and address how these positions will be filled and, if funds are required, the source of these funds.

• If personnel are to be only partially funded by this supplemental grant, indicate the percentage of time to be allocated to this project and identify the resources used to fund the remainder of the individual's salary.

E. Categorical Budget and Budget Justification (10 Points)

This section should provide a clear estimate of the project program costs and justification for expenses for the entire grant period. The budget and budget justification should be consistent with the tasks identified in the work plan.

1. Categorical budget (Form SF 424A, Budget Information Non-Construction Programs) completing each of the budget periods requested.

2. Narrative justification for all costs, explaining why each line item is necessary or relevant to the proposed project. Include sufficient details to facilitate the determination of cost allowability.

3. Budget justification should include a brief program narrative for the second and third years.

4. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

2. Review and Selection Process.

In addition to the above criteria/requirements, the application will be considered according to the following:

A. The submission deadline: August 13, 2007. The application submitted in advance of or by the deadline and verified by the postmark will undergo a preliminary review to determine that:

• The applicant is eligible in accordance with this grant announcement.

• The application is not a duplication of a previously funded project.

• The application narrative, forms, and materials submitted meet the requirements of the announcement allowing the review panel to undertake an in-depth evaluation; otherwise, it may be returned.

B. The Objective Review date is August 16, 2007.

The application requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit by the Ad Hoc Objective Review Committee (ORC) appointed by the IHS to review and make recommendations on this application. Prior to ORC review, the application will be screened to determine that programs proposed are those which the IHS has the authority to provide, either directly or through funding agreement, and that those programs are designed for the benefit of IHS beneficiaries. If an Urban Indian organization does not meet these requirements, the application will not be reviewed. The ORC review will be conducted in accordance with the IHS Objective Review Guidelines. The application will be evaluated and rated on the basis of the evaluation criteria listed in section V.1. The criteria are used to evaluate the quality of a proposed project and determine the likelihood of success.

3. Anticipated Announcement and Award Dates.

Anticipated announcement date is August 20, 2007 with an Award Date of August 24, 2007.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by the DGO and will be mailed via postal mail to the Urban Indian organization. The NoA will be signed by the Grants Management Officer, and this is the authorizing document under which funds are dispersed. The NoA is the legally binding document, will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded for the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

2. Administrative Requirements

Grants are administered in accordance with the following documents:

• This Program Announcement.

• 45 CFR Part 74, ''Uniform Administrative Requirements for Awards to Institutions of Higher Education, Hospitals, Other Non-Profit Organizations, and Commercial Organizations.''

• Grants Policy Guidance: HHS Grants Policy Statement, January 2007.

• ''Non-Profit Organizations'' (Title 2 Part 230).

• Audit Requirements: OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

3. Indirect Costs

This section applies to indirect costs in accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to have a *current* indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the awarding office, the award shall include funds for reimbursement of indirect costs. However, the indirect costs portion will remain restricted until the current rate is provided to DGO.

If an Urban Indian organization has questions regarding the indirect costs policy, please contact the DGO at (301) 443–5204.

4. Reporting

A. Progress Report. Program progress reports are required semi-annually. These reports will include a brief comparison of actual accomplishments to the goals established for the period, reasons for slippage (if applicable), and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Status Report. Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget period. Standard Form 269 (long form) will be used for financial reporting.

Failure to submit required reports within the time allowed may result in suspension or termination of an active agreement, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the organization or the individual responsible for preparation of the reports.

Telecommunication for the hearing impaired is available at: TTY 301–443–6394.

VII. Agency Contacts

For program-related information: Phyllis S. Wolfe, Director, Office of Urban Indian Health Programs, 801 Thompson Avenue, Suite 200, Rockville, Maryland 20852, (301) 443–4680 or *phyllis.wolfe@ihs.gov.*

For general information regarding this announcement: Danielle Steward, Health Systems Specialist, Office of Urban Indian Health Programs, 801 Thompson Road, Room 200, Rockville, MD 20852, (301) 443–4680 or *danielle.steward@ihs.gov.*

For specific grant-related and business management information: Denise Clark, Senior Grants Management Specialist, 801 Thompson Avenue, TMP 360, Rockville, MD 20852, (301) 443–5204 or *denise.clark@ihs.gov.*

VIII. Other Information

None.

Date: July 3, 2007.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. 07–3359 Filed 7–10–07; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The Hispanic Community Health Study (HCHS)/Study of Latinos (SOL)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: Hispanic Community Health Study (HCHS)/Study of Latinos (SOL). *Type of Information Collection Request:* New Collection. *Need and Use of Information Collection:* The Hispanic Community Health Study (HCHS)/Study of Latinos (SOL) will identify risk factors for cardiovascular and lung disease in Hispanic populations and determine the role of acculturation in the prevalence and development of

these diseases. Hispanics, now the largest minority population in the U.S., are influenced by factors associated with immigration from different cultural settings and environments, including changes in diet, activity, community support, working conditions, and health care access. This project is a multicenter, six-and-a-half year epidemiologic study and will recruit 16,000 Hispanic men and women aged 18–74 in four community-based cohorts in Chicago, Miami, San Diego, and the Bronx. The study will also examine measures of obesity, physical activity, nutritional habits, diabetes, lung and sleep function, cognitive function, hearing, and dental conditions. Closely integrated with the research component will be a community and professional education component, with the goals of bringing the research results back to the community, improving recognition and control of risk factors, and attracting and training Hispanic researchers in epidemiology and population-based research. *Frequency of Response:* The participants will be contacted annually. *Affected Public:* Individuals or households; Businesses or other for profit; Small businesses or organizations. *Type of Respondents:* Individuals or households; physicians. The annual reporting burden is as follows: *Estimated Number of Respondents:* 10,801; *Estimated Number of Responses per Respondent:* 1.0; *Average Burden Hours Per Response:* 3.6; and *Estimated Total Annual Burden Hours Requested:* 38,401. The annualized cost to respondents is estimated at $506,613, assuming respondents time at the rate of $13 per hour and physician time at the rate of $50 per hour. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF ANNUAL HOUR BURDEN

Type of response	Number of respondents	Frequency of response	Average hours per response	Annual hour burden
Participant Examinations and Questionnaires	5,334	1.0	6.5	34,671
Participant Telephone Interviews	5,267	1.0	.67	3,530
Physician, Medical Examiner, and Next-of-kin Follow-up [1]	200	1.0	1.0	200
Total	10,801			38,401

[1] Annual burden is placed on doctors and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events.

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.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Larissa Aviles-Santa, Deputy Project Officer, NIH, NHLBI, 6701 Rockledge Drive, MSC 7936, Bethesda, MD 20892–7934, or call non-toll-free number 301–435–1284 or E-mail your request, including your address to: *AvilessantaL@NHLBI.NIH.GOV.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: June 28, 2007.

Peter Savage,

Acting Director, DPPS.

Suzanne Freeman,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E7–13384 Filed 7–10–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen

validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Sciences Corporation, 345 Hill Ave., Nashville, TN 37210, 615–255–2400 (Formerly: Aegis Analytical Laboratories).

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200/800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.).

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 13112 Evening Creek Drive, Suite 100, San Diego, CA 92128, 858–668–3710/800–882–7272 (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300, Seattle, WA 98122, 206–923–7020/800–898–0180 (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.

MAXXAM Analytics Inc.*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700 (Formerly: NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

Meriter Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225 (Formerly: General Medical Laboratories).

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, 123 International Way, Springfield, OR 97477, 541–341–8092.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521 (Formerly: SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.

Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400 (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

The following laboratory voluntarily withdrew from the NLCP on June 19, 2007:

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories).

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Elaine Parry,

Acting Director, Office of Program Services, SAMHSA.

[FR Doc. E7–13408 Filed 7–10–07; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

DATE AND TIME: Friday, July 13, 2007—1:30 p.m. to 4 p.m.

ADDRESSES: Emrick Technology Center, 2750 Hugh Moore Park Road, Easton, PA 18042.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 2750 Hugh Moore Park Road, Easton, PA 18042, (610) 923–3548.

Dated: July 3, 2007.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 07–3354 Filed 7–10–07; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Information Collection; Export of Fertilized Live Eggs, Caviar, or Meat from Aquacultured Paddlefish or Sturgeon (CITES)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC.

DATES: You must submit comments on or before September 10, 2007.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail, fax, or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is associated with regulations implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES regulates international trade in listed species through a system of permits and certificates. We assess permit requests according to criteria in CITES and Federal regulations (50 CFR parts 13 and 23) for the issuance, suspension, revocation, or denial of permits.

We have developed a new permit application form (FWS Form 3–200–80) specific to permit requests for the export of fertilized live eggs, caviar, or meat from aquacultured paddlefish or sturgeon. In the past, we have used FWS Form 3–200–24 (Export of Captive Born Wildlife) to collect the information necessary for us to evaluate these permit requests. When using that general form, applicants have had considerable difficulty understanding what information is necessary and how to supply it. The proposed form clarifies these issues. The information we plan to collect includes, but is not limited to:

(1) Each species from which product will be exported.

(2) Production facilities.

(3) Documentation showing the number of brood stock spawned annually.

(4) Estimated weight of eggs produced annually.

(5) Total caviar harvested annually (by weight).

(6) Mortality rates by age class.

(7) How captive population is managed to maintain genetic vitality.

(8) Whether or not population is supplemented by wild-origin fish.

(9) Roe to be exported.

II. Data

OMB Control Number: None. This is a new collection.

Title: Export of Fertilized Live Eggs, Caviar, or Meat from Aquacultured Paddlefish or Sturgeon (CITES), 50 CFR 13 and 23.

Service Form Number(s): 3–200–80.

Type of Request: New collection.

Affected Public: Individuals and commercial exporters of paddlefish and sturgeon caviar and meat; State, tribal, Federal, and local governments.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Estimated Annual Number of Respondents: 5.

Estimated Total Annual Responses: 5.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 10.

Estimated Total Nonhour Burden Cost: $300 for application fees.

III. Request for Comments

We invite comments concerning this IC on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this 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.

Comments that you submit in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 25, 2007

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E7–13415 Filed 7–10–07; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Information Collection; OMB Control Number 1018–0095; Endangered and Threatened Wildlife, Experimental Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to renew the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on November 30, 2007. We 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.

DATES: You must submit comments on or before September 10, 2007.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail, fax, or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 10(j) of the Endangered Species Act of 1973 (ESA), as amended, (16 U.S.C. 1531 et seq.) authorizes the Secretary of the Interior to establish experimental populations of endangered or threatened species. Because individuals of experimental populations are categorically protected under the ESA, the information we collect is important for monitoring the success of reintroduction efforts and recovery efforts in general. Information collection requirements for experimental populations of endangered and threatened species are in 50 CFR 17.84. We collect three categories of information:

(1) General take or removal. Relates to human-related mortality including unintentional taking incidental to otherwise lawful activities (e.g., highway mortalities); animal husbandry actions authorized to manage the population (e.g., translocation or providing aid to sick, injured, or orphaned individuals); take in defense of human life; take related to defense of property (if authorized); or take in the form of authorized harassment.

(2) Depredation-related take. Involves take for management purposes where livestock depredation is documented, and may include authorized harassment or authorized lethal take of experimental animals in the act of attacking livestock.

(3) Specimen collection, recovery, or reporting of dead individuals. This information documents incidental or authorized scientific collection. Most of the contacts with the public deal primarily with the reporting of sightings of experimental population animals or the inadvertent discovery of an injured or dead individual.

The information that we collect includes:

(1) Name, address, and phone number of reporting party.

(2) Species involved.

(3) Type of incident.

(4) Location and time of the reported incident.

(5) Description of the circumstances related to the incident.

This information helps us to assess the effectiveness of control activities and to develop better means to reduce problems with livestock for those species where depredation is a problem. Service recovery specialists use the information to determine the success of reintroductions in relation to established recovery plan goals for the threatened and endangered species involved.

II. Data

OMB Control Number: 1018–0095.

Title: Endangered and Threatened Wildlife, Experimental Populations, 50 CFR 17.84.

Service Form Number(s): None.

Type of Request: Revision of currently approved collection.

Affected Public: Individuals and households, businesses, not-for-profit organizations, farms, and State, tribal, and local governments.

Respondent's Obligation: Voluntary. *Frequency of Collection:* On occasion.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
General take or removal	20	20	15 minutes	5
Depredation related take	22	22	15 minutes	5.5
Specimen collection	20	20	15 minutes	5
Totals	62	62		15.5

III. Request for Comments

We invite comments concerning this IC on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this 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.

Comments that you submit in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 25, 2007

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E7–13499 Filed 7–10–07; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
Endangered Species			
048370	U.S. Geological Survey, National Wildlife Health Center.	72 FR 9770; March 5, 2007	May 17, 2007.
131348	University of Puerto Rico Herbarium	72 FR 19718; April 19, 2007	June 1, 2007.
147954	Lawrence J. Nolan	72 FR 13816; March 23, 2007	May 16, 2007.
Marine Mammals			
150501	Jeremiah P. Burke	72 FR 19718; April 19, 2007	June 7, 2007.

Dated: June 21, 2007.

Melanie F. Goddard Brose,

Acting Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–13390 Filed 7–10–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and/or marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North

Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Marine Mammals

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
151297	Anton Gossein	72 FR 25328; May 4, 2007	June 13, 2007.

Dated: June 22, 2007.

Michael L. Carpenter

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–13391 Filed 7–10–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by August 10, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Mesa Garden, Belen, NM, PRT–678845.

The applicant requests renewal of a permit to export the following endangered and threatened cactus species for the purpose of enhancement of the species in the wild: Tobusch fishhook (*Ancistrocactus tobuschii*); star cactus, (*Astrophytum asterias*); Nellie cory cactus, (*Coryphantha minima* syn. *Escobaria minima*); bunched Cory cactus, (*Coryphantha ramillosa*); Cochise pincushion cactus, (*Coryphantha robbinsorum*); Sneed pincushion cactus, (*Coryphantha sneedii* var. *sneedii*); Lee pincushion cactus, (*Coryphantha sneedii* var. *leei*); Chisos Mountain hedgehog cactus, (*Echinocereus chisoensis* var. *chisoensis*); Kuenzler hedgehog cactus, (*Echinocereus fendleri* var. *kuenzleri*); black lace cactus, (*Echinocereus reichenbachii* var. *albertii*); Arizona hedgehog cactus, (*Echinocereus triglochidiatus* var. *arizonicus*, syn E. *coccineus* var. *arizonicus*); Davis' green Pitaya, (*Echinocereus viridiflorus* var. *davisii*); Lloyd's Mariposa cactus, (*Echinomastus mariposensis* syn. *Neolloydia mariposensis*); Brady pincushion cactus, (*Pediocactus bradyi*); San Rafael cactus, (*Pediocactus despainii*); Knowlton cactus, (*Pediocactus knowltonii*); Peebles Navajo cactus, (*Pediocactus peeblesianus peeblesianus*); Siler pincushion cactus, (*Pediocactus sileri* syn. *Echinocactus* and *Utahia*); Uinta Basin hookless cactus, (*Scerocactu glaucus*); Mesa Verde cactus, (*Sclerocactus mesae-verdae*) and Wright fishhook cactus, (*Sclerocactus wrightiae*). This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Randy Miller's Predators in Action, Bear City, CA, PRT–157596.

The applicant requests a permit to export to Pretoria, South Africa and re-import three captive born tigers (*Panthera tigris*) for the purpose of enhancement of the survival of the species.

Applicant: University of Utah/Museum of Natural History, Salt Lake City, UT, PRT–156524.

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of animals and plants previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Allan Gleaton, Albany, GA, PRT–148754.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: June 22, 2007.

Michael L. Carpenter,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–13392 Filed 7–10–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by August 10, 2007.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (**ADDRESSES** above).

Applicant: John W. Bussey, Jr., Jackson, MS, PRT–156522.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Joshua D. Parker, Denver City, TX, PRT–153408.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Timothy D. Akers, Richmond, KY, PRT–152951.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Mitchel Kalmanson, Maitland, FL, PRT–072945, 072948, 074389–074393, 074395, 074397, and 074398.

The applicant requests the re-issuance of permits for the re-export and re-import of 10 captive-born tigers (*Panthera tigris*) to and from worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are [072945, Chad; 072948, Toshiro; 074389, Weber; 074390, Pancho; 074391, Petra; 074392, Gandhi; 074393, Tasha; 074395, Chardon; 074397, Princesa; 074398, Isis]. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: John M. Azevedo, Manteca, CA, PRT–156712.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Donald E. Thompson, Troy, MO, PRT–156806.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: David B. Ball, Mobile, AL, PRT–157133.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Norwegian Bay polar bear population in Canada for personal, noncommercial use.

Applicant: Michael G. West, Oneida, NY, PRT–155528.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Thomas J. Mason, Chippewa Falls, WI, PRT–154893.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Foxe Basin polar bear population in Canada prior to February 18, 1997, for personal, noncommercial use.

Dated: June 21, 2007.

Melanie F. Goddard Brose,

Acting Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–13393 Filed 7–10–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 23, 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 July 26, 2007.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

COLORADO

Boulder County

Gold Miner Hotel (Boundary Increase), 601 Klondyke Ave., Eldora, 07000772

Jamestown Town Hall (Boundary Increase), (Metal Mining and Tourist Era Resources of Boulder County MPS), 118 Main St., Jamestown, 07000773

CONNECTICUT

Hartford County

Glastonbury Knitting Company, 64 Addison Rd., Glastonbury, 07000770

IOWA

Marion County

Knoxville WPA Athletic Field Historic District, Bounded by Linocln St., Robinson St., Stadium St. and Marion St., Knoxville, 07000775

NEW YORK

Dutchess County

Martin, Hendrick, House, 65 Willowbrook Ln., Red Hook, 07000776

Richmond County

Temple Emanu-El, 984 Post Ave., Staten Island, 07000778

Westchester County

Plashbourne Estate, 51 Carlton Rd., Yonkers, 07000777

OREGON

Benton County

Whiteside, Charles and Ibby, House, 344 SW 7th St., Corvallis, 07000774

Multnomah County

Yeon, John, Speculative House, 3922 N. Lombard St., Portland, 07000771

WEST VIRGINIA

Boone County

Madison National Bank, 375 Main St., Madison, 07000779

Cabell County

Hawthorne Historic District, Roughly Hawthorne Way and portions of South, Whitaker Blvd., Huntington, 07000786

Kenwood, 619 Ridgewood Rd., Huntington, 07000784

Fayette County

Boyd Avenue Historic District, Boyd Ave., E and W sides, N of Queen St., Martinsburg, 07000781

Mount Hope Historic District, Portions of Maine, Tennessee, Montana, Virginia Sts., Fayette, Mountain Aves, Stadium Dr., N. Pax Ave., N. Maryland, Mount Hope, 07000785

Jefferson County

Duffields Depot, 45 Melvin Rd., Shenandoah Junction, 07000780

Kanawha County

McClung's Price Place, 699 Savannah Ln., Lewisburg, 07000782

Putnam County

Hoge, James W., House, Hoge Ln., Winfield, 07000783

WISCONSIN

Kenosha County

Kenosha North Pierhead Light, (Light Stations of the United States MPS), North pier at Kenosha harbor entry, 0.1 mi. E of Simmons Island Park, Kenosha, 07000787

A request for a MOVE has been made for the following resource: Pedrick Store House part of the

MASSACHUSETTS

Essex County

Marblehead Historic District, Roughly bounded by Marblehead Harbor, Waldron Court, Essex, Elm, Pond, and Norman Sts., Marblehead, 84002402

[FR Doc. E7–13388 Filed 7–10–07; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement in In re Collins & Aikman Corporation, et al. Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA)

Notice is hereby given that on July 5, 2007, a proposed Settlement Agreement was lodged with the United States Bankruptcy Court for the Eastern District of Michigan in *In re Collins & Aikman Corporation, et al.,* Case No. 05–55927. The Settlement Agreement between the United States on behalf of U.S. EPA, Debtor Collins & Aikman Corporation and its Debtor subsidiaries, and Marmon Wire & Cable LLC, relates to certain liabilities under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* and Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), at 42 U.S.C. 6973, in connection with the Mosaic Tile Plant Dump Site in Zanesville, Ohio.

The Department of Justice will receive comments relating to the Settlement Agreement for a period of thirty (30) days from the date of this publication. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d). Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Collins & Aikman Corporation, et al.,* DJ Ref. No. 90–11–2–08595.

The Settlement Agreement may be examined at the Office of the United States Attorney for the Eastern District of Michigan, 211 W. Fort Street, Suite 2001, Detroit, MI 48226, by request to Assistant U.S. Attorney Julia Pidgeon, and at the U.S. EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–3370 Filed 7–10–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in United States v. East Kentucky Power Cooperative, Inc. Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on July 2, 2007, a proposed consent decree (''Consent Decree'') between East Kentucky Power Cooperative, Inc. (''EKPC'') and the United States, Civil Action No. 04–34–KSF, was lodged with the United States District Court for the Eastern District of Kentucky.

The Consent Decree would resolve claims asserted by the United States against EKPC pursuant to Sections 113(b) and 167 of the Clean Air Act (the ''Act''), 42 U.S.C. 7413(b) and 7477, seeking injunctive relief and the assessment of civil penalties for EKPC's violations of:

(a) The Prevention of Significant Deterioration (''PSD'') provisions in Part C of Subchapter I of the Act, 42 U.S.C. 7470–92;

(b) The New Source Performance Standards (''NSPS'') provisions of the Act, 42 U.S.C. 7411;

(c) Title V of the Act, 42 U.S.C. 7661 *et seq.*; and

(d) The federally-enforceable State Implementation Plan (''SIP'') developed by the Commonwealth of Kentucky.

EKPC operates three coal-fired power plants in Kentucky: The Spurlock Plant, located near Maysville, Kentucky, the Dale Plant, located near Winchester, Kentucky, and the Cooper Plant, located near Somerset, Kentucky. The complaint filed by the United States alleges that EKPC modified Spurlock Unit 2 and Dale Units 3 and 4 without complying with PSD (including the requirements to first obtain a PSD permit authorizing the modifications and to install and operate the best available technology to control emissions of sulfur dioxide (''SO_2''), nitrogen oxides (''NO_x''), and/or particulate matter (''PM'')), and modified Dale Units 3 and 4 without complying the NSPS. The Complaint also alleges that EKPC violated Title V of the Act by failing to include the PSD and NSPS requirement triggered by its modifications in its Title V operating permits for the Spurlock and Dale plants. Finally, the Complaint alleges that EKPC illegally operated Spurlock Unit 2 at heat input capacities that were higher than allowed by its operating permit.

The proposed Consent Decree would require EKPC to reduce SO_2, NO_x and PM emissions at its plants through the installation and operation of state-of-the-art pollution control technologies and/or the retirement or re-powering of certain units. In addition, the proposed Consent Decree would require EKPC to install and operate wet electrostatic precipitators at its Spurlock Plant, which are designed to control sulfuric acid mist from coal-fired power plants, as a means of mitigating the harm caused by the alleged violations. Finally, the proposed Consent Decree would require EKPC to pay a $750,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *East Kentucky Power Cooperative,* D.J. Ref. No. 90–5–2–1–08085.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Kentucky, 260 West Vine Street, Suite 300, Lexington, Kentucky, 40507–1612, and at U.S. EPA Region IV, 61 Forsyth Street, SW., Atlanta, Georgia, 30303–8960. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Constent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $18.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–3368 Filed 7–10–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on July 3, 2007, a proposed Remedial Design/Remedial Action Consent Decree (''Decree'') in *United States* v. *Findett Real Estate Corp., et al.,* Civil Action No. 07–1215 was lodged with the United States District Court for the Eastern District of Missouri.

The Decree resolves claims of the United States and the State of Missouri against the settling defendants brought under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (''CERCLA''), 42 U.S.C. 9601 *et seq.,* for declaratory relief, injunctive relief, and recovery of response costs incurred and to be incurred by the United States in connection with the release of hazardous substances at operable unit 3 (''OU3'') of the Hayford Bridge Road Groundwater Site located in St. Charles, Missouri (''Site''). The Decree requires six of the settling defendants to perform the remedy selected by EPA for OU3 and the remaining settling defendants to pay their allocated share of the costs to implement the remedy, including EPA oversight costs. The work to be performed by the settling defendants at OU3 is expected cost about $1.12 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj. gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Findett Real Estate Corp., et al.,* Civil Action No. 07–1215 (E.D. Missouri), D.J. Ref. 90–11–2–417/2.

The Decree may be examined at the Office of the United States Attorney, Eastern District of Missouri, 111 S. 10th Street, 20th Floor, St. Louis, Missouri 63102, and at U.S. EPA Region VII, 901 N. 5th Street, Kansas City, Kansas 66101. During the public comment period, the Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $50.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $12.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–3367 Filed 7–10–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 26, 2007 a proposed Consent Decree in the case of *United States* v. *Frazer Exton Development LP,* Docket No. 2:07–cv–02666–ER, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this proceeding, the United States filed a claim pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, for reimbursement of costs incurred in connection with response actions taken at the Foote Mineral Superfund Site, located in East Whiteland Township, Chester County, Pennsylvania, and for the performance of studies and additional response work at the Site by Frazer Exton Development LP. Pursuant to the Consent Decree, the settling Defendant agrees to finance and perform the remedial action selected by EPA. Additionally, Settling Defendant will pay $311,447 in reimbursement of costs previously incurred by the United States.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov,* or mailed to: P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *U.S.* v. *Frazer Exton Development LP,* D.J. Ref. 90–11–3–08948.

The Consent Decree may be examined at U.S. EPA Region III, Office of Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103–2029, c/o Bonnie Pugh-Winkler, Esq. During the public comment period, the Consent Decree may also be examined at the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $20.00 (25 cents per page reproduction cost), or $78.00 for the Consent Decree and all of the attached exhibits, payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–3369 Filed 7–10–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation of Settlement and Judgment Under the Clean Water Act

Notice is hereby given that on June 29, 2007, a Stipulation of Settlement and Judgment (''Stipulation'') in *United States* v. *Icicle Seafoods, Inc. and Evening Star, Inc.,* Civil Action No. 3:06–cv–00268–JWS, was lodged with the United States District Court for the District of Alaska.

In this action the United States sought civil penalties and injunctive relief pursuant to Section 309 of the Clean Water Act, as amended (''CWA''), 33 U.S.C. 1319, for alleged violations of the National Pollutant Discharge Elimination System permit (''Permit'') issued by the Environmental Protection Agency (''EPA'') for discharges from the M/V *Northern Victor,* to Udagak Bay, Alaska. Defendants, Icicle Seafoods, Inc. and its wholly-owned subsidiary, Evening Star, Inc., own and operate the M/V *Northern Victor.* The Stipulation would resolve this action with a civil penalty payment of $900,000. Defendants have conducted a removal of the inactive, underwater seafood waste pile in Udagak Bay created by the operation of the M/V *Northern Victor* prior to their acquisition of the vessel, as the Permit required. The Stipulation preserves for future resolution any claims that the United States or EPA may have vis-a-vis the waste pile to which the M/V *Northern Victor* actively discharges other than those exceedances of the 1.5-acre zone-of-deposit limitation of the Permit that occurred through June 10, 2005.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Stipulation. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Icicle Seafoods, Inc. and Evening Star, Inc.,* D.J. Ref. #90–5–1–1–07395/1.

The Stipulation may be examined at the offices of the Environment Division, 801 B Street, Anchorage, Alaska 99501 [Contact: Lorraine Carter (907–271–5452)], and at U.S. EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington 98101 [Contact: Margo Young (206) 553–1287)]. During the public comment period, the Stipulation may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Stipulation may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $20.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the address recited above.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–3371 Filed 7–10–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of First Amended Consent Decree Under the Clean Water Act

Notice is hereby given that on June 27, 2007, a proposed First Amended Consent Decree in *United States, et al.* v. *James H. Pflueger, et al.,* Case No. CV 06–00140 BMK (D. Hawaii), relating to allegations of Clean Water Act violations at Defendants' properties on the Island of Kauai, Hawaii, was lodged with the United States District Court for the District of Hawaii.

The proposed First Amended Consent Decree is an amendment of a settlement of claims for civil penalties and injunctive relief brought against Defendants James H. Pflueger, Pflueger Properties, and Pila'a 400 LLC pursuant to the Clean Water Act, 33 U.S.C. 1251–1387, and Section 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. 407, for the unauthorized discharge into waters of the United States of both fill and

storm water runoff associated with their construction activities. The proposed First Amended Consent Decree revises construction schedules for certain remedial work required by the Decree and adds a new status report requirement regarding the work.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the First Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and National Resources Division, and either e-mailed to *pubcommentees.enrd@usdoj.gov,* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, with a copy to Robert Mullaney, U.S. Department of Justice, 301 Howard Street, Suite 1050, San Francisco, CA 94105, and should refer to *United States, et al.* v. *James H. Pflueger, et al.,* D.J. Ref. 90–5–1–1–07871.

The First Amended Consent Decree may be examined at U.S. EPA Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California. During the public comment period, the First Amended Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the First Amended Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 517–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $34.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman

Assistant Chief, Environmental. Enforcement Section. Environment and National Resources Division.

[FR Doc. 07–3372 Filed 7–10–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,284]

Continental Structural Plastics, Petoskey, MI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated June 9, 2007, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The determination was signed on May 16, 2007 and published in the **Federal Register** on May 30, 2007 (72 FR 30033).

The initial investigation resulted in a negative determination based on the finding that imports of plastic automotive parts did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed in Washington, DC, this 20th day of June, 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–13396 Filed 7–10–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 23, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 23, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 3rd day of July 2007.

Ralph Dibattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX.—TAA PETITIONS INSTITUTED BETWEEN 6/25/07 AND 6/29/07

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61734	Taylor Togs, Inc. (Wkrs)	Micaville, NC	06/25/07	06/15/07
61735	Dolby Labs Licensing (State)	San Francisco, CA	06/25/07	06/22/07
61736	Jones Co. Ltd. (Wkrs)	Humboldt, TN	06/25/07	06/13/07
61737	Champion Parts, Inc. (State)	Hope, AR	06/25/07	06/22/07
61738	Simplicity Pattern Company, Inc. (Comp)	Niles, MI	06/25/07	06/22/07

APPENDIX.—TAA PETITIONS INSTITUTED BETWEEN 6/25/07 AND 6/29/07—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61739	Solectron, Ltd (State)	Ponce, PR	06/25/07	06/22/07
61740	Continental Tire North America, Inc. (Comp)	Charlotte, NC	06/25/07	06/25/07
61741	Ameriwood Industries, Inc. (Comp)	Dowagiac, MI	06/25/07	06/19/07
61742	Sypris Technologies, Corp (State)	Kenton, OH	06/25/07	06/22/07
61743	Risdon International, Inc.—Watertown (State)	Watertown, CT	06/25/07	06/22/07
61744	Risdon International, Inc.—Danbury (State)	Danbury, CT	06/25/07	06/22/07
61745	Ampac Fine Chemicals (State)	Rancho Cordova, CA	06/25/07	06/21/07
61746	Carolina Warp Print, Inc. (Comp)	Gastonia, NC	06/26/07	06/26/07
61747	Kimball Electronics (Comp)	Gaylord, MI	06/26/07	06/24/07
61748	The Apparel Group/Foxcroft Sportswear (Comp)	Fall River, MA	06/26/07	06/25/07
61749	Syroco Industries (State)	Siloam Springs, AR	06/26/07	06/25/07
61750	Data Trace Information (State)	Santa Ana, CA	06/26/07	06/19/07
61751	Tyco Electronics Corporation (Comp)	Reading, PA	06/26/07	06/25/07
61752	WestPPoint Home (Wkrs)	Clemson, SC	06/26/07	06/22/07
61753	WestPoint Home Inc./Bath Products Division (Comp)	Wagram, NC	06/26/07	06/25/07
61754	IBM Corporation (Wkrs)	Rochester, MN	06/27/07	06/25/07
61755	Troxel Products LLC dba Flexible Flyer (Wkrs)	West Point, MS	06/27/07	06/25/07
61756	Rogers Corporation (State)	Chandler, AZ	06/27/07	06/26/07
61757	Efore USA Inc (Comp)	Irving, TX	06/28/07	06/13/07
61758	Credence Speakers, Inc. (Wkrs)	Kevil, KY	06/28/07	06/21/07
61759	Agilent Technologies, Inc. (Comp)	Loveland, CO	06/28/07	06/26/07
61760	Hutchinson Technology Inc. (State)	Eau Claire, WI	06/28/07	06/21/07
61761	MJJ Brilliant (Wkrs)	New York, NY	06/28/07	06/23/07
61762	St. Anthony's Health Center (State)	Alton, IL	06/28/07	06/27/07
61763	Unicare c/o Wellpoint Company (Wkrs)	Bolingbrook, IL	06/29/07	06/28/07
61764	Victor Forstmann, Inc. (Comp)	East Dublin, GA	06/29/07	06/28/07
61765	Convergy's Information Management Group (Wkrs)	Wilkes-Barre, PA	06/29/07	05/30/07
61766	Comtec Manufacturing Inc. (Comp)	St. Mary's, PA	06/29/07	06/28/07
61767	Outsource Partners International OPI (Wkrs)	Houston, TX	06/29/07	06/28/07
61768	QST Industries, Inc. (Comp)	Mocksville, NC	06/29/07	06/28/07

[FR Doc. E7–13395 Filed 7–10–07; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities: Extension of a Currently Approved Information Collection With Non-Substantive Changes; Comment Request

ACTION: 60-day notice of information collection under review: Form ETA–750, Application for Alien Employment Certification; OMB Control No. 1205–0015.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning Form ETA 750 Application for Alien Employment Certification. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or at this Web site: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 10, 2007.

ADDRESSES: William L. Carlson, Administrator, Office of Foreign Labor Certification, U.S. Department of Labor, Room C4312, 200 Constitution Ave., NW., Washington, DC 20210; by phone at (202) 693–3010 (this is not a toll-free number); by fax at (202) 693–2768; or by e-mail at *ETA.OFLC.Forms@dol.gov* subject line: Form ETA 750.

SUPPLEMENTARY INFORMATION:

I. Background

The information collection is required by section 212(a)(5)(A), section 214(c) and section 218 of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A), 1184(c) and 1188). The INA mandates the Secretary of Labor to certify that any alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is not adversely affecting wages and working conditions of U.S. workers similarly employed and that there are not sufficient U.S. workers able, willing, and qualified to perform such skilled or unskilled labor. Before any employer may request any skilled or unskilled alien labor, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the INA or meet one of the exceptions in the INA. Both the Department of Labor and the Department of Homeland Security have promulgated regulations to implement these sections of the INA. The relevant regulations are 20 CFR 655.1–4, 20 CFR 655.90–113, 20 CFR 655.200–215, 8 CFR 204.5(k)(4)(ii), and 8 CFR 214.2(h)(5) and (6).

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

In order to meet its statutory responsibilities under the INA, the Department needs to extend an existing collection of information pertaining to employers seeking to import foreign labor. The form used to collect the information is utilized not only by the Department, but also by other federal agencies to meet the requirements of the INA. The Department uses the information collected to implement several of its nonimmigrant worker programs, including the H–2A and H–2B temporary work programs, and for both permanent and temporary programs for the employment of alien professional athletes. The Department of Homeland Security, U.S. Citizenship and Immigration Services, utilizes the form for its National Interest Waiver program for employment-sponsored immigration.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Application for Alien Employment Certification.

OMB Number: 1205–0015.

Agency Number(s): Form ETA 750.

Recordkeeping: On occasion.

Affected Public: Individuals, businesses or other for-profits and not-for-profit institutions, and farms.

Total Respondents: 38,435.

Estimated Total Burden Hours: 56,145 hours annually to the respondents and 134,522 hours annually to the Federal government.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $1,403,625 annually to respondents and $4,307,833 annually to the Federal government.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 29, 2007.

William L. Carlson,

Administrator, Office of Foreign Labor Certification.

[FR Doc. E7–13397 Filed 7–10–07; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities: Extension of a Currently Approved Information Collection With Non-Substantive Changes; Comment Request

ACTION: 60-day notice of information collection under review: Form ETA–9033, Attestation by Employers using Alien Crewmembers for Longshore Activities at U.S. Ports; OMB Control No. 1205–0309.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning Form ETA 9033 Attestation by Employers Using Alien Crewmembers for Longshore Activities. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or at this Web site: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 10, 2007.

ADDRESSES: William L. Carlson, Administrator, Office of Foreign Labor Certification, U.S. Department of Labor, Room C4312, 200 Constitution Ave., NW., Washington, DC 20210; by phone at (202)693–3010 (this is not a toll-free number); by fax at (202) 693–2768; or by e-mail at *ETA.OFLC.Forms@dol.gov* subject line: Form 9033.

SUPPLEMENTARY INFORMATION:

I. Background

The information collection is required by section 258 of the Immigration and Nationality Act (INA) (8 U.S.C. 1288). The INA has a prevailing practice exception to the general prohibition on the performance of longshore work by alien crewmembers in U.S. ports. Under the prevailing practice exception, before any employer may use alien crewmembers to perform longshore activities in U.S. ports, it must submit an attestation to the Secretary of Labor containing the elements prescribed by the INA. The INA further requires that the Secretary of Labor make available for public examination in Washington, DC a list of employers that have filed attestations and, for each of these employers, a copy of the employer's attestation and accompanying documentation received by the Secretary.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

In order to meet its statutory responsibilities under the INA, the Department needs to extend an existing collection of information pertaining to employers seeking to use alien crewmembers to perform longshore activities in U.S. ports. ETA has not received any attestations under the prevailing practice exception within the last three years. An information collection request will be submitted to

increase the burden should activities recommence.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports.

OMB Number: 1205–0309.

Agency Number(s): Form ETA 9033.

Recordkeeping: On occasion.

Affected Public: Businesses or other for-profits.

Total Respondents: 0.

Estimated Total Burden Hours: 4.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 29, 2007.

William L. Carlson,

Administrator, Office of Foreign Labor Certifications.

[FR Doc. E7–13402 Filed 7–10–07; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: The National Sports Hall of Fame, LLC/Harrisburg, Pennsylvania.

Principal Product: The loan, guarantee, or grant application is for a new business venture to construct and create working capital for The National Sports Hall of Fame. The NAICS industry codes for this enterprise are: 712110 Museums; 722110 Full-Service Restaurants; and, 531120 Lessors of Nonresidential Buildings (except Miniwarehouses).

DATES: All interested parties may submit comments in writing no later than July 25, 2007. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov;* or transmit via fax 202–693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed: at Washington, DC this 3rd of July, 2007.

Gay M. Gilbert,

Administrator, Office of Workforce Investment, Employment and Training Administration.

[FR Doc. E7–13467 Filed 7–10–07; 8:45 am]

BILLING CODE 4510–FN–P

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9 a.m., August 17, 2007.

PLACE: One board MISSISSIPPI V at City Front, St. Louis, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Louis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., August 20, 2007.

PLACE: One board MISSISSIPPI V at City Front, Cape Girardeau, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., August 21, 2007.

PLACE: One board MISSISSIPPI V at Mud Island, Memphis, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., August 22, 2007.

PLACE: One board MISSISSIPPI V at City Front, Greenville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg

District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., August 24, 2007, at Port commission Dock, Morgan City, LA.

PLACE: One board MISSISSIPPI V at City Dock, Baton Rouge, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone (601) 634-5766.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–3394 Filed 7–9–07; 12:23 pm]

BILLING CODE 3710–GX–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) for the following collection of information: 3220–0184, Earnings Information Request. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Under Section 2 of the Railroad Retirement Act, an annuity is not payable, or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The provisions relating to the reduction or non-payment of annuities by reason of work are prescribed in 20 CFR part 230.

To obtain the information needed to determine if an annuity is not payable to an *applicant* because of earnings in excess of prescribed amounts, the RRB uses a series of basic application forms used to request specific information related to an annuitant's past, present and future earnings. To determine information needed for determining reductions in, or non-payment of, annuities currently being paid to *annuitants,* the RRB primarily relies on earnings information received from the Social Security Administration under the terms of a computer matching agreements.

The RRB utilizes Form G–19–F, *Earnings Information Request,* to obtain earnings information that either had not been previously reported or erroneously reported by a beneficiary. In order to enhance program integrity, the RRB proposes to revise Form G–19–F to expand a current item that requests information about the annuitant's employer to include the employer's identification number (EID). Other minor non-burden impacting editorial changes are also proposed.

Our ICR describes the information we seek to collect from the public. If a respondent fails to complete the form, the RRB may be unable to pay them benefits. One response is required from a respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (72 FR 20390 on April 24, 2007) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Earnings Information Request.

OMB Control Number: 3220–0184.

Form(s) submitted: G–19F.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or households.

Abstract: Under Section 2 of the Railroad Retirement Act, an annuity is not payable or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The collection obtains earnings information not previously or erroneously reported by a beneficiary.

Changes Proposed: In order to enhance program integrity the RRB proposes changes to Form G–19–F to expand a current item that requests information about the annuitant's employer to include the employer's identification number. Minor non-burden impacting editorial changes are also proposed.

The burden estimate for the ICR is as follows:

Estimated completion time for RRB Form G–19–F: 8 minutes.

Estimated annual number of respondents: 900.

Total annual responses: 900.

Total annual reporting hours: 120.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–13411 Filed 7–10–07; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request a revision to a currently approved collection of information: 3220–0138, Self-Employment and Substantial Service Questionnaire consisting of Form AA–4, Self-Employment and Substantial Service Questionnaire.

The RRB invites comments on the proposed collection of information to determine (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to

minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Section 2 of the Railroad Retirement Act (RRA) provides for payment of annuities to qualified employees and their spouses. In order to receive an age and service annuity, Section 2(e)(3) states that an applicant must stop all railroad work and give up any rights to return to such work. However, applicants are not required to stop non-railroad work or self-employment.

The RRB considers some work claimed as ''self-employment'' to actually be employment for an employer. Whether the RRB classifies a particular activity as self-employment or as work for an employer depends upon the circumstances of each case. These circumstances are prescribed in 20 CFR part 216.

Under the 1988 amendments to the RRA, an applicant is no longer required to stop work for a ''Last Pre-Retirement Nonrailroad Employer'' (LPE). However, section 2(f)(6) of the RRA requires that a portion of the employee's Tier II benefit and supplemental annuity be deducted for earnings from a ''LPE'' employer.

''LPE'' is defined as the last person, company or institution with whom the employee or spouse applicant was employed concurrently with, or after, the applicant's last railroad employment and before their annuity beginning date. If a spouse never worked for a railroad, the LPE employer is the last person for whom he or she worked.

The RRB utilizes Form AA–4, *Self-Employment and Substantial Service Questionnaire,* when an applicant claims to be self-employed to obtain information needed to determine if the applicant's work is LPE, railroad service or self-employment. If the work is self-employment, the questionnaire identifies any months in which the applicant did not perform substantial service. The RRB proposes editorial and formatting changes to Form AA–4. Other non-burden impacting changes proposed include dividing current items containing multiple questions into separate items with Yes/No responses and skip patterns. Checklists have also been added to many items to obtain more standardized responses.

Our ICR describes the information we seek to collect from the public. If a respondent fails to complete Form AA–4, the RRB may be unable to pay them benefits. The completion time for the form is estimated at 40 to 70 minutes. One response is received from each respondent. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (72 FR 19555 on April 18, 2007) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Self-Employment and Substantial Service Questionnaire.

OMB Control Number: 3220–0138.

Form(s) submitted: AA–4.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or households.

Abstract: Section 2 of the Railroad Retirement Act provides for payment of annuities to qualified employees and their spouses. Work for a Last Pre-Retirement Nonrailroad Employer (LPE), and work in self-employment affect payments in different ways. This collection obtains information to determine whether claimed self-employment is really self-employment, and not work for a railroad or LPE.

Changes Proposed: The RRB proposes editorial and formatting changes to Form AA–4. Other non-burden impacting changes include dividing current items containing multiple questions into separate items with Yes/No responses and skip patterns. Checklists have also been added to many items to obtain more standardized responses.

The burden estimate for the icr is as follows:

Estimated Completion Time for Form AA–4: 40 to 70 minutes.

Estimated annual number of respondents: 600.

Total annual responses: 600.

Total annual reporting hours: 415.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–13413 Filed 7–10–07; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56009; File No. SR–ISE–2007–51]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fee Changes

July 3, 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 June 22, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE proposes to amend its Schedule of Fees to establish fees for transactions in options on one Premium Products.[5] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.ise.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

[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] ''Premium Products'' is defined in the Schedule of Fees as the products enumerated therein.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISE has substantially prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Schedule of Fees to establish fees for transactions in options on the following Premium Product: The ISE Electronic Trading Index (''DMA'').[6] All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange proposes to adopt an execution fee and a comparison fee for all transactions in options on DMA.[7] The amount of the execution fee and comparison fee for products covered by this filing shall be $0.15 and $0.03 per contract, respectively, for all Public Customer Orders[8] and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[9] Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be $0.37 and $0.03 per contract, respectively. Further, since options on DMA are not multiply-listed, the Payment for Order Flow fee shall not apply. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[10] in general, and Section 6(b)(4) of the Act[11] in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges 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 been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and Rule 19b–4(f)(2)[13] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal took effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2007–51 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–2007–51. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–51 and should be submitted on or before August 1, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13400 Filed 7–10–07; 8:45 am]

BILLING CODE 8010–01–P

[6] The Exchange represents that DMA, a narrow-based index, meets the standards of ISE Rule 2002(b), which allows the ISE to begin trading this product by filing a Form 19b–4(e) at least five business days after commencement of trading this new products pursuant to Rule 19b–4(e) of the Act. Accordingly, ISE filed Form 19b–4(e) with the Commission on June 22, 2007.

[7] These fees will be charged to Exchange members. Under a pilot program that is set to expire on July 31, 2007, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900). *See* Securities Exchange Act Release No. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006) (SR–ISE–2006–38).

[8] ''Public Customer Order'' is defined in ISE Rule 100(a)(39) as an order for the account of a Public Customer. ''Public Customer'' is defined in ISE Rule 100(a)(38) as a person that is not a broker or dealer in securities.

[9] The execution fee is currently between $.21 and $.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $.03 per contract side.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56007; File No. SR–NASD–2007–046]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow NASD Members To Use the NASD/Nasdaq Trade Reporting Facility To Process Transaction Fees Charged by One Member to Another Member

July 3, 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 July 3, 2007, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. NASD has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission.[4] 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

NASD is proposing to (1) amend NASD Rule 6130 (Trade Report Input) to allow NASD members to use the NASD/Nasdaq Trade Reporting Facility (the ''NASD/Nasdaq TRF'') to process transaction fees charged by one member to another member on trades in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act, effected otherwise than on an exchange; and (2) repeal NASD Interpretive Material (IM)–2230 (''Third Market'' Confirmations) to ensure the efficacy of the transaction fee transfer mechanism proposed herein.

The text of the proposed rule change is available at the NASD, the Commission's Public Reference Room, and *http://www.nasd.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 240.19b–4(f)(6).

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 NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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

Background

Historically, there has been no mechanism for members to charge each other commissions or other explicit transaction fees through the NASD trade reporting and clearance submission process. Generally, members that want to charge other members an explicit transaction fee must bill and collect these fees directly from the other member outside the transaction reporting and clearing process.

Some members, however, trade on a ''net'' basis, meaning that the broker-dealer's compensation is implicitly included in the execution price disseminated to the tape and reported for clearance and settlement to the National Securities Clearing Corporation (''NSCC''). For example, broker-dealer 1 (B/D 1) wants to purchase a security at $10, with a transaction fee of $.01 per share from broker-dealer 2 (B/D 2). Rather than selling the security at $10 and then charging a separate transaction fee of $.01 per share, B/D 2 will sell the security to B/D 1 ''net'' at a price of $10.01. Because $10.01 is the reported price, the transaction fee is included as part of the trade and is transferred as part of the clearance and settlement process. However, with the adoption of the Regulation NMS Order Protection Rule (Rule 611 of Regulation NMS under the Act), trades reported on a ''net'' basis are more apt to trade through protected quotes than those reported on a gross basis. For example, in the scenario above, if the protected inside market was $9.95 to $10, a trade at $10.01 may constitute a trade-through for the purposes of the Regulation NMS Order Protection Rule (i.e., the trade is at a price worse than the best displayed offer for the security).

The Securities Industry and Financial Markets Association (SIFMA), on behalf of certain NASD member firms, approached Nasdaq and NASD concerning this issue and requested that the NASD/Nasdaq TRF facilitate the processing of transaction fees between members. They indicated that upon the implementation of the Regulation NMS Order Protection Rule, many member firms intend to stop trading ''net'' and begin charging an explicit transaction fee for each trade.

Proposed Amendments To Allow Inclusion of Transaction Fees in Clearing Reports

NASD is proposing to adopt new paragraph (h) of Rule 6130,[5] which provides that NASD members may agree in advance to transfer a transaction fee charged by one member to another member on a transaction in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act, effected otherwise than on an exchange through the submission of a clearing report to the NASD/Nasdaq TRF. The report submitted to the NASD/Nasdaq TRF shall provide, in addition to all other information required to be submitted by any other rule, a total per share or contract price amount, inclusive of the transaction fee. As a result, members would submit two price amounts as part of their report to the NASD/Nasdaq TRF: One price including the transaction fee, which would be submitted by the NASD/Nasdaq TRF to NSCC for clearance and settlement; and one price exclusive of the transaction fee, which would be reported to the appropriate Securities Information Processor for public dissemination. For example, if B/D 1 purchases from B/D 2 at $10.00 and B/D 1 and B/D 2 agree to a transaction fee of $.01 per share, the trade price that would be publicly disseminated would be $10.00, while the trade would be cleared and settled by NSCC at $10.01.[6] The parties to the trade would know both prices—the price reported for public dissemination and the clearance/settlement price.

In addition, the proposed rule provides that both members and their respective clearing firms, as applicable, must execute an agreement, as specified by NASD, permitting the facilitation of the transfer of the transaction fee through the NASD/Nasdaq TRF, as well as any other applicable agreement, such as a give up agreement pursuant to Rule

[5] In this rule filing, NASD is proposing to redesignate current paragraph (h) of Rule 6130 as paragraph (i).

[6] Today, if this transaction were effected on a net basis, the transaction at a price of $10.01 would both be reported to the tape and submitted to NSCC.

4632(h). Such agreement must be executed and submitted to the NASD/Nasdaq TRF before the members can transfer any transaction fee under the proposed rule. Among other things, the form of agreement specified by NASD would expressly provide that the acceptance and processing by the NASD/Nasdaq TRF of the transaction fee as part of a trade report shall not constitute an estoppel as to NASD or bind NASD in any subsequent administrative, civil or disciplinary proceeding with respect to the transaction fee transferred. In other words, processing of a transaction fee by the NASD/Nasdaq TRF should not be taken to mean that NASD approved that transaction fee or its amount or its appropriateness under NASD rules or federal securities laws. The mere fact that the transaction fee flowed through an NASD facility will not be a defense to any action taken by NASD relating to the fee. The proposed rule also provides that the relevant agreements are considered member records for purposes of NASD Rule 3110(a) and must be made and preserved by both members in conformity with applicable NASD rules.

Furthermore, the proposed rule expressly provides that it shall not relieve a member from its obligations under NASD rules and federal securities laws, including but not limited to, NASD Rule 2230 (Confirmations) and SEC Rule 10b–10. To the extent that any transaction fee is passed onto the customer, members should review their customer confirmation obligations to ensure that they are disclosing such fees in compliance with all applicable rules and regulations, as well as other NASD rules, including but not limited to, NASD Rules 2320 (Best Execution) and 2440 (Fair Prices and Commissions).

The proposed rule relates solely to transaction fees charged by one NASD member to another NASD member. Members would not be able to use the NASD/Nasdaq TRF to facilitate the transfer of fees for transactions with a customer (i.e., clients that are not brokers or dealers) or a non-member. In addition, the NASD/Nasdaq TRF can only be used to facilitate the transfer of transaction fees. Members would not be able to use the NASD/Nasdaq TRF to transfer access fees or rebates on transactions.

Pursuant to SR–NASD–2007–040,[7] NASD proposed amendments to prohibit members from submitting to an NASD Facility (i.e., a Trade Reporting Facility or the Alternative Display Facility) any report associated with a previously executed trade that was not reported to that NASD Facility. Thus, members will not be permitted to use the NASD/Nasdaq TRF to transfer transaction fees on any trades that were previously reported to another NASD Facility.

NASD also is proposing to amend Rule 6130(d) (Trade Information To Be Input) to require that for any transaction for which the NASD/Nasdaq TRF is used to transfer a transaction fee between two NASD members, the trade report must comply with the requirements of proposed Rule 6130(h).

Finally, IM–2230 (''Third Market'' Confirmations) requires any member that absorbs a transaction fee transferred pursuant to proposed Rule 6130(h) to include a legend to that effect on the customer confirmation. However, given that such a transaction fee, by definition, has been absorbed by the member and, as appropriate, incorporated into the fee paid by and disclosed to the customer on the confirmation, such disclosure provides no or minimal additional information to the customer. Accordingly, NASD is proposing to repeal IM–2230 because it could be unduly burdensome on members and potentially reduce the efficacy of the transaction fee transfer mechanism proposed herein, in light of the anticipated increase in the number of trades for which a transaction fee will be charged, while providing only minimal additional information to customers.

NASD notes that the proposed rule change does not include any proposed rules relating to fees for use of the NASD/Nasdaq TRF to transfer transaction fees pursuant to proposed new Rule 6130(h). Such fees will be the subject of a future rule filing with the Commission.

NASD has filed the proposed rule change for immediate effectiveness and requested a waiver of the 30-day operative delay to allow the proposed rule change to become operative on the Regulation NMS Pilot Stocks Phase Date, July 9, 2007.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that by automating and improving fee transfers as a value-added service, the proposed rule change will assist members in complying with their obligations under Regulation NMS.

B. Self Regulatory Organization's Statement on Burden on Competition

NASD 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

NASD 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4[10] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) 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.[11]

Under Rule 19b–4(f)(6) of the Act,[12] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Commission believes that the proposed rule change is beneficial because it will: (1) Make transaction fees transparent by virtue of their being separately reported; and (2) assist members in conducting their business consistent with their obligations under Regulation NMS that commence on the Pilot Stocks Phase date of July 9, 2007. Therefore, the Commission believes that it is consistent with the protection of investors and the public interest to

[7] *See* Securities Exchange Act Release No. 55962 (June 26, 2007), 72 FR 36536 (July 3, 2007) (notice of filing and immediate effectiveness of SR–NASD–2007–040).

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NASD has satisfied the five-day pre-filing notice requirement.

[12] *Id.*

waive the 30-day operative date so that the proposal may take effect upon filing.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2007–046 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2007–046. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2007–046 and should be submitted on or before August 1, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

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[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56008; File No. SR–NSX–2007–07]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Modify a Rule Relating to Market Data Revenue Credits for Transactions Executed Through NSX BLADE

July 3, 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 May 18, 2007, the National Stock Exchange, Inc. (''NSX'' or ''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. The Exchange filed Amendment No. 1 to the proposed rule change on June 29, 2007. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons and is approving the proposal as modified by Amendment No. 1 on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Exchange Rule 16.2(b) to increase its tape credits from 50 percent to 100 percent of market data revenues generated by transactions in Tape A, Tape B, and Tape C securities and to clarify that the Exchange will not provide any tape credits for market data revenue generated by quotes. The text of the proposed rule change is available at the NSX, the Commission's Public Reference Room, and *http://www.nsx.com/RulesFilings.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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 16.2(b) currently provides for a 50 percent transaction credit on revenues generated by transactions in Tape A, Tape B, and Tape C securities, using the Exchange's NSX BLADE.SM The credit is allocable to ETP Holders on a pro rata basis based upon Tape A, Tape B, and Tape C revenue generated by an ETP Holder's transactions on the Exchange. The Exchange derives the funds for these credits from payments it receives from the joint industry plans that allocate market data revenues to self-regulatory organizations (''SROs''). Prior to April 1, 2007, the formula to calculate market data revenue was based solely on the trading activity of an SRO. As of April 1, 2007, the market data formulas under the joint industry plans that allocate market data revenues to SROs were changed by Regulation NMS.[3] The joint industry plans' formula for market data revenue is now a new two-step process: First, distributable plan market data revenues are allocated among individual securities (symbol-by-symbol); and, second, revenues that are allocated to an individual security are allocated among the SROs such that 50% of the revenue is attributable to transactions on an SRO

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 242.600 to 242.612. *See also* Securities Exchange Act Release No. 53829 (May 18, 2006) 71 FR 30038 (May 24, 2006).

and 50% is attributable to certain types of quoting activity on an SRO.[4]

With the instant proposed rule change, the Exchange is proposing that Exchange Rule 16.2(b) be amended to increase from 50% to 100% the percentage of Tape A, Tape B, and Tape C revenue shared with its ETP Holders that is based on reporting transactions in securities on the Exchange. The Exchange is also proposing to clarify explicitly in Exchange Rule 16.2(b) its present practice of not providing any credit to ETP Holders with respect to market data revenue that is based on their reporting quotes of securities in the Exchange's system.

In addition, simultaneous with the implementation of this proposed rule change, the Exchange intends to harmonize its pro rata calculations of its credits to ETP Holders with the new Market Data formula under Regulation NMS to reflect the symbol-by-symbol and other components of the allocation of the Trading Share portion of the formula. Thus, the Exchange will begin providing credits to ETP Holders for market data revenue for transactions executed through the Exchange based on a pro rata distribution of the market data revenue actually generated by such ETP Holder's transactions in individual securities, as opposed to a pro rata distribution of that ETP Holder's total trading activity in a particular tape.

The Exchange has determined that this change is necessary for competitive reasons. The increase of the trade market data revenue credits to 100% will allow the Exchange to offer a more competitive program to its current and potential ETP Holders. The Exchange's retention of market data revenue based upon reporting quotes will be included in the Exchange's general operating revenues which are used to fund, among other things, the Exchange's regulatory oversight functions.

The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest because it lowers the cost of trading and market data to broker-dealers and the investing public and because it enhances competition in the trading of Tape A, Tape B and Tape C securities.

Beginning with the Exchange's second quarter of 2007, which began April 1st and ends June 30th, the Exchange intends to calculate its quarterly market data credits owed to its ETP Holders in accordance with the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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. 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–NSX–2007–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2007–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2007–07 and should be submitted on or before August 1, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and, in particular, with the requirements of Section 6(b) of the Act[8] and the rules and regulations thereunder. The Commission finds that the Exchange's proposal to increase its tape credits is consistent with Section 6(b)(4) of the Act,[9] which requires, among other things, that exchanges have an equitable allocation of reasonable dues, fees, and other charges among their members and issuers and other persons using their facilities. The Commission further notes that the Exchange's proposal to harmonize its market data revenue credit program with the new formula under Regulation NMS is consistent with the promotion of a national market system.

The Commission finds good cause, pursuant to Section 19(b)(2)(B) of the Act,[10] for approving the proposed rule change prior to the 30th day after the date of publication of the notice of the

[4] The Allocation Amendment to the CTA, CQ, and the Nasdaq UTP Plans contains the market data formula respecting quotes. In general, Quote Credits can be earned for each second of time (with a minimum of one second) multiplied by the dollar value of size that an automated best bid or offer is submitted to the plan processors that is equal to the NBBO, provided the quote does not lock or cross a previously displayed automated quotation. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] In approving this rule, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2)(B).

filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval would facilitate the undelayed increase in the distribution of the market data revenue to ETP Holders and allow the Exchange to offer a more competitive market data revenue credit program.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [11] that the proposed rule change (SR–NSX–2007–07), as modified by Amendment No. 1, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13399 Filed 7–10–07; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56015; File No. SR–NYSE–2007–48]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No.1 Thereto Relating to Proposed Amendments to Rule 600 To Provide Guidance Regarding New and Pending Arbitration Claims in Light of the Consolidation of NYSE Regulation Into NASD DR

July 5, 2007.

On May 23, 2007, pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change that was published for comment in the **Federal Register** on June 4, 2007.[4] On June 21, 2007, the NYSE filed Amendment No. 1 to revise the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the NYSE.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Release No. 34–55818 (May 25, 2007), 72 FR 30898 (June 4, 2007).

[5] Amendment No. 1 replaced and superseded the original filing in its entirety.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to amend current Rule 600 and adopt a new Rule 600A. As part of the consolidation of the member firm regulation function of NYSE Regulation, Inc. (''NYSE Regulation'') with the National Association of Securities Dealers, Inc. (''NASD''), NYSE Regulation will cease to provide an arbitration program, and its existing arbitration department (''NYSE Arbitration'') will be consolidated with that of NASD Dispute Resolution, Inc. (''NASD DR''). The proposed amendments provide that the arbitration rules of the Exchange shall apply only to NYSE arbitration cases pending prior to the date which is the later of the date of approval of this proposed rule change or the date of the consolidation (the ''Effective Date''), and that, thereafter, disputes between NYSE member organizations, associated persons, and/or their customers will be arbitrated under the NASD DR Codes of Arbitration Procedure. The text of the proposed rule is set forth below. Proposed new language is italicized.

* * * * *

Rule 600 Arbitration

* * * * *

Supplementary Material

Rules 600 through 639, and Rule 347, with the exception of Rule 600A, apply only to arbitrations filed prior to [insert later of effective date of the consolidation or approval of this proposed rule change] and are otherwise of no force or effect. Notwithstanding the foregoing, arbitrations filed with NYSE Arca on or prior to January 31, 2007 continue to be governed by the NYSE Arca Rule 12 in effect on or prior to January 31, 2007, and arbitrations filed with NYSE Arca Equities on or prior to January 31, 2007 continue to be governed by the NYSE Arca Equities Rule 12 in effect on or prior to January 31, 2007. On and after [insert date of the consolidation] all such arbitrations filed prior to [insert later of effective date of the consolidation or approval of this proposed rule change] shall, until concluded, be administered by NASD Dispute Resolution, Inc. (''NASD DR'') pursuant to a Regulatory Services Agreement with the Exchange.

* * * * *

Rule 600A

(a) Duty to Arbitrate. (i) Any dispute, claim or controversy between or among member organizations and/or associated persons shall be arbitrated pursuant to the NASD DR Codes of Arbitration Procedure; and, (ii) any dispute, claim or controversy between a customer or non-member and a member organization and/or associated person arising in connection with the business of such member organization and/or in connection with the activities of an associated person, shall be arbitrated pursuant to NASD DR Codes of Arbitration Procedure as provided by any duly executed and enforceable written agreement, or upon the demand of the customer or non-member. Such obligation to arbitrate shall extend only to those matters that are permitted to be arbitrated under NASD DR Codes of Arbitration Procedure.

(b) Referrals. The Exchange may receive, investigate and take disciplinary action with respect to any referral it receives from a NASD DR arbitrator of any matter which comes to the attention of such arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Exchange's Rules or the federal securities laws.

(c) Failure to Arbitrate or to Pay an Arbitration Award. Any member organization or associated person who fails to submit to arbitration a matter required to be arbitrated pursuant to this Rule, or that fails to honor an arbitration award made pursuant to the NASD DR Codes of Arbitration Procedure, or made under the auspices of any other self-regulatory organization, shall be subject to disciplinary proceedings in accordance with Exchange Rule 476.

(d) Other Actions. The submission of any matter to arbitration as provided for under this Rule shall in no way limit or preclude any right, action or determination by the Exchange that it would otherwise be authorized to adopt, administer or enforce.

* * * * *

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 included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide guidance regarding both new and pending arbitration claims in light of the consolidation of the member firm regulation function of NYSE Regulation into NASD DR. NYSE Arbitration currently administers an arbitration program for NYSE Regulation, governed by NYSE Regulation Rules 600 through 639. NYSE Arbitration also administers a program for NYSE Arca, Inc. (''NYSE Arca'') and NYSE Arca Equities, Inc. (''NYSE Arca Equities''), governed by what is referred to as ''Rule 12.'' [6]

As part of the consolidation of NYSE Regulation with NASD,[7] NYSE Regulation will cease to administer an arbitration program, and its existing arbitration department will be consolidated with NASD DR. As a result, on and after the date of the consolidation, all arbitration claims filed prior to the Effective Date, and previously subject to NYSE Regulation rules and administration, will be administered by NASD DR pursuant to a Regulatory Services Agreement with the NYSE.

The rules governing the administration of any particular arbitration will depend on the date the case was filed. This will ensure that any person that filed an arbitration under a particular set of arbitration rules will continue to have the case administered pursuant to those rules through to the case's conclusion. There are two categories of cases. First, NYSE arbitration cases filed before the Effective Date will continue to be governed by existing NYSE Regulation arbitration rules, as would pending NYSE Arca and NYSE Arca Equities cases filed on or after February 1, 2007.[8] Second, those NYSE Arca and NYSE Arca Equities cases filed on or prior to January 31, 2007 are (and will continue to be) governed by Rule 12.

Proposed Exchange Rule 600A provides detailed guidance concerning claims involving member organizations and/or associated persons that are asserted on and after the Effective Date. First, any dispute, claim or controversy between or among member organizations and/or associated persons shall be arbitrated pursuant to the NASD DR Codes of Arbitration Procedure. Second, any dispute, claim or controversy between a customer or a non-member and a member organization and/or associated person arising in connection with the business of such member organization and/or in connection with the activities of an associated person shall be arbitrated pursuant to NASD DR Codes of Arbitration Procedure as provided by any duly executed and enforceable written agreement, or upon the demand of the customer or non-member. Note that the obligation to arbitrate shall extend only to those matters that are permitted to be arbitrated under NASD DR Codes of Arbitration Procedure.

In almost all cases the change from NYSE to NASD DR arbitration rules should not result in material, substantive differences to persons participating in the arbitration process. However, one difference is the treatment of employment discrimination claims. NASD DR rules provide that any claim alleging employment discrimination, including any sexual harassment claims, in violation of a statute, will be eligible for arbitration pursuant to either a pre-dispute or a post-dispute agreement to arbitrate. In contrast, Exchange Rule 600(f) and Exchange Rule 347(b) permit claims to be arbitrated only when the parties have agreed to arbitrate the claim after it has arisen.

Rule 347(a) provides that a controversy between a registered representative and a member organization ''arising out of the employment or termination of employment of such registered representative'' shall be arbitrated at the request of any party. These employment claims would continue to be covered by NASD DR Rule 13200(a), which requires the arbitration of disputes arising out of the ''business activities'' of a member or an associated person and is between or among members, members and associated persons, or associated persons.[9] Accordingly, Rule 600 would be amended, as described below, to provide that Rule 347 would apply only to claims filed before the Effective Date.

Rule 600A will explicitly retain the Exchange's enforcement authority related to arbitration. In appropriate cases, arbitrators refer to the Exchange potential violations of the Exchange's Rules or the federal securities laws that come to their attention during and in connection with a proceeding. Rule 600A will specify that the Exchange will retain the ability to take action based on such referrals that may come from arbitrators in cases being arbitrated at NASD DR.

Rule 600A will also retain the substance of current Exchange Rule 637, regarding the obligation to honor arbitration awards. It will provide that any Exchange member organization, or associated person of any Exchange member organization, that fails to honor an award of arbitrators rendered under the NASD DR Codes of Arbitration Procedure, or under the auspices of any other self-regulatory organization, shall be subject to disciplinary proceedings in accordance with Exchange Rule 476. It will also specify that failure to submit a matter to arbitration as required by Rule 600A will also subject the member organization to Exchange disciplinary action.

Rule 600A will also specify that the submission of any matter to arbitration as provided for under the Rule shall in no way limit or preclude any right, action or determination by the Exchange that it would otherwise be authorized to adopt, administer or enforce.

Finally, Supplementary Material added to existing Rule 600, and to become effective on the Effective Date, will specify that the current NYSE arbitration rules, Rules 600 through 639 and Rule 347, will thereafter apply only to arbitrations filed prior to the Effective Date and will be otherwise of no force or effect. The Supplementary Material will also specify that arbitrations filed with NYSE Arca or NYSE Arca Equities on or prior to January 31, 2007 will continue to be governed by those organizations' Rule 12. This will ensure that those who filed arbitrations under a particular set of arbitration rules will continue to have their cases

[6] NYSE Arca and NYSE Arca Equities have two separate rules that govern arbitrations, one for Equity Trading Permit (''ETP'') holders, and one for Option Trading Permit (''OTP'') holders and OTP firms; both rules are known as ''Rule 12.'' Although Rule 12 has subsequently been amended, for purposes of administering NYSE Arca and NYSE Arca Equities arbitrations filed on or prior to January 31, 2007, NYSE Arbitration follows Rule 12 as it was in effect on that date.

[7] Additional information regarding the consolidation may be found in: SR–NASD–2007–23 (March 19, 2007) concerning proposed amendments to the By-Laws of NASD to implement governance and related changes to accommodate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc.; and SR–NYSE–2007–22 (February 27, 2007) concerning proposed amendments to several NYSE rules which, among other matters, harmonize the rules with corresponding NASD regulatory requirements.

[8] *See* Release No. 34–55142 (January 19, 2007), 72 FR 3898 (January 26, 2007) (SR–NYSEArca–2006–54) and Release No. 34–55141 (January 19, 2007), 72 FR 3897 (January 26, 2007) (SR–NYSEArca–2006–55).

[9] Telephone conversation among Jean Feeney, Vice President, NASD; Lourdes Gonzalez, Assistant Chief Counsel—Sales Practices, Commission; and Michael Hershaft, Special Counsel, Commission (June 27, 2007).

administered pursuant to those same rules through to the cases' conclusion. The Supplementary Material will also note that on and after the date of the consolidation, all outstanding arbitrations filed prior to the Effective Date shall, until concluded, be administered by NASD DR pursuant to a Regulatory Services Agreement with the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) [10] of the Act, which requires, among other things, that the rules of an Exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest. The proposed rule change will streamline the arbitration process and provide for a unified and more efficient arbitration forum with one set of arbitration rules and administrative procedures. This will allow resources to be devoted to maintaining and improving the NASD DR program, rather than splitting resources between two mainly duplicative programs. As a result of these improvements, the proposed rule change will better protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange 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 e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–48 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.

All submissions should refer to File number SR–NYSE–2007–48. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. 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–NYSE–2007–48 and should be submitted on or before August 1, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13468 Filed 7–10–07; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5866]

Culturally Significant Objects Imported for Exhibition Determinations: ''Piranesi as Designer''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Piranesi as Designer'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Cooper-Hewitt, National Design Museum, Smithsonian Institution, New York, New York, from on or about September 14, 2007, until on or about January 20, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 2, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–13429 Filed 7–10–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: I–805 Managed Lanes South

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a project in San Diego, California.

FOR FURTHER INFORMATION CONTACT: Steve Healow, Federal Highway Administration, 650 Capitol Mall Suite 4–100, Sacramento, CA 95814, Telephone: (916) 498–5849 or David Nagy, Senior Environmental Planner, California Department of Transportation, 4050 Taylor Street, San Diego, CA 92110, Telephone: (619) 688–0224.

SUPPLEMENTARY INFORMATION: The FHWA is issuing this notice to advise the public that an EIS will be prepared for proposed improvements on Interstate 805 (I–805) in San Diego, CA. Proposed improvements include construction of managed lanes, direct access ramps, in-line transit stations, and auxiliary lanes between Palomar Street and University Avenue. These proposed improvements are necessary to convey existing and projected traffic demand. Alternatives under consideration include (1) taking no action; (2) constructing two managed lanes from Palomar Street to State Route 94; and (3) constructing four managed lanes from Palomar Street to State Route 94. Incorporated into and studied with the build alternatives will be design variations for locations of direct access ramps, auxiliary lanes, and in-line transit stations. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public scoping meeting will be held for the project, and a separate mailing will be sent out to all interested parties with the specific date, time, and location for the meeting. In addition, a public hearing will be held during draft EIS circulation. Public notice will be given as to the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the contacts provided above.

(Catalog 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.)

Issued on: July 3, 2007.

Steve Healow,

Senior Project Development Engineer, Federal Highway Administration. Sacramento, California.

[FR Doc. E7–13414 Filed 7–10–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highways in Washington

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). These actions relate to a proposed highway project on State Route 28 (Sunset Highway) Eastside Corridor Project in Douglas County, Washington. These actions grant approvals for the project.

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 the highway project will be barred unless the claim is filed on or before January 7, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Liana Liu, Area Engineer, Federal Highway Administration Washington Division, 711 S. Capital Way, Suite 501, Olympia, WA 98501, 360–753–9553, *Liana.Liu@fhwa.dot.gov.* Terry Mattson, Project Engineer, Washington State Department of Transportation, P.O. Box 98, Wenatchee, WA 98807–0098, 509–667–2899, *mattsot@wsdot.wa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in the State of Washington. This project would improve safety and provide congestion relief on State Route 28, Douglas County, Washington. The proposed project provides four lanes and a median divider on SR 28 (Sunset Highway) from the intersection of SR 2/97 to 9th Street, NE., in the City of East Wenatchee. The project also extends Eastmont Avenue from Badger Mountain Road to the intersection of SR 2/97. The SR 2/97 intersection with Sunset Highway is expanded to accommodate additional lanes and tie-in with Eastmont Avenue. The project includes a new interchange on SR 2/97 at Empire Avenue to connect 38th Street, NW., and Cascade Avenue. Other improvements to Sunset Highway include u-turns at two intersections and six new signals. Stormwater facilities are upgraded along the corridor and minor improvements to side streets are included. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement for the project, approved on November 22, 2006, a Record of Decision approved on May 17, 2007, and in other documents in the FHWA administrative record. The Final Environmental Impact Statement and other documents in the FHWA administrative record file are available by contacting the FHWA or the Washington State Department of Transportation at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act 42 U.S.C. 7401–7671(q).

3. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]. Migratory Bird Treaty Act [16 U.S.C. 703–712].

4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(aa) 11]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

5. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious

Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

6. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k).

7. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog 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 his program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: July 5, 2007.

Liana L. Liu,

Area Engineer, Federal Highway Administration, Olympia, Washington.

[FR Doc. E7–13409 Filed 7–10–07; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance (VITA) Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 7, 2007, at Noon Eastern Time.

FOR FURTHER INFORMATION CONTACT: Barbara Foley at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel VITA Issue Committee will be held Tuesday, August 7, 2007, at Noon, Eastern Time via a telephone conference call. You can submit written comments to the Panel by faxing to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, P.O. Box 3205, Milwaukee, WI 53201–3205, or you can contact us at *http://www.improveirs.org.* Public comments will also be welcome during the meeting. Please contact Barbara Foley at 1–888–912–1227 or (414) 231–2360 for additional information.

The agenda will include the following: Various VITA Issues.

Dated: July 3, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–13386 Filed 7–10–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 1, 2007, at 1 p.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Barbara Foley at 1–888–912–1227, or (414) 231–2360.

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 Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Wednesday, August 1, 2007, at 1 p.m. Eastern Time via a conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or (414) 231–2360, or write Barbara Foley, TAP Office, MS–1006–MIL, PO Box 3205, Milwaukee, WI 53201–2105, or FAX to (414) 231–2363, or you can contact us at *http://www.improveirs.org.* For information to join the Joint Committee conference call meeting, contact Barbara Foley at the above number.

The agenda will include the following: Discussion of issues and responses brought to the Joint Committee, office report, and discussion of next meeting.

Dated: July 3, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–13387 Filed 7–10–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held on September 19–20, 2007, in Room 930 at the VA Central Office, 810 Vermont Avenue, NW., Washington, DC. On September 19 the session will be from 8:30 a.m. and until 5 p.m., and on September 20 from 8 a.m. and until 12 noon. This meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology by assessing the capability of VA health care facilities and programs to meet the medical, psychological and functional needs of older veterans and by evaluating VA programs designated as Geriatric Research, Education, and Clinical Centers (GRECCs).

The meeting will feature presentations and discussion on VA's aging research activities, update on VA's geriatric workforce (to include training, recruitment and retention approaches), VHA Primary Care and Geriatric Primary Care, recent VHA efforts regarding dementia and delirium, and performance oversight of the VA Geriatric Research, Education, and Clinical Centers.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties can provide written comments for review by the Committee not less than ten days in advance of the meeting to Mrs. Marcia Holt-Delaney, Office of Geriatrics and

Extended Care (114), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Individuals who wish to attend the meeting should contact Mrs. Holt-Delaney, Program Analyst, at (202) 273-8540, at least seven days in advance of the meeting.

Dated: July 6, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–3362 Filed 7–10–07; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on July 30–31, 2007, in room 530 at 810 Vermont Street, NW., Washington, DC, from 8 a.m. to 4:30 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on adverse health effects that may be associated with exposure to ionizing radiation, and to make recommendations on proposed standards and guidelines regarding VA benefit claims based upon exposure to ionizing radiation.

The Committee's agenda will include discussions of medical and scientific papers concerning the health effects of exposure to ionizing radiation. On the basis of the discussions, the Committee may make recommendations to the Secretary concerning the relationship of certain diseases to exposure to ionizing radiation. On July 30, there will be a presentation by VA's Public Health and Environmental Hazards Office. The July 31 session will include planning for future Committee activities and assignment of tasks among the members.

An open forum for oral statements from the public will be available for 30 minutes in the afternoon each day. People wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis and will be provided three minutes per statement.

Members of the public wishing to attend should contact Ms. Bernice Green at the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermont Avenue, NW., Washington, DC 20420, by phone at (202) 461–9723, or by fax at (202) 275–1728. Individuals should submit written questions or prepared statements for the Committee's review to Ms. Green at least five days prior to the meeting. Those who submit material may be asked for clarification prior to its consideration by the Committee.

Dated: July 3, 2007.

By Direction of the Secretary

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 07–3361 Filed 7–10–07; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
July 11, 2007

Part II

Environmental Protection Agency

40 CFR Part 50

National Ambient Air Quality Standards for Ozone; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2005–0172; FRL–8331–5]

RIN 2060–AN24

National Ambient Air Quality Standards for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Based on its review of the air quality criteria for ozone (O_3) and related photochemical oxidants and national ambient air quality standards (NAAQS) for O_3, EPA proposes to make revisions to the primary and secondary NAAQS for O_3 to provide requisite protection of public health and welfare, respectively, and to make corresponding revisions in data handling conventions for O_3.

With regard to the primary standard for O_3, EPA proposes to revise the level of the 8-hour standard to a level within the range of 0.070 to 0.075 parts per million (ppm), to provide increased protection for children and other ''at risk'' populations against an array of O_3-related adverse health effects that range from decreased lung function and increased respiratory symptoms to serious indicators of respiratory morbidity including emergency department visits and hospital admissions for respiratory causes, and possibly cardiovascular-related morbidity as well as total nonaccidental and cardiopulmonary mortality. The EPA also proposes to specify the level of the primary standard to the nearest thousandth ppm. The EPA solicits comment on alternative levels down to 0.060 ppm and up to and including retaining the current 8-hour standard of 0.08 ppm (effectively 0.084 ppm using current data rounding conventions).

With regard to the secondary standard for O_3, EPA proposes to revise the current 8-hour standard with one of two options to provide increased protection against O_3-related adverse impacts on vegetation and forested ecosystems. One option is to replace the current standard with a cumulative, seasonal standard expressed as an index of the annual sum of weighted hourly concentrations, cumulated over 12 hours per day (8 a.m. to 8:00 p.m.) during the consecutive 3-month period within the O_3 season with the maximum index value, set at a level within the range of 7 to 21 ppm-hours. The other option is to make the secondary standard identical to the proposed primary 8-hour standard. The EPA solicits comment on specifying a cumulative, seasonal standard in terms of a 3-year average of the annual sums of weighted hourly concentrations; on the range of alternative 8-hour standard levels for which comment is being solicited for the primary standard, including retaining the current secondary standard, which is identical to the current primary standard; and on an alternative approach to setting a cumulative, seasonal secondary standard(s).

DATES: Written comments on this proposed rule must be received by October 9, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0172, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Docket No. EPA–HQ–OAR–2005–0172, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* Docket No. EPA–HQ–OAR–2005–0172, Environmental Protection Agency, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. 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–2005–0172. The 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* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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 Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

Public Hearings: The EPA intends to hold public hearings around the end of August to early September in several cities across the country, and will announce in a separate **Federal Register** notice the dates, times, and addresses of the public hearings on this proposed rule.

FOR FURTHER INFORMATION CONTACT: Dr. David J. McKee, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail code C504–06, Research Triangle Park, NC 27711; telephone: 919–541–5288; fax: 919–541–0237; e-mail: *mckee.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

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 rulemaking 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 or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- 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, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Availability of Related Information

A number of documents relevant to this rulemaking are available on EPA Web sites. The Air Quality Criteria for Ozone and Related Photochemical Oxidants (Criteria Document) (two volumes, EPA/ and EPA/, date) is available on EPA's National Center for Environmental Assessment Web site. To obtain this document, go to *http://www.epa.gov/ncea,* and click on ''Ozone.'' The Staff Paper, human exposure and health risk assessments, vegetation exposure and impact assessment, and other related technical documents are available on EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) Web site. The Staff Paper is available at *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_sp.html,* and the exposure and risk assessments and other related technical documents are available at *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_td.html.* EPA will be making available corrected versions of the final Staff Paper and human exposure and health risk assessment technical support documents on these same EPA Web sites on or around July 16, 2007. These and other related documents are also available for inspection and copying in the EPA docket identified above.

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I. Background

A. Legislative Requirements

Two sections of the Clean Air Act (CAA) govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify and list ''air pollutants'' that ''in his judgment, may reasonably be anticipated to endanger public health and welfare'' and whose ''presence * * * in the ambient air results from numerous or diverse mobile or stationary sources'' and to issue air quality criteria for those that are listed. Air quality criteria are intended to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in ambient air * * *.''

Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' NAAQS for pollutants listed under section 108. Section 109(b)(1) defines a primary standard as one ''the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health.'' [1] A secondary standard, as defined in section 109(b)(2), must ''specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air.'' [2]

[1] The legislative history of section 109 indicates that a primary standard is to be set at ''the maximum permissible ambient air level * * * which will protect the health of any [sensitive] group of the population,'' and that for this purpose ''reference should be made to a representative sample of persons comprising the sensitive group rather than to a single person in such a group'' [S. Rep. No. 91–1196, 91st Cong., 2d Sess. 10 (1970)].

[2] Welfare effects as defined in section 302(h) (42 U.S.C. 7602(h)) include, but are not limited to, ''effects on soils, water, crops, vegetation, man-

Continued

The requirement that primary standards include an adequate margin of safety was intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It was also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Association* v. *EPA,* 647 F.2d 1130, 1154 (DC Cir 1980), *cert. denied,* 449 U.S. 1042 (1980); *American Petroleum Institute* v. *Costle,* 665 F.2d 1176, 1186 (D.C. Cir. 1981), *cert. denied,* 455 U.S. 1034 (1982). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, in selecting primary standards that include an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree. The CAA does not require the Administrator to establish a primary NAAQS at a zero-risk level or at background concentration levels, *see Lead Industries Association* v. *EPA,* 647 F.2d at 1156 n. 51, but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety.

In addressing the requirement for an adequate margin of safety, EPA considers such factors as the nature and severity of the health effects involved, the size of the population(s) at risk, and the kind and degree of the uncertainties that must be addressed. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. *Lead Industries Association* v. *EPA,* 647 F.2d at 1161–62; *Whitman* v. *American Trucking Associations,* 531 U.S. 457, 495 (2001) (Breyer, J., concurring in part and concurring in judgment).

In setting standards that are ''requisite'' to protect public health and welfare, as provided in section 109(b), EPA's task is to establish standards that are neither more nor less stringent than necessary for these purposes. *Whitman* v. *American Trucking Associations,* 531 U.S. 457, 473. In establishing ''requisite'' primary and secondary standards, EPA may not consider the costs of implementing the standards. *Id.* at 471. As discussed by Justice Breyer in *Whitman* v. *American Trucking Associations,* however, ''this interpretation of § 109 does not require the EPA to eliminate every health risk, however slight, at any economic cost, however great, to the point of ''hurtling'' industry over ''the brink of ruin,'' or even forcing ''deindustrialization.'' *Id.* at 494 (Breyer J., concurring in part and concurring in judgment) (*citations omitted*). Rather, as Justice Breyer explained:

> The statute, by its express terms, does not compel the elimination of *all* risk; and it grants the Administrator sufficient flexibility to avoid setting ambient air quality standards ruinous to industry.
>
> Section 109(b)(1) directs the Administrator to set standards that are ''requisite to protect the public health'' with ''an adequate margin of safety.'' But these words do not describe a world that is free of all risk—an impossible and undesirable objective. (*citation omitted*). Nor are the words ''requisite'' and ''public health'' to be understood independent of context. We consider football equipment ''safe'' even if its use entails a level of risk that would make drinking water ''unsafe'' for consumption. And what counts as ''requisite'' to protecting the public health will similarly vary with background circumstances, such as the public's ordinary tolerance of the particular health risk in the particular context at issue. The Administrator can consider such background circumstances when ''deciding what risks are acceptable in the world in which we live.'' (*citation omitted*).
>
> The statute also permits the Administrator to take account of comparative health risks. That is to say, she may consider whether a proposed rule promotes safety overall. A rule likely to cause more harm to health than it prevents is not a rule that is ''requisite to protect the public health.'' For example, as the Court of Appeals held and the parties do not contest, the Administrator has the authority to determine to what extent possible health risks stemming from reductions in tropospheric ozone (which, it is claimed, helps prevent cataracts and skin cancer) should be taken into account in setting the ambient air quality standard for ozone. (*citation omitted*).
>
> The statute ultimately specifies that the standard set must be ''requisite to protect the public health'' ''*in the judgment of the Administrator,*'' § 109(b)(1), 84 Stat. 1680 (emphasis added), a phrase that grants the Administrator considerable discretionary standard-setting authority.
>
> The statute's words, then, authorize the Administrator to consider the severity of a pollutant's potential adverse health effects, the number of those likely to be affected, the distribution of the adverse effects, and the uncertainties surrounding each estimate. (*citation omitted*). They permit the Administrator to take account of comparative health consequences. They allow her to take account of context when determining the acceptability of small risks to health. And they give her considerable discretion when she does so.
>
> This discretion would seem sufficient to avoid the extreme results that some of the industry parties fear. After all, the EPA, in setting standards that ''protect the public health'' with ''an adequate margin of safety,'' retains discretionary authority to avoid regulating risks that it reasonably concludes are trivial in context. Nor need regulation lead to deindustrialization. Preindustrial society was not a very healthy society; hence a standard demanding the return of the Stone Age would not prove ''requisite to protect the public health.''
>
> Although I rely more heavily than does the Court upon legislative history and alternative sources of statutory flexibility, I reach the same ultimate conclusion. Section 109 does not delegate to the EPA authority to base the national ambient air quality standards, in whole or in part, upon the economic costs of compliance.

Id. at 494–496.

Section 109(d)(1) of the CAA requires that ''not later than December 31, 1980, and at 5-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 108 and the national ambient air quality standards * * * and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate * * *.'' Section 109(d)(2) requires that an independent scientific review committee ''shall complete a review of the criteria * * * and the national primary and secondary ambient air quality standards * * * and shall recommend to the Administrator any new * * * standards and revisions of existing criteria and standards as may be appropriate * * *.'' This independent review function is performed by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board.

B. Related Control Requirements

States have primary responsibility for ensuring attainment and maintenance of ambient air quality standards once EPA has established them. Under section 110 of the Act (42 U.S.C. 7410) and related provisions, States are to submit, for EPA approval, State implementation plans (SIPs) that provide for the attainment and maintenance of such standards through control programs directed to emission sources. The majority of man-made NO_X and VOC emissions that contribute to O_3 formation in the United States come from three types of sources: mobile sources, industrial processes (which include consumer and commercial products), and the electric

made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

power industry.[3] Mobile sources and the electric power industry were responsible for 78 percent of annual NO_X emissions in 2004. That same year, 99 percent of man-made VOC emissions came from industrial processes (including solvents) and mobile sources. Emissions from natural sources, such as trees, may also comprise a significant portion of total VOC emissions in certain regions of the country, especially during the O_3 season, which are considered natural background emissions.

EPA has developed new emissions standards for many types of stationary sources and for nearly every class of mobile sources in the last decade to reduce O_3 by decreasing emissions of NO_X and VOC. These programs complement State and local efforts to improve O_3 air quality and meet current national standards. Under the Federal Motor Vehicle Control Program (FMVCP, see title II of the CAA, 42 U.S.C. 7521–7574), EPA has established new emissions standards for nearly every type of automobile, truck, bus, motorcycle, earth mover, and aircraft engine, and for the fuels used to power these engines. EPA also established new standards for the smaller engines used in small watercraft, lawn and garden equipment. Recently EPA proposed new standards for locomotive and marine diesel engines. Benefits from engine standards increase modestly each year as older, more-polluting vehicles and engines are replaced with newer, cleaner models. In time, these programs will yield substantial emission reductions. Benefits from fuel programs generally begin as soon as a new fuel is available.

The reduction of VOC emissions from industrial processes has been achieved either directly or indirectly through implementation of control technology standards, including maximum achievable control technology, reasonably available control technology, and best available control technology standards; or are anticipated due to proposed or upcoming proposals based on generally available control technology or best available controls under provisions related to consumer and commercial products. These standards have resulted in VOC emission reductions of almost a million tons per year accumulated starting in 1997 from a variety of sources including combustion sources, coating categories, and chemical manufacturing. The EPA is currently working to finalize new federal rules, or amendments to existing rules, that will establish new nationwide VOC content limits for several categories of consumer and commercial products, including aerosol coatings, architectural and industrial maintenance coatings, and household and institutional commercial products. These rules will take effect in 2009, and will yield significant new reductions in nationwide VOC emissions—about 200,000 tons per year. Additionally, in O_3 nonattainment areas, we anticipate reductions of an additional 25,000 tons per year following completion of control technique recommendations for 3 additional consumer and commercial product categories. These emission reductions primarily result from solvent controls and typically occur where and when the solvent is used, such as during manufacturing processes.

The power industry is one of the largest emitters of NO_X in the United States. Power industry emission sources include large electric generating units and some large industrial boilers and turbines. The EPA's landmark Clean Air Interstate Rule (CAIR), issued on March 10, 2005, permanently caps power industry emissions of NO_X in the eastern United States. The first phase of the cap begins in 2009, and a lower second phase cap begins in 2015. By 2015, EPA projects that the CAIR and other programs in the Eastern U.S. will reduce power industry O_3 season NO_X emissions in that region by about 50 percent and annual NO_X emissions by about 60 percent from 2003 levels.

With respect to agricultural sources, the U.S. Department of Agriculture (USDA) has approved conservation systems and activities that reduce agricultural emissions of NO_X and VOC. Current practices that may reduce emissions of NO_X and VOC include engine replacement programs, diesel retrofit programs, manipulation of pesticide applications including timing of applications, and animal feeding operations waste management techniques. The EPA recognizes that USDA has been working with the agricultural community to develop conservation systems and activities to control emissions of O_3 precursors.

These conservation activities are voluntarily adopted through the use of incentives provided to the agricultural producer. In cases where the States need these measures to attain the standard, the measures could be adopted. The EPA will continue to work with USDA on these activities with efforts to identify and/or improve the control efficiencies, prioritize the adoption of these conservation systems and activities, and ensure that appropriate criteria are used for identifying the most effective application of conservation systems and activities.

The EPA will work together with USDA and with States to identify appropriate measures to meet the primary and secondary standards, including site-specific conservation systems and activities. Based on prior experience identifying conservation measures and practices to meet the PM NAAQS requirements, the EPA will use a similar process to identify measures that could meet the O_3 requirements. The EPA anticipates that certain USDA-approved conservation systems and activities that reduce agricultural emissions of NO_X and VOC may be able to satisfy the requirements for applicable sources to implement reasonably available control measures for purposes of attaining the primary and secondary O_3 NAAQS.

C. Review of Air Quality Criteria and Standards for O_3

Tropospheric (ground-level) O_3 is formed from biogenic and anthropogenic precursor emissions. Naturally occurring O_3 in the troposphere can result from biogenic organic precursors reacting with naturally occurring nitrogen oxides (NO_X) and by stratospheric O_3 intrusion into the troposphere. Anthropogenic precursors of O_3, specifically NO_X and volatile organic compounds (VOC), originate from a wide variety of stationary and mobile sources. Ambient O_3 concentrations produced by these emissions are directly affected by temperature, solar radiation, wind speed and other meteorological factors.

The last review of the O_3 NAAQS was completed on July 18, 1997, based on the 1996 O_3 CD (U.S. EPA, 1996a) and 1996 O_3 Staff Paper (U.S. EPA, 1996b). EPA revised the primary and secondary O_3 standards on the basis of the then latest scientific evidence linking exposures to ambient O_3 to adverse health and welfare effects at levels allowed by the 1-hour average standards (62 FR 38856). The O_3 standards were revised by replacing the existing primary 1-hour average standard with an 8-hour average O_3 standard set at a level of 0.08 ppm, which is equivalent to 0.084 ppm using the standard rounding conventions. The form of the primary standard was changed to the annual fourth-highest daily maximum 8-hour average concentration, averaged over three years. The secondary O_3 standard was changed by making it identical in all respects to the revised primary standard.

Following promulgation of the revised O_3 NAAQS, petitions for review were

[3] See EPA report, *Evaluating Ozone Control Programs in the Eastern United States: Focus on the NO_X Budget Trading Program, 2004.*

filed addressing a broad range of issues. In May 1999, in response to those challenges, the U.S. Court of Appeals for the District of Columbia Circuit held that EPA's approach to establishing the level of the standards in 1997, both for the O_3 and for the particulate matter (PM) NAAQS promulgated on the same day, effected ''an unconstitutional delegation of legislative authority.'' *American Trucking Associations* v. *EPA,* 175 F.3d 1027 (DC Cir., 1999). Although the D.C. Circuit stated that ''factors EPA uses in determining the degree of public health concern associated with different levels of O_3 and PM are reasonable,'' it remanded the rule to EPA, stating that when EPA considers these factors for potential non-threshold pollutants ''what EPA lacks is any determinate criterion for drawing lines'' to determine where the standards should be set. *Id.* at 1034. Consistent with EPA's long-standing interpretation and DC Circuit precedent, the court also reaffirmed prior rulings holding that in setting the NAAQS, it is ''not permitted to consider the cost of implementing those standards.'' *Id.* at 1040–41. The DC Circuit further directed EPA to consider on remand the potential indirect beneficial health effects of O_3 pollution in shielding the public from the effects of solar ultraviolet (UV) radiation, as well as the direct adverse health effects of O_3 pollution.

Both sides filed cross appeals on the constitutional and cost issues to the United States Supreme Court, and the Court granted *certiorari.* On February 27, 2001, the U.S. Supreme Court issued a unanimous decision upholding the EPA's position on both the constitutional and the cost issues. *Whitman* v. *American Trucking Associations,* 531 U.S. at 464, 475–76. On the constitutional issue, the Court held that the statutory requirement that NAAQS be ''requisite'' to protect public health with an adequate margin of safety sufficiently guided EPA's discretion, affirming EPA's approach of setting standards that are neither more nor less stringent than necessary. The Supreme Court remanded the case to the D.C. Circuit for resolution of any remaining issues that had not been addressed by that Court's earlier decisions. *Id.* at 475–76. On March 26, 2002, the D.C. Circuit Court rejected all remaining challenges to the NAAQS, holding under traditional standard of review that EPA ''engaged in reasoned decision-making'' in setting the 1997 O_3 NAAQS. *Whitman* v. *American Trucking Associations,* 283 F.3d 355 (DC Cir. 2002).

In response to the DC Circuit Court's remand to consider the potential indirect beneficial health effects of O_3 in shielding the public from the effects of solar (UV) radiation, on November 14, 2001, EPA proposed to leave the 1997 8-hour NAAQS unchanged (66 FR 57267). After considering public comment on the proposed decision, EPA reaffirmed the 8-hour O_3 NAAQS set in 1997 (68 FR 614). Finally, on April 30, 2004, EPA issued an 8-hour implementation rule that, among other things, provided that the 1-hour O_3 NAAQS would no longer apply to areas one year after the effective date of the designation of those areas for the 8-hour NAAQS (69 FR 23966).[4] For most areas, the date that the 1-hour NAAQS no longer applied was June 15, 2005. (See 40 CFR 50.9 for details.)

The EPA initiated this current review in September 2000 with a call for information (65 FR 57810) for the development of a revised Air Quality Criteria Document for O_3 and Other Photochemical Oxidants (henceforth the ''Criteria Document''). A project work plan (U.S. EPA, 2002) for the preparation of the Criteria Document was released in November 2002 for CASAC and public review. EPA held a series of workshops in mid-2003 on several draft chapters of the Criteria Document to obtain broad input from the relevant scientific communities. These workshops helped to inform the preparation of the first draft Criteria Document (EPA, 2005a), which was released for CASAC and public review on January 31, 2005; a CASAC meeting was held on May 4–5, 2005 to review the first draft Criteria Document. A second draft Criteria Document (EPA, 2005b) was released for CASAC and public review on August 31, 2005, and was discussed along with a first draft Staff Paper (EPA, 2005c) at a CASAC meeting held on December 6–8, 2005. In a February 16, 2006 letter to the Administrator, the CASAC offered final comments on all chapters of the Criteria Document (Henderson, 2006a), and the final Criteria Document (EPA, 2006a) was released on March 21, 2006. In a June 8, 2006 letter (Henderson, 2006b) to the Administrator, the CASAC offered additional advice to the Agency concerning chapter 8 of the final Criteria Document (Integrative Synthesis) to help inform the second draft Staff Paper.

A second draft Staff Paper (EPA, 2006b) was released on July 17, 2006 and reviewed by CASAC on August 24 and 25, 2006. In an October 24, 2006 letter to the Administrator, CASAC provided advice and recommendations to the Agency concerning the second draft Staff Paper (Henderson, 2006c). A final Staff Paper (EPA, 2007) was released on January 31, 2007. Around the time of the release of the final Staff Paper in January 2007, EPA discovered a small error in the exposure model that when corrected resulted in slight increases in the human exposure estimates. Since the exposure estimates are an input to the lung function portion of the health risk assessment, this correction also resulted in slight increases in the lung function risk estimates as well. The exposure and risk estimates discussed in this notice reflect the corrected estimates, and thus are slightly different than the exposure and risk estimates cited in the January 31, 2007 Staff Paper.[5] In a March 26, 2007 letter (Henderson, 2007), CASAC offered additional advice to the Administrator with regard to recommendations and revisions to the primary and secondary O_3 NAAQS.

The schedule for completion of this review is governed by a consent decree resolving a lawsuit filed in March 2003 by a group of plaintiffs representing national environmental and public health organizations, alleging that EPA had failed to complete the current review within the period provided by statute.[6] The modified consent decree that governs this review, entered by the court on December 16, 2004, provides that EPA sign for publication notices of proposed and final rulemaking concerning its review of the O_3 NAAQS no later than March 28, 2007 and December 19, 2007, respectively. This consent decree was further modified in October 2006 to change these proposed and final rulemaking dates to no later than May 30, 2007 and February 20, 2008, respectively. These dates for signing the publication notices of proposed and final rulemaking were further extended to no later than June 20, 2007 and March 12, 2008, respectively.

This action presents the Administrator's proposed decisions on the review of the current primary and secondary O_3 standards. Throughout this preamble a number of conclusions, findings, and determinations proposed by the Administrator are noted. While

[4] On December 22, 2006, the D.C. Circuit vacated the April 30, 2004 implementation rule. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882. In March 2007, EPA requested the Court to reconsider its decision.

[5] EPA plans to make available corrected versions of the final Staff Paper and the human exposure and health risk assessment technical support documents on or around July 16, 2007 on the EPA web site listed in the Availability of Related Information section of this notice.

[6] *American Lung Association* v. *Whitman* (No. 1:03CV00778, D.D.C. 2003).

they identify the reasoning that supports this proposal, they are not intended to be final or conclusive in nature. The EPA invites general, specific, and/or technical comments on all issues involved with this proposal, including all such proposed judgments, conclusions, findings, and determinations.

II. Rationale for Proposed Decision on the Primary Standard

This section presents the rationale for the Administrator's proposed decision to revise the existing 8-hour O_3 primary standard by lowering the level of the standard to within a range from 0.070 to 0.075 ppm, and to specify the standard to the nearest thousandth ppm (*i.e.*, to the nearest parts per billion). As discussed more fully below, this rationale is based on a thorough review, in the Criteria Document, of the latest scientific information on human health effects associated with the presence of O_3 in the ambient air. This rationale also takes into account and is consistent with: (1) Staff assessments of the most policy-relevant information in the Criteria Document and staff analyses of air quality, human exposure, and health risks, presented in the Staff Paper, upon which staff recommendations for revisions to the primary O_3 standard are based; (2) CASAC advice and recommendations, as reflected in discussions of drafts of the Criteria Document and Staff Paper at public meetings, in separate written comments, and in CASAC's letters to the Administrator; and (3) public comments received during the development of these documents, either in connection with CASAC meetings or separately.

In developing this rationale, EPA has drawn upon an integrative synthesis of the entire body of evidence, published through early 2006, on human health effects associated with the presence of O_3 in the ambient air. As discussed below in section II.A, this body of evidence addresses a broad range of health endpoints associated with exposure to ambient levels of O_3 (EPA, 2006a, chapter 8), and includes over one hundred epidemiologic studies conducted in the U.S., Canada, and many countries around the world.[7] In considering this evidence, EPA focuses on those health endpoints that have been demonstrated to be caused by exposure to O_3, or for which the Criteria Document judges associations with O_3 to be causal, likely causal, or for which the evidence is highly suggestive that O_3 contributes to the reported effects. This rationale also draws upon the results of quantitative exposure and risk assessments, discussed below in section II.B. Evidence- and exposure/risk-based considerations that form the basis for the Administrator's proposed decisions on the adequacy of the current standard and on the elements of the range of proposed alternative standards are discussed below in sections II.C and II.D, respectively.

Judgments made in the Criteria Document and Staff Paper about the extent to which relationships between various health endpoints and short-term exposures to ambient O_3 are likely causal have been informed by several factors. As discussed below in section II.A, these factors include the nature of the evidence (*i.e.*, controlled human exposure, epidemiological, and/or toxicological studies) and the weight of evidence, which takes into account such considerations as biological plausibility, coherence of evidence, strength of association, and consistency of evidence.

In assessing the health effects data base for O_3, it is clear that human studies provide the most directly applicable information for determining causality because they are not limited by the uncertainties of dosimetry differences and species sensitivity differences, which would need to be addressed in extrapolating animal toxicology data to human health effects. Controlled human exposure studies provide data with the highest level of confidence since they provide human effects data under closely monitored conditions and can provide exposure-response relationships. Epidemiological data provide evidence of associations between ambient O_3 levels and more serious acute and chronic health effects (*e.g.*, hospital admissions and mortality) that cannot be assessed in controlled human exposure studies. For these studies the degree of uncertainty introduced by confounding variables (*e.g.*, other pollutants, temperature) and other factors affects the level of confidence that the health effects being investigated are attributable to O_3 exposures, alone and in combination with other copollutants.

In using a weight of evidence approach to inform judgments about the degree of confidence that various health effects are likely to be caused by exposure to O_3, confidence increases as the number of studies consistently reporting a particular health endpoint grows and as other factors, such as biological plausibility and strength, consistency, and coherence of evidence, increase. Conclusions regarding biological plausibility, consistency, and coherence of evidence of O_3-related health effects are drawn from the integration of epidemiological studies with mechanistic information from controlled human exposure studies and animal toxicological studies. As discussed below, this type of mechanistic linkage has been firmly established for several respiratory endpoints (*e.g.*, lung function decrements, lung inflammation) but remains far more equivocal for cardiovascular endpoints (*e.g.*, cardiovascular-related hospital admissions). For epidemiological studies, strength of association refers to the magnitude of the association and its statistical strength, which includes assessment of both effects estimate size and precision. In general, when associations yield large relative risk estimates, it is less likely that the association could be completely accounted for by a potential confounder or some other bias. Consistency refers to the persistent finding of an association between exposure and outcome in multiple studies of adequate power in different persons, places, circumstances and times. For example, the magnitude of effect estimates is relatively consistent across recent studies showing association between short-term, but not long-term, O_3 exposure and mortality.

Based on the information discussed below in sections II.A.1–II.A.3, judgments concerning the extent to which relationships between various health endpoints and ambient O_3 exposures are likely causal are summarized below in section II.A.3.c. These judgments reflect the nature of the evidence and the overall weight of the evidence, and are taken into consideration in the quantitative exposure and risk assessments, discussed below in Section II.B.

To put judgments about health effects that have been demonstrated to be caused by exposure to O_3, or for which the Criteria Document judges associations with O_3 to be causal, likely causal, or for which the evidence is highly suggestive that O_3 contributes to the reported effects into a broader public health context, EPA has drawn upon the results of the quantitative exposure and risk assessments. These assessments provide estimates of the likelihood that individuals in particular population groups that are at risk for various O_3-related physiological health effects would experience ''exposures of concern'' and specific health endpoints

[7] In its assessment of the epidemiological evidence judged to be most relevant to making decisions on the level of the O_3 primary standard, EPA has placed greater weight on U.S. and Canadian epidemiologic studies, since studies conducted in other countries may well reflect different demographic and air pollution characteristics.

under varying air quality scenarios (*e.g.*, just meeting the current or alternative standards), as well as characterizations of the kind and degree of uncertainties inherent in such estimates.

In this review, the term ''exposures of concern'' is defined as personal exposures while at moderate or greater exertion to 8-hour average ambient O_3 levels at and above specific benchmark levels which represent exposure levels at which O_3-related health effects are known or can reasonably be inferred to occur in some individuals, as discussed below in section II.B.1.[8] EPA emphasizes that although the analysis of ''exposures of concern'' was conducted using three discrete benchmark levels (*i.e.*, 0.080, 0.070, and 0.060 ppm), the concept is more appropriately viewed as a continuum with greater confidence and less uncertainty about the existence of health effects at the upper end and less confidence and greater uncertainty as one considers increasingly lower O_3 exposure levels. EPA recognizes that there is no sharp breakpoint within the continuum ranging from at and above 0.080 ppm down to 0.060 ppm. In considering the concept of exposures of concern, it is important to balance concerns about the potential for health effects and their severity with the increasing uncertainty associated with our understanding of the likelihood of such effects at lower O_3 levels.

Within the context of this continuum, estimates of exposures of concern at discrete benchmark levels provide some perspective on the public health impacts of O_3-related health effects that have been demonstrated in human clinical and toxicological studies but cannot be evaluated in quantitative risk assessments, such as lung inflammation, increased airway responsiveness, and changes in host defenses. They also help in understanding the extent to which such impacts have the potential to be reduced by meeting the current and alternative standards. These O_3-related physiological effects are plausibly linked to the increased morbidity seen in epidemiological studies (*e.g.*, as indicated by increased medication use in asthmatics, school absences in all children, and emergency department visits and hospital admissions in people with lung disease). Estimates of the number of people likely to experience exposures of concern cannot be directly translated into quantitative estimates of the number of people likely to experience specific health effects, since sufficient information to draw such comparisons is not available—if such information were available, these health outcomes would have been included in the quantitative risk assessment. Due to individual variability in responsiveness, only a subset of individuals who have exposures at and above a specific benchmark level can be expected to experience such adverse health effects, and susceptible subpopulations such as those with asthma are expected to be affected more by such exposures than healthy individuals. The amount of weight to place on the estimates of exposures of concern at any of these benchmark levels depends in part on the weight of the scientific evidence concerning health effects associated with O_3 exposures at and above that benchmark level. It also depends on judgments about the importance from a public health perspective of the health effects that are known or can reasonably be inferred to occur as a result of exposures at and above the benchmark level. Such public health policy judgments are embodied in the NAAQS standard setting criteria (*i.e.*, standards that, in the judgment of the Administrator, are requisite to protect public health with an adequate margin of safety).

As discussed below in section II.B.2, the quantitative health risk assessment conducted as part of this review includes estimates of risks of lung function decrements in asthmatic and all school age children, respiratory symptoms in asthmatic children, respiratory-related hospital admissions, and non-accidental and cardiorespiratory-related mortality associated with recent ambient O_3 levels, as well as risk reductions and remaining risks associated with just meeting the current and various alternative O_3 standards in a number of example urban areas. There were two parts to this risk assessment: one part was based on combining information from controlled human exposure studies with modeled population exposure, and the other part was based on combining information from community epidemiological studies with either monitored or adjusted ambient concentrations levels. This assessment not only provided estimates of the potential magnitude of O_3-related health effects, as well as a characterization of the uncertainties and variability inherent in such estimates. This assessment also provided insights into the distribution of risks and patterns of risk reductions associated with meeting alternative O_3 standards.

As discussed below, a substantial amount of new research has been conducted since the last review of the O_3 NAAQS, with important new information coming from epidemiologic studies as well as from controlled human exposure, toxicological, and dosimetric studies. The newly available research studies evaluated in the Criteria Document and the exposure and risk assessments presented in the Staff Paper have undergone intensive scrutiny through multiple layers of peer review and many opportunities for public review and comment. While important uncertainties remain in the qualitative and quantitative characterizations of health effects attributable to exposure to ambient O_3, the review of this information has been extensive and deliberate. In the judgment of the Administrator, this intensive evaluation of the scientific evidence has provided an adequate basis for regulatory decision making. This review also provides important input to EPA's research plan for improving our future understanding of the effects of ambient O_3 at lower levels, especially in at-risk population groups.

A. Health Effects Information

This section outlines key information contained in the Criteria Document (chapters 4–8) and in the Staff Paper (chapter 3) on known or potential effects on public health which may be expected from the presence of O_3 in ambient air. The information highlighted here summarizes: (1) New information available on potential mechanisms for health effects associated with exposure to O_3; (2) the nature of effects that have been associated directly with exposure to O_3 and indirectly with the presence of O_3 in ambient air; (3) an integrative interpretation of the evidence, focusing on the biological plausibility and coherence of the evidence; and (4) considerations in characterizing the public health impact of O_3, including the identification of ''at risk'' subpopulations.

The decision in the last review focused primarily on evidence from short-term (*e.g.*, 1 to 3 hours) and prolonged (6 to 8 hours) controlled-exposure studies reporting lung function decrements, respiratory symptoms, and respiratory inflammation in humans, as well as epidemiology studies reporting excess

[8] Exposures of concern were also considered in the last review of the O_3 NAAQS, and were judged by EPA to be an important indicator of the public health impacts of those O_3-related effects for which information was too limited to develop quantitative estimates of risk but which had been observed in humans at and above the benchmark level of 0.08 ppm for 6-to 8-hour exposures * * * including increased nonspecific bronchial responsiveness (for example, aggravation of asthma), decreased pulmonary defense mechanisms (suggestive of increased susceptibility to respiratory infection), and indicators of pulmonary inflammation (related to potential aggravation of chronic bronchitis or long-term damage to the lungs). (62 FR 38868)

hospital admissions and emergency department (ED) visits for respiratory causes. The Criteria Document prepared for this review emphasizes a large number of epidemiological studies published since the last review with these and additional health endpoints, including the effects of acute (short-term and prolonged) and chronic exposures to O_3 on lung function decrements and enhanced respiratory symptoms in asthmatic individuals, school absences, and premature mortality. It also emphasizes important new information from toxicology, dosimetry, and controlled human exposure studies. Highlights of the evidence include:

(1) Two new controlled human-exposure studies are now available that examine respiratory effects associated with prolonged O_3 exposures at levels below 0.080 ppm, which was the lowest exposure level that had been examined in the last review.

(2) Numerous controlled human-exposure studies have examined indicators of O_3-induced inflammatory response in both the upper respiratory tract (URT) and lower respiratory tract (LRT), while other studies have examined changes in host defense capability following O_3 exposure of healthy young adults and increased airway responsiveness to allergens in subjects with allergic asthma and allergic rhinitis exposed to O_3.

(3) Animal toxicology studies provide new information regarding mechanisms of action, increased susceptibility to respiratory infection, and the biological plausibility of acute effects and chronic, irreversible respiratory damage.

(4) Numerous acute exposure epidemiological studies published during the past decade offer added evidence of ambient O_3-related lung function decrements and respiratory symptoms in physically active healthy subjects and asthmatic subjects, as well as evidence on new health endpoints, such as the relationships between ambient O_3 concentrations and school absenteeism and between ambient O_3 and cardiac-related physiological endpoints.

(5) Several additional studies have been published over the last decade examining the temporal associations between O_3 exposures and emergency department visits for respiratory diseases and on respiratory-related hospital admissions.

(6) A large number of newly available epidemiological studies have examined the effects of acute exposure to PM and O_3 on mortality, notably including large multicity studies that provide much more robust and credible information than was available in the last review, as well as recent meta-analyses that have evaluated potential sources of heterogeneity in O_3-mortality associations.

1. Overview of Mechanisms

Evidence on possible mechanisms by which exposure to O_3 may result in acute and chronic health effects is discussed in chapters 5 and 6 of the Criteria Document.[9] Evidence from dosimetry, toxicology, and human exposure studies has contributed to an understanding of the mechanisms that help to explain the biological plausibility and coherence of evidence for O_3-induced respiratory health effects reported in epidemiological studies. More detailed information about the physiological mechanisms related to the respiratory effects of short- and long-term exposure to O_3 can be found in section II.A.3.b.i and II.A.3.b.iii, respectively. In the past, however, little information was available to help explain potential biological mechanisms which linked O_3 exposure to premature mortality or cardiovascular effects. As discussed more fully in section II.A.3.b.ii below, since the last review an emerging body of animal toxicology and human clinical evidence is beginning to suggest mechanisms that may mediate acute O_3 cardiovascular effects. While much is known about mechanisms that play a role in O_3-related respiratory effects, additional research is needed to more clearly understand the role that O_3 may have in contributing to cardiovascular effects.

With regard to the mechanisms related to short-term respiratory effects, scientific evidence discussed in the Criteria Document (section 5.2) indicates that reactions of O_3 with lipids and antioxidants in the epithelial lining fluid and the epithelial cell membranes of the lung can be the initial step in mediating deleterious health effects of O_3. This initial step activates a cascade of events that lead to oxidative stress, injury, inflammation, airway epithelial damage and increased alveolar permeability to vascular fluids. Inflammation can be accompanied by increased airway responsiveness, which is an increased bronchoconstrictive response to airway irritants and allergens. Continued respiratory inflammation also can alter the ability to respond to infectious agents, allergens and toxins. Acute inflammatory responses to O_3 in some healthy people are well documented, and precursors to lung injury can become apparent within 3 hours after exposure in humans. Repeated respiratory inflammation can lead to a chronic inflammatory state with altered lung structure and lung function and may lead to chronic respiratory diseases such as fibrosis and emphysema (EPA, 2006a, section 8.6.2). The severity of symptoms and magnitude of response to acute exposures depend on inhaled dose, as well as individual susceptibility to O_3, as discussed below. At the same O_3 dose, individuals who are more susceptible to O_3 will have a larger response than those who are less susceptible; among individuals with similar susceptibility, those who receive a larger dose will have a larger response to O_3.

The inhaled dose is the product of O_3 concentration (C), minute ventilation or ventilation rate, and duration of exposure (T), or (C x ventilation rate x T). A large body of data regarding the interdependent effect of these components of inhaled dose on pulmonary responses was assessed in the 1986 and 1996 O_3 Criteria Documents. In an attempt to describe O_3 dose-response characteristics, acute responses were modeled as a function of total inhaled O_3 dose which was generally found to be a better predictor of response than O_3 concentration, ventilation rate, or duration of exposure, alone, or as a combination of any two of these factors (EPA 2006a, section 6.2). Predicted O_3-induced decrements in lung function have been shown to be a function of exposure concentration, duration and exercise level for healthy, young adults (McDonnell *et al.*, 1997). A meta-analysis of 21 studies (Mudway and Kelly, 2004) showed that markers of inflammation and increased cellular permeability in healthy subjects are associated with total O_3 dose.

The Criteria Document summarizes information on potentially susceptible and vulnerable groups in section 8.7. As described there, the term *susceptibility* refers to innate (*e.g.*, genetic or developmental) or acquired (*e.g.*, personal risk factors, age) factors that make individuals more likely to experience effects with exposure to pollutants. A number of population groups have been identified as potentially susceptible to health effects as a result of O_3 exposure, including people with existing lung diseases, including asthma, children and older adults, and people who have larger than normal lung function responses that may be due to genetic susceptibility. In addition, some population groups have been identified as having increased

[9] While most of the available evidence addresses mechanisms for O_3, O_3 clearly serves as an indicator for the total photochemical oxidant mixture found in the ambient air. Some effects may be caused by one or more components in the overall pollutant mix, either separately or in combination with O_3.

vulnerability to O_3-related effects due to increased likelihood of exposure while at elevated ventilation rates, including healthy children and adults who are active outdoors, for example, outdoor workers, and joggers. Taken together, the susceptible and vulnerable groups are more commonly referred to as ''at-risk'' groups [10], as discussed more fully below in section II.A.4.b.

Based on new evidence from animal, human clinical and epidemiological studies the Criteria Document concludes that people with preexisting pulmonary disease are likely to be among those at increased risk from O_3 exposure. Altered physiological, morphological and biochemical states typical of respiratory diseases like asthma, COPD and chronic bronchitis may render people sensitive to additional oxidative burden induced by O_3 exposure (EPA 2006a, section 8.7). Children and adults with asthma are the group that has been studied most extensively. Evidence from controlled human exposure studies indicates that asthmatics may exhibit larger lung function decrements in response to O_3 exposure than healthy controls. As discussed more fully in section II.A.4.b.ii below, asthmatics present a differential response profile for cellular, molecular, and biochemical parameters (CD, Figure 8–1) that are altered in response to acute O_3 exposure. They can have larger inflammatory responses, as manifested by larger increases in markers of inflammation such as white bloods cells (*e.g.*, PMNs) or inflammatory cytokines. Asthmatics, and people with allergic rhinitis, are more likely to mount an allergic-type response upon exposure to O_3, as manifested by increases in white blood cells associated with allergy (*i.e.*, eosinophils) and related molecules, which increase inflammation in the airways. The increased inflammatory and allergic responses also may be associated with the larger late-phase responses that asthmatics can experience, which can include increased bronchoconstrictor responses to irritant substances or allergens and additional inflammation. These more serious responses in asthmatics and others with lung disease provide biological plausibility for the respiratory morbidity effects observed in epidemiological studies.

Children with and without asthma were found to be particularly susceptible to O_3 effects on lung function and generally have greater lung function responses than older people. The American Academy of Pediatrics (2004) notes that children and infants are among the population groups most susceptible to many air pollutants, including O_3. This is in part because their lungs are still developing. For example, eighty percent of alveoli are formed after birth, and changes in lung development continue through adolescence (Dietert *et al.*, 2000). Moreover, children have high minute ventilation rates and relatively high levels of physical activity which also increases their O_3 dose (Plunkett *et al.*, 1992). Thus, children are at risk due to both their susceptibility and vulnerability.

Looking more broadly at age-related differences in susceptibility, several mortality studies have investigated age-related differences in O_3 effects (EPA, 2006a, section 7.6.7.2), primarily in the older adult population. Among the studies that observed positive associations between O_3 and mortality, a comparison of all age or younger age (65 years of age) O_3-mortality effect estimates to that of the elderly population (>65 years) indicates that, in general, the elderly population is more susceptible to O_3 mortality effects. There is supporting evidence of age-related differences in susceptibility to O_3 lung function effects. The Criteria Document concludes that the elderly population (>65 years of age) appears to be at greater risk of O_3-related mortality and hospitalizations compared to all ages or younger populations, and children (<18 years of age) experience other potentially adverse respiratory health outcomes with increased O_3 exposure (EPA, 2006a, section 7.6.7.2).

Controlled human exposure studies have also indicated a high degree of interindividual variability in some of the pulmonary physiological parameters, such as lung function decrements. The variable effects in individuals have been found to be reproducible, in other words, a person who has a large lung function response after exposure to O_3 will likely have about the same response if exposed again to the same dose of O_3 (EPA 2006a, p. 6–2). In human clinical studies, group mean responses are not representative of this segment of the population that has much larger than average responses to O_3. Recent studies, discussed in section II.A.4.iv below, reported a role for genetic polymorphism (*i.e.*, the occurrence together in the same population of more than one allele or genetic marker at the same locus with the least frequent allele or marker occurring more frequently than can be accounted for by mutation alone) in observed differences in antioxidant enzymes and genes involved in inflammation to modulate pulmonary function and inflammatory responses to O_3 exposure. These observations suggest a potential role for these markers in the innate susceptibility to O_3, however, the validity of these markers and their relevance in the context of prediction to population studies needs additional experimentation.

Clinical studies that provide information about mechanisms of the initial response to O_3 (*e.g.*, lung function decrements, inflammation, and injury to the lung) also inform the selection of appropriate lag times to analyze in epidemiological studies through elucidation of the time course of these responses (EPA 2006a, section 8.4.3). Based on the results of these studies, it would be reasonable to expect that lung function decrements could be detected epidemiologically within lags of 0 (same day) or 1 to 2 days following O_3 exposure, given the rapid onset of lung function changes and their persistence for 24 to 48 hours among more responsive human subjects in clinical studies. Other responses take longer to develop and can persist for longer periods of time. For example, although asthmatic individuals may begin to experience symptoms soon after O_3 exposure, it may take anywhere from 1 to 3 days after exposure for these subjects to seek medical attention as a result of increased airway responsiveness or inflammation that may persist for 2 to 3 days. This may be reflected by epidemiologic observations of significantly increased risk for asthma-related emergency department visits or hospital admissions with 1- to 3-day lags, or, perhaps, enhanced distributed lag risks (combined across 3 days) for such morbidity indicators. Analogously, one might project increased mortality within 0 to 3 day lags as a possible consequence of O_3-induced increases in clotting agents arising from the cascade of events, starting with cell injury described above, occurring within 12 to 24 hours of O_3 exposure. The time course for many of these initial responses to O_3 is highly variable. Moreover these observations pertain only to the initial response to O_3. Consequent responses can follow. For example, Jörres *et al.*, (1996) found that in subjects with

[10] In previous Staff Papers and **Federal Register** notices announcing proposed and final decisions on the O_3 and other NAAQS, EPA has used the phrase ''sensitive population groups'' to include both population groups that are at increased risk because they are more susceptible and population groups that are at increased risk due to increased vulnerability or exposure. In this notice, we use the phrase, ''at risk'' populations to include both types of population groups.

asthma and allergic rhinitis, a maximum percent fall in FEV_1 of 27.9% and 7.8%, respectively, occurred 3 days after O_3 exposure when they were challenged with the highest common dose of allergen.

2. Nature of Effects

The Criteria Document provides new evidence that notably enhances our understanding of short-term and prolonged exposure effects, including effects on lung function, symptoms, and inflammatory effects reported in controlled exposure studies. These studies support and extend the findings of the previous Criteria Document. There is also a significant body of new epidemiological evidence of associations between short-term and prolonged exposure to O_3 and effects such as premature mortality, hospital admissions and emergency department visits for respiratory (*e.g.*, asthma) causes. Key epidemiological and controlled human exposure studies are summarized below and discussed in chapter 3 of the Staff Paper, which is based on scientific evidence critically reviewed in chapters 5, 6, and 7 of the Criteria Document, as well as the Criteria Document's integration of scientific evidence contained in chapter 8.[11] Conclusions drawn about O_3-related health effects are based upon the full body of evidence from controlled human exposure, epidemiological and toxicological data contained in the Criteria Document.

a. Morbidity

This section summarizes scientific information on the effects of inhalation of O_3, including public health effects of short-term, prolonged, and long-term exposures on respiratory morbidity and cardiovascular system effects, as discussed in chapters 6, 7 and 8 of the Criteria Document and chapter 3 of the Staff Paper. This section also summarizes the uncertainty about the potential indirect effects on public health associated with changes due to increases in UV–B radiation exposure, such as UV–B radiation-related skin cancers, that may be associated with reductions in ambient levels of ground-level O_3, as discussed in chapter 10 of the Criteria Document and chapter 3 of the Staff Paper.

i. Effects on the Respiratory System From Short-Term and Prolonged O_3 Exposures

Controlled human exposure studies have shown that O_3 induces a variety of health effects, including: lung function decrements, respiratory symptoms, increased airway responsiveness, respiratory inflammation and permeability, increased susceptibility to respiratory infection, and acute morphological effects. Epidemiology studies have reported associations between O_3 exposures (*i.e.*, 1-hour, 8-hour and 24-hour) and a wide range of respiratory-related health effects including: Pulmonary function decrements; respiratory symptoms; increased asthma medication use; increased school absences; increased emergency department visits and hospital admissions.

(a) Pulmonary Function Decrements, Respiratory Symptoms, and Asthma Medication Use

(i) Results From Controlled Human Exposure Studies

A large number of studies published prior to 1996 that investigated short-term O_3 exposure health effects on the respiratory system from short-term O_3 exposures were reviewed in the 1986 and 1996 Criteria Documents (EPA, 1986, 1996). In the last review, 0.50 ppm was the lowest O_3 concentration at which statistically significant reductions in forced vital capacity (FVC) and forced expiratory volume in 1 second (FEV_1) were reported in sedentary subjects. During exercise, spirometric (lung function) and symptomatic responses were observed at much lower O_3 exposures. When minute ventilation was considerably increased by continuous exercise (CE) during O_3 exposures lasting 2 hour or less at ≥ 0.12 ppm, healthy subjects generally experienced decreases in FEV_1, FVC, and other measures of lung function; increases in specific airway resistance (sRaw), breathing frequency, and airway responsiveness; and symptoms such as cough, pain on deep inspiration, shortness of breath, throat irritation, and wheezing. When exposures were increased to 4 to 8 hours in duration, statistically significant lung function and symptom responses were reported at O_3 concentrations as low as 0.08 ppm and at lower minute ventilation (*i.e.*, moderate rather than high level exercise) than the shorter duration studies.

The most important observations drawn from studies reviewed in the 1996 Criteria Document were that: (1) Young healthy adults exposed to O_3 concentrations ≥ 0.080 ppm develop significant, reversible, transient decrements in pulmonary function if minute ventilation or duration of exposure is increased sufficiently; (2) children experience similar lung function responses but report lesser symptoms from O_3 exposure relative to young adults; (3) O_3-induced lung function responses are decreased in the elderly relative to young adults; (4) there is a large degree of intersubject variability in physiological and symptomatic responses to O_3, but responses tend to be reproducible within a given individual over a period of several months; (5) subjects exposed repeatedly to O_3 for several days show an attenuation of response upon successive exposures, but this attenuation is lost after about a week without exposure; and (6) acute O_3 exposure initiates an inflammatory response which may persist for at least 18 to 24 hours post exposure.

The development of these respiratory effects is time-dependent during both exposure and recovery periods, with great overlap for development and disappearance of the effects. In healthy human subjects exposed to typical ambient O_3 levels near 0.120 ppm, lung function responses largely resolve within 4 to 6 hours post-exposure, but cellular effects persist for about 24 hours. In these healthy subjects, small residual lung function effects are almost completely gone within 24 hours, while in hyperresponsive subjects, recovery can take as much as 48 hours to return to baseline. The majority of these responses are attenuated after repeated consecutive exposures, but such attenuation to O_3 is lost one week post-exposure.

Since 1996, there have been a number of studies published investigating lung function and symptomatic responses that generally support the observations previously drawn. Recent studies for acute exposures of 1 to 2 hours and 6 to 8 hours in duration are compiled in the Staff Paper (Appendix 3C). As summarized in more detail in the Staff Paper (section 3.3.1.1), among the more important of the recent studies that examined changes in FEV_1 in large numbers of subjects over a range of 1–2 hours at exposure levels of 0.080 to 0.40 ppm were studies by McDonnell *et al.* (1997) and Ultman *et al.* (2004). These studies observed considerable intersubject variability in FEV_1 decrements, which was consistent with findings in the 1996 Criteria Document.

For prolonged exposures (4 to 8 hours) in the range of 0.080 to 0.160 ppm O_3 using moderate intermittent exercise and typically using square-

[11] Health effects discussions are also drawn from the more detailed information and tables presented in the Criteria Document's annexes.

wave exposure patterns (*i.e.*, a constant exposure level during time of exposure), several pre- and post-1996 studies (Folinsbee *et al.*, 1988, 1994; Horstman *et al.*, 1990; Adams, 2002, 2003a, 2006) have reported statistically significant lung function responses and increased symptoms in healthy adults with increasing duration of exposure, O_3 concentration, and minute ventilation. Studies that employed triangular exposure patterns (*i.e.*, integrated exposures that begin at a low level, rise to a peak, and return to a low level during the exposure) (Hazucha *et al.*, 1992; Adams 2003a, 2006) suggest that the triangular exposure pattern can potentially lead to greater FEV_1 decrements and respiratory symptoms than square-wave exposures (when the overall O_3 doses are equal). These results suggest that peak exposures, reflective of the pattern of ambient O_3 concentrations in some locations, are important in terms of O_3 toxicology.

McDonnell (1996) used data from a series of studies to investigate the frequency distributions of FEV_1 decrements following 6.6 hour exposures and found statistically significant but relatively small group mean decreases in average FEV_1 responses (between 5 and 10 percent) at 0.080 ppm O_3.[12] Notably, about 26 percent of the 60 exposed subjects had lung function decrements >10 percent, including about 8 percent of the subjects that experienced large decrements (>20 percent) (EPA, 2007, Figure 3–1A). These results (which were not corrected for exercise in filtered air responses) demonstrate that while average responses may be relatively small at the 0.080 ppm exposure level, some individuals experience more severe effects that may be clinically significant. Similar results at the 0.080 ppm exposure level (for 6.6 hours during intermittent exercise) were seen in more recent studies of 30 healthy young adults by Adams (2002, 2006).[13] In these studies, relatively small but statistically significant lung function decrements and respiratory symptom responses were found (for both square-wave and triangular exposure patterns), with 17 percent of the subjects (5 of 30) experiencing ≥ 10 percent FEV_1 decrements (comparing pre- and post-exposures) when the results were not corrected for the effects of exercise alone in filtered air (EPA, 2007, Figure 3–1B) and with 23 percent of subjects (7 of 30) experiencing such effects when the results were corrected (EPA, 2007, p. 3–6).[14]

These studies by Adams (2002, 2006) are notable in that they are the only available controlled exposure human studies that examine respiratory effects associated with prolonged O_3 exposures at levels below 0.080 ppm, which was the lowest exposure level that had been examined in the last review. The Adams (2006) study investigated a range of exposure levels (0.000, 0.040, 0.060, and 0.080 ppm O_3) using square-wave and triangular exposure patterns. The study was designed to examine multiple comparisons of pulmonary function (FEV_1) and respiratory symptom responses (total subjective symptoms (TSS) and pain on deep inspiration (PDI)) between these various exposure protocols at six different time points within the exposure periods. At the 0.060 ppm exposure level, the author reported no statistically significant differences for FEV_1 decrements nor for most respiratory symptoms responses; statistically significant responses were reported only for TSS for the triangular exposure pattern toward the end of the exposure period, with the PDI responses being noted as following a closely similar pattern (Adams, 2006, p. 131–132). EPA's reanalysis of the data from the Adams (2006) study, comparing FEV_1 responses pre- and post-exposure at the 0.060 ppm exposure level, found small group mean differences from responses to filtered air that were statistically significant.[15] Notably, these studies report a small percentage of subjects experiencing lung function decrement (≥ 10 percent) at the 0.060 ppm exposure level.[16]

(ii) Results of Epidemiological and Field Studies

A relatively large number of field studies investigating the effects of ambient O_3 concentrations, in combination with other air pollutants, on lung function decrements and respiratory symptoms have been published over the last decade that support the major findings of the 1996 Criteria Document that lung function changes, as measured by decrements in FEV_1 or peak expiratory flow (PEF), and respiratory symptoms in healthy adults and asthmatic children are closely correlated to ambient O_3 concentrations. Pre-1996 field studies focused primarily on children attending summer camps and found O_3-related impacts on measures of lung function, but not respiratory symptoms, in healthy children. The newer studies have expanded to evaluate O_3-related effects on outdoor workers, athletes, the elderly, hikers, school children, and asthmatics. Collectively, these studies confirm and extend clinical observations that prolonged (*i.e.*, 6–8 hour) exposure periods, combined with elevated levels of exertion or exercise, increase the dose of O_3 to the lungs at a given ambient exposure level and result in larger lung function effects. The results of one large study of hikers (Korrick *et al.*, 1998), which reported outcome measures stratified by several factors (*e.g.*, gender, age, smoking status, presence of asthma) within a population capable of more than normal exertion, provide useful insight. In this study, lung function was measured before and after hiking, and individual O_3 exposures were estimated by averaging hourly O_3 concentrations from ambient monitors located at the base and summit. The mean 8-hour average O_3 concentration was 0.040 ppm (8-hour average concentration range of 0.021 ppm to 0.074 ppm O_3). Decreased lung function was associated with O_3 exposure, with the greatest effect estimates reported for the subgroup that reported having asthma or wheezing, and for those who hiked for longer periods of time.

Asthma panel studies conducted both in the U.S. and in other countries have reported that decrements in PEF are associated with routine O_3 exposures among asthmatic and healthy persons. One large U.S. multicity study, the National Cooperative Inner City Asthma Study or NCICAS, (Mortimer *et al.*, 2002) examined O_3-related changes in PEF in 846 asthmatic children from 8 urban areas and reported that the incidence of ≥ 10 percent decrements in morning PEF are associated with increases in 8-hour average O_3 for a 5-day cumulative lag, suggesting that O_3 exposure may be associated with clinically significant changes in PEF in

[12] This study and other studies (Folinsbee *et al.*, 1988; Horstman *et al.*, 1990; and McDonnell *et al.*, 1991), conducted in EPA's clinical research facility in Chapel Hill, NC, measured ozone concentrations to within +/−5 percent or +/−0.004 ppm at the 0.080 ppm exposure level.

[13] These studies, conducted at a facility at the University of California, in Davis, CA, reported O_3 concentrations to be accurate within +/−0.003 ppm over the range of concentrations included in these studies.

[14] These distributional results presented in the Criteria Document and Staff Paper for the Adams studies are based on study data that were not included in the publication but were obtained from the author.

[15] Brown, J.S. (2007). EPA Office of Research and Development memorandum to Ozone NAAQS Review Docket (OAR–2005–0172); Subject: The effects of ozone on lung function at 0.06 ppm in healthy adults, June 14, 2007.

[16] Based on study data (Adams, 2006) provided by the author, 7 percent of the subjects (2 of 30 subjects) experienced notable FEV_1 decrements ≥ 10 percent) with the square wave exposure pattern at the 0.060 ppm exposure level (comparing pre- and post-exposures) when the results were corrected for the effects of exercise alone in filtered air (EPA, 2007, p. 3–6).

asthmatic children; however, no associations were reported with evening PEF. The mean 8-hour average O_3 was 0.048 ppm across the 8 cities. Excluding days when 8-hour average O_3 was greater than 0.080 ppm (less than 5 percent of days), the associations with morning PEF remained statistically significant. Mortimer *et al.* (2002) discussed potential biological mechanisms for delayed effects on pulmonary function in asthma, which included increased nonspecific airway responsiveness secondary to airway inflammation due to O_3 exposure. Two other panel studies (Romieu *et al.*, 1996, 1997) carried out simultaneously in northern and southwestern Mexico City with mildly asthmatic school children reported statistically significant O_3-related reductions in PEF, with variations in effect depending on lag time and time of day. Mean 1-hour maximum O_3 concentrations in these locations ranged from 0.190 ppm (SD 80) in northern Mexico City to 0.196 ppm (SD 78) in southwestern Mexico City. While several studies report statistically significant associations between O_3 exposure and reduced PEF in asthmatics, other studies did not, possibly due to low levels of O_3 exposure. EPA concludes that these studies collectively indicate that O_3 may be associated with short-term declines in lung function in asthmatic individuals and that the Mortimer *et al.* (2002) study showed statistically significant effect at concentrations in the range below 0.080 ppm O_3.

Most of the panel studies which have investigated associations between O_3 exposure and respiratory symptoms or increased use of asthma medication are focused on asthmatic children. Two large U.S. studies (Mortimer *et al.*, 2002; Gent *et al.*, 2003) have reported associations between ambient O_3 concentrations and daily symptoms/asthma medication use, even after adjustment for copollutants. Results were more mixed, meaning that a greater proportion of studies were not both positive and statistically significant, across smaller U.S. and international studies that focused on these health endpoints.

The NCICAS reported morning symptoms in 846 asthmatic children from 8 U.S. urban areas to be most strongly associated with a cumulative 1- to 4-day lag of O_3 concentrations (Mortimer *et al.*, 2002). The NCICAS used standard protocols that included instructing caretakers of the subjects to record symptoms (including cough, chest tightness, and wheeze) in the daily diary by observing or asking the child. While these associations were not statistically significant in several cities, when the individual data are pooled from all eight cities, statistically significant effects were observed for the incidence of symptoms. The authors also reported that the odds ratios remained essentially the same and statistically significant for the incidence of morning symptoms when days with 8-hour O_3 concentrations above 0.080 ppm were excluded. These days represented less than 5 percent of days in the study.

Gent and colleagues (2003) followed 271 asthmatic children under age 12 and living in southern New England for 6 months (April through September) using a daily symptom diary. They found that mean 1-hour max O_3 and 8-hour max O_3 concentrations were 0.0586 ppm (SD 19.0) and 0.0513 ppm (SD 15.5), respectively. The data were analyzed for two separate groups of subjects, those who used maintenance asthma medications during the follow-up period and those who did not. The need for regular medication was considered to be a proxy for more severe asthma. Not taking any medication on a regular basis and not needing to use a bronchodilator would suggest the presence of very mild asthma. Statistically significant effects of 1-day lag O_3 were observed on a variety of respiratory symptoms only in the medication user group. Both daily 1-hour max and 8-hour max O_3 concentrations were similarly related to symptoms such as chest tightness and shortness of breath. Effects of O_3, but not $PM_{2.5}$, remained significant and even increased in magnitude in two-pollutant models. Some of the associations were noted at 1-hour max O_3 levels below 0.060 ppm. In contrast, no effects were observed among asthmatics not using maintenance medication. In terms of person days of follow-up, this is one of the larger studies currently available that address symptom outcomes in relation to O_3, and provides supportive evidence for effects of O_3 independent of $PM_{2.5}$. Study limitations include the post-hoc nature of the population stratification by medication use. Also, the study did not account for all of the important meteorological factors that might influence these results, such as relative humidity or dew point.

The multicity study by Mortimer *et al.* (2002), which provides an asthmatic population representative of the United States, and several single-city studies indicate a robust association of O_3 concentrations with respiratory symptoms and increased medication use in asthmatics. While there are a number of well-conducted, albeit relatively smaller, U.S. studies which showed only limited or a lack of evidence for symptom increases associated with O_3 exposure, these studies had less statistical power and/or were conducted in areas with relatively low 1-hour maximum average O_3 levels, in the range of 0.03 to 0.09 ppm. Even so, the evidence has continued to expand since 1996 and now is considered to be much stronger than in the previous review. The Criteria Document concludes that the asthma panel studies, as a group, and the NCICAS in particular, indicate a positive association between ambient concentrations and respiratory symptoms and increased medication use in asthmatics. The evidence has continued to expand since 1996 and now is considered to be much stronger than in the previous review of the O_3 primary standard.

School absenteeism is another potential surrogate for the health implications of O_3 exposure in children. The association between school absenteeism and ambient O_3 concentrations was assessed in two relatively large field studies. Chen *et al.* (2000) examined total daily school absenteeism in about 28,000 elementary school students in Nevada over a 2-year period (after adjusting for PM_{10} and CO concentrations) and found that ambient O_3 concentrations with a distributed lag of 14 days were statistically significantly associated with an increased rate of school absences. Gilliland *et al.* (2001) studied O_3-related absences among about 2,000 4th grade students in 12 southern California communities and found statistically significant associations between 8-hour average O_3 concentrations (with a distributed lag out to 30 days) and all absence categories, and particularly for respiratory causes. Neither PM_{10} nor NO_2 were associated with any respiratory or nonrespiratory illness-related absences in single pollutant models. The Criteria Document concludes that these studies of school absences suggest that ambient O_3 concentrations, accumulated over two to four weeks, may be associated with school absenteeism, and particularly illness-related absences, but further replication is needed before firm conclusions can be reached regarding the effect of O_3 on school absences. In addition, more research is needed to help shed light on the implications of variation in the duration of the lag structures (*i.e.*, 1 day, 5 days, 14 days, and 30 days) found both across studies and within data sets by health endpoint and exposure metric.

(b) Increased Airway Responsiveness

As discussed in more detail in the Criteria Document (section 6.8) and Staff Paper (section 3.3.1.1.2), increased airway responsiveness, also known as airway hyperresponsiveness (AHR) or bronchial hyperreactivity, refers to a condition in which the propensity for the airways to bronchoconstrict due to a variety of stimuli (*e.g.*, exposure to cold air, allergens, or exercise) becomes augmented. This condition is typically quantified by measuring the decrement in pulmonary function after inhalation exposure to specific (*e.g.*, antigen, allergen) or nonspecific (*e.g.*, methacholine, histamine) bronchoconstrictor stimuli. Exposure to O_3 causes an increase in airway responsiveness as indicated by a reduction in the concentration of stimuli required to produce a given reduction in FEV_1 or airway obstruction. Increased airway responsiveness is an important consequence of exposure to O_3 because its presence means that the airways are predisposed to narrowing on inhalation of various stimuli, such as specific allergens, cold air or SO_2. Statistically significant and clinically relevant decreases in pulmonary function have been observed in early phase allergen response in subjects with allergic rhinitis after consecutive (4-day) 3-hour exposures to 0.125 ppm O_3 (Holz *et al.*, 2002). Similar increased airway responsiveness in asthmatics to house dust mite antigen 16 to 18 hours after exposure to a single dose of O_3 (0.160 ppm for 7.6 hours) was observed. These observations, based on O_3 exposures to levels much higher than the current standard level suggest that O_3 exposure may be a clinically important factor that can exacerbate the response to ambient bronchoconstrictor substances in individuals with preexisting allergic asthma or rhinitis. Further, O_3 may have an immediate impact on the lung function of asthmatics as well as contribute to effects that persist for longer periods.

Kreit *et al.* (1989) found that O_3 can induce increased airway responsiveness in asthmatic subjects to O_3, who typically have increased airway responsiveness at baseline. A subsequent study (Jörres *et al.*, 1996) suggested an increase in specific (*i.e.*, allergen-induced) airway reactivity in subjects with allergic asthma, and to a lesser extent in subjects with allergic rhinitis after short-term exposure to higher O_3 levels; other studies reported similar results. According to one study (Folinsbee and Hazucha, 2000), changes in airway responsiveness after O_3 exposure resolve more slowly than changes in FEV_1 or respiratory symptoms. Other studies of repeated exposure to O_3 suggest that changes in airway responsiveness tend to be somewhat less affected by attenuation with consecutive exposures than changes in FEV_1 (EPA, 2006a, p. 6–31).

The Criteria Document (section 6.8) concludes that O_3 exposure is linked with increased airway responsiveness. Both human and animal studies indicate that increased airway responsiveness is not mechanistically associated with inflammation, and does not appear to be strongly associated with initial decrements in lung function or increases in symptoms. As a result of increased airway responsiveness induced by O_3 exposure, human airways may be more susceptible to a variety of stimuli, including antigens, chemicals, and particles. Because asthmatic subjects typically have increased airway responsiveness at baseline, enhanced bronchial response to antigens in asthmatics raises potential public health concerns as they could lead to increased morbidity (*e.g.*, medication usage, school absences, emergency room visits, hospital admissions) or to more persistent alterations in airway responsiveness (Criteria Document, p. 8–21). As such, increased airway responsiveness after O_3 exposure represents a plausible link between O_3 exposure and increased hospital admissions.

(c) Respiratory Inflammation and Increased Permeability

Based on evidence from the previous review, acute inflammatory responses in the lung have been observed subsequent to 6.6 hour O_3 exposures to the lowest tested level—0.080 ppm—in healthy adults engaged in moderately high exercise (section 6.9 of the Criteria Document and section 3.3.1.3 of the Staff Paper). Some of these prior studies suggest that inflammatory responses may be detected in some individuals following O_3 exposures in the absence of O_3-induced pulmonary decrements in those subjects. These studies also demonstrate that short-term exposures to O_3 also can cause increased permeability in the lungs of humans and experimental animals. Inflammatory responses and epithelial permeability have been seen to be independent of spirometric responses. Not only are the newer lung inflammation and increased cellular permeability findings discussed in the Criteria Document (pp. 8–21 to 8–24) consistent with the previous review, but they provide better characterization of the physiological mechanisms by which O_3 causes these effects.

Lung inflammation and increased permeability, which are distinct events controlled by different mechanisms, are two commonly observed effects of O_3 exposure observed in all of the species studied. Increased cellular permeability is a disruption of the lung barrier that leads to leakage of serum proteins, influx of polymorphonuclear leukocytes (neutrophils or PMNs), release of bioactive mediators, and movement of compounds from the airspaces into the blood.

A number of controlled human exposure studies have analyzed bronchoalveolar lavage (BAL) and nasal lavage (NL)[17] fluids and cells for markers of inflammation and lung damage (EPA, 2006a, Annex AX6). Increased lung inflammation is demonstrated by the presence of neutrophils found in BAL fluid in the lungs, which has long been accepted as a hallmark of inflammation. It is apparent, however, that inflammation within airway tissues may persist beyond the point that inflammatory cells are found in the BAL fluid. Soluble mediators of inflammation, such as cytokines and arachidonic acid metabolites have been measured in the BAL fluid of humans exposed to O_3. In addition to their role in inflammation, many of these compounds have bronchoconstrictive properties and may be involved in increased airway responsiveness following O_3 exposure. An in vitro study of epithelial cells from nonatopic and atopic asthmatics exposed to 0.010 to 0.100 ppm O_3 showed significantly increased permeability compared to cells from normal persons. This indicates a potentially inherent susceptibility of cells from asthmatic individuals for O_3-induced permeability.

In the 1996 Criteria Document, assessment of controlled human exposure studies indicated that a single, acute (1 to 4 hours) O_3 exposure ($\geq$ 0.080 to 0.100 ppm) of subjects engaged in moderate to heavy exercise could induce a number of cellular and biochemical changes suggestive of pulmonary inflammation and lung permeability (EPA, 2006a, p. 8–22). These changes persisted for at least 18 hours. Markers from BAL fluid following both 2-hour and 4-hour O_3 exposures repeated up to 5 days indicate that there is ongoing cellular damage irrespective of attenuation of

[17] Graham and Koren (1990) compared inflammatory mediators present in NL and BAL fluids of humans exposed to 0.4 ppm O_3 for 2 hours and found similar increases in PMNs in both fluids, suggesting a qualitative correlation between inflammatory changes in the lower airways (BAL) and upper respiratory tract (NL).

some cellular inflammatory responses of the airways, pulmonary function, and symptom scores (EPA, 2006a, p. 8–22). Acute airway inflammation was shown in Devlin *et al.* (1990) to occur among adults exposed to 0.080 ppm O_3 for 6.6 hours with exercise. McBride *et al.* (1994) reported that asthmatic subjects were more sensitive than non-asthmatics to upper airway inflammation for O_3 exposures that did not affect pulmonary function (EPA, 2006a, p. 6–33). However, the public health significance of these changes is not entirely clear.

The studies reporting inflammatory responses and markers of lung injury have clearly demonstrated that there is significant variation in response of subjects exposed, especially to 6.6 hours O_3 exposures at 0.080 and 0.100 ppm. To provide some perspective on the public health impact for these effects, the Staff Paper (section 3.3.1.1.3) notes that one study (Devlin *et al.*, 1991) showed that roughly 10 to 50 percent of the 18 young healthy adult subjects experienced notable increases (*i.e.*, ≥ 2 fold increase) in most of the inflammatory and cellular injury indicators analyzed, associated with 6.6-hour exposures at 0.080 ppm. Similar, although in some cases higher, fractions of the population of 10 healthy adults tested saw > 2 fold increases associated with 6.6-hour exposures to 0.100 ppm. The authors of this study expressed the view that ''susceptible subpopulations such as the very young, elderly, and people with pulmonary impairment or disease may be even more affected'' (Devlin *et al.*, 1991).

Since 1996, a substantial number of human exposure studies have been published which have provided important new information on lung inflammation and epithelial permeability. Mudway and Kelly (2004) examined O_3-induced inflammatory responses and epithelial permeability with a meta-analysis of 21 controlled human exposure studies and showed that an influx in neutrophils and protein in healthy subjects is associated with total O_3 dose (product of O_3 concentration, exposure duration, and minute ventilation) (EPA, 2006a, p. 6–34). Results of the analysis suggest that the time course for inflammatory responses (including recruitment of neutrophils and other soluble mediators) is not clearly established, but there is evidence that attenuation profiles for many of these parameters are different (EPA, 2006a, p. 8–22).

The Criteria Document (chapter 8) concludes that interaction of O_3 with lipid constituents of epithelial lining fluid (ELF) and cell membranes and the induction of oxidative stress is implicated in injury and inflammation. Alterations in the expression of cytokines, chemokines, and adhesion molecules, indicative of an ongoing oxidative stress response, as well as injury repair and regeneration processes, have been reported in animal toxicology and human in vitro studies evaluating biochemical mediators implicated in injury and inflammation. While antioxidants in ELF confer some protection, O_3 reactivity is not eliminated at environmentally relevant exposures (Criteria Document, p. 8–24). Further, antioxidant reactivity with O_3 is both species-specific and dose-dependent.

(d) Increased Susceptibility to Respiratory Infection

As discussed in more detail in the Criteria Document (sections 5.2.2, 6.9.6, and 8.4.2), short-term exposures to O_3 have been shown to impair physiological defense capabilities in experimental animals by depressing alveolar macrophage (AM) functions and by altering the mucociliary clearance of inhaled particles and microbes resulting in increased susceptibility to respiratory infection. Short-term O_3 exposures also interfere with the clearance process by accelerating clearance for low doses and slowing clearance for high doses. Animal toxicological studies have reported that acute O_3 exposures suppress alveolar phagocytosis and immune system functions. Dysfunction of host defenses and subsequent increased susceptibility to bacterial lung infection in laboratory animals has been induced by short-term exposures to O_3 levels as low as 0.080 ppm.

A single controlled human exposure study reviewed in the 1996 Criteria Document reported that exposure to 0.080 to 0.100 ppm O_3 for 6.6 hours (with moderate exercise) induced decrements in the ability of AMs to phagocytose microorganisms (EPA, 2006a, p. 8–26). Integrating the recent animal study results with human exposure evidence available in the 1996 Criteria Document, the Criteria Document concludes that available evidence indicates that short-term O_3 exposures have the potential to impair host defenses in humans, primarily by interfering with AM function. Any impairment in AM function may lead to decreased clearance of microorganisms or nonviable particles. Compromised AM functions in asthmatics may increase their susceptibility to other O_3 effects, the effects of particles, and respiratory infections (EPA, 2006a, p. 8–26).

(e) Morphological Effects

The 1996 Criteria Document found that short-term O_3 exposures cause similar alterations in lung morphology in all laboratory animal species studied, including primates. As discussed in the Staff Paper (section 3.3.1.1.5), cells in the centriacinar region (CAR) of the lung (the segment between the last conducting airway and the gas exchange region) have been recognized as a primary target of O_3-induced damage (epithelial cell necrosis and remodeling of respiratory bronchioles), possibly because epithelium in this region receives the greatest dose of O_3 delivered to the lower respiratory tract. Following chronic O_3 exposure, structural changes have been observed in the CAR, the region typically affected in most chronic airway diseases of the human lung (EPA, 2006a, p. 8–24).

Ciliated cells in the nasal cavity and airways, as well as Type I cells in the gas-exchange region, are also identified as targets. While short-term O_3 exposures can cause epithelial cell proliferation and fibrolitic changes in the CAR, these changes appear to be transient with recovery time after exposure, depending on species and O_3 dose. The potential impacts of repeated short-term and chronic morphological effects of O_3 exposure are discussed below in the section on effects from long-term exposures. Long-term or prolonged exposure has been found to cause chronic lesions similar to early lesions of respiratory bronchiolitis, which have the potential to progress to fibrotic lung disease (Criteria Document, p. 8–25).

Recent studies continue to show that short-term and sub-chronic exposures to O_3 cause similar alterations in lung structure in a variety of experimental animal species. For example, a series of new studies that used infant rhesus monkeys and simulated seasonal ambient exposure (0.5 ppm 8 hours/day for 5 days, every 14 days for 11 episodes) reported remodeling in the distal airways; abnormalities in tracheal basement membrane; eosinophil accumulation in conducting airways; and decrements in airway innervation (Criteria Document, p. 8–25). Based on evidence from animal toxicological studies, short-term and sub-chronic exposures to O_3 can cause morphological changes in the respiratory systems, particularly in the CAR, of a number of laboratory animal species (EPA, 2006a, section 5.2.4).

(f) Emergency Department Visits/ Hospital Admissions for Respiratory Causes

Increased summertime emergency department visits and hospital admissions for respiratory causes have been associated with ambient exposures to O_3. As discussed in section 3.3.1.1.6 of the Staff Paper, numerous studies conducted in various locations in the U.S. and Canada consistently have shown a relationship between ambient O_3 levels and increased incidence of emergency department visits and hospital admissions for respiratory causes, even after controlling for modifying factors, such as weather and copollutants. Such associations between elevated ambient O_3 during summer months and increased hospital admissions have a plausible biological basis in the human and animal evidence of functional, symptomatic, and physiologic effects discussed above and in the increased susceptibility to respiratory infections observed in laboratory animals.

In the last review of the O_3 NAAQS, the Criteria Document evaluated emergency department visits and hospital admissions as possible outcomes following exposure to O_3 (EPA, 2006a, section 7.3). The evidence was limited for emergency department visits, but results of several studies generally indicated that short-term exposures to O_3 were associated with respiratory emergency department visits. The strongest and most consistent evidence, at both lower levels (*i.e.*, below 0.120 ppm 1-hour max O_3) and at higher levels (above 0.120 ppm 1-hour max O_3), was found in the group of studies which investigated summertime[18] daily hospital admissions for respiratory causes in different eastern North American cities. These studies consistently demonstrated that ambient O_3 levels were associated with increased hospital admissions and accounted for about one to three excess respiratory hospital admissions per million persons with each 0.100 ppm increase in 1-hour max O_3, after adjustment for possible confounding effects of temperature and copollutants. Overall, the 1996 Criteria Document concluded that there was strong evidence that ambient O_3 exposures can cause significant exacerbations of preexisting respiratory disease in the general public. Excess respiratory-related hospital admissions associated with O_3 exposures for the New York City area (based on Thurston *et al.*, 1992) were included in the quantitative risk assessment in the prior review and are included in the current assessment along with estimates for respiratory-related hospital admissions in Cleveland, Detroit, and Los Angeles based on more recent studies (Staff Paper, chapter 5). Significant uncertainties and the difficulty of obtaining reliable baseline incidence numbers resulted in emergency department visits not being used in the quantitative risk assessment in either the last or the current O_3 NAAQS review.

In the past decade, a number of studies have examined the temporal pattern associations between O_3 exposures and emergency department visits for respiratory causes (EPA, 2006a, section 7.3.2). These studies are summarized in the Criteria Document (chapter 7 Annex) and some are shown in Figure 1 (in section II.A.3). Respiratory causes for emergency department visits include asthma, bronchitis, emphysema, pneumonia, and other upper and lower respiratory infections, such as influenza, but asthma visits typically dominate the daily incidence counts. Most studies report positive associations. Among studies with adequate controls for seasonal patterns, many reported at least one significant positive association involving O_3.

In reviewing evidence for associations between emergency department visits for asthma and short-term O_3 exposures, the Criteria Document notes that in general, O_3 effect estimates from summer only analyses tended to be positive and larger compared to results from cool season or all year analyses (Figure 7–8, EPA, 2006a, p. 7–68). Several of the studies reported significant associations between O_3 concentrations and emergency department visits for respiratory causes, in particular asthma. However, inconsistencies were observed which were at least partially attributable to differences in model specifications and analysis approach among various studies. For example, ambient O_3 concentrations, length of the study period, and statistical methods used to control confounding by seasonal patterns and copollutants appear to affect the observed O_3 effect on emergency department visits. Thus, the Criteria Document has concluded that stratified analyses by season generally supported a positive association between O_3 concentrations and emergency department visits for asthma in the warm season.

Hospital admissions studies focus specifically on unscheduled admissions because unscheduled hospital admissions occur in response to unanticipated disease exacerbations and are more likely than scheduled admissions to be affected by variations in environmental factors, such as daily O_3 levels. Results of a fairly large number of these studies published during the past decade are summarized in Criteria Document (chapter 7 Annex), and results of U.S. and Canadian studies are shown in Figure 1 below (in section II.A.3). As a group, these hospital admissions studies tend to be larger geographically and temporally than the emergency department visit studies and provide results that are generally more consistent. The strongest associations of respiratory hospital admissions with O_3 concentrations were observed using short lag periods, in particular for a 0-day lag (same day exposure) and a 1-day lag (previous day exposure). Most studies in the United States and Canada indicated positive, statistically significant associations between ambient O_3 concentrations and respiratory hospital admissions in the warm season. However, not all studies found a statistically significant relationship with O_3, possibly because of very low ambient O_3 levels. Analyses for confounding using multipollutant regression models suggest that copollutants generally do not confound the association between O_3 and respiratory hospitalizations. Ozone effect estimates were robust to PM adjustment in all-year and warm-season only data.

Overall, the Criteria Document concludes that positive and robust associations were found between ambient O_3 concentrations and various respiratory disease hospitalization outcomes, when focusing particularly on results of warm-season analyses. Recent studies also generally indicate a positive association between O_3 concentrations and emergency department visits for asthma during the warm season (EPA, 2006a, p. 7–175). These positive and robust associations are supported by the human clinical, animal toxicological, and epidemiological evidence for lung function decrements, increased respiratory symptoms, airway inflammation, and increased airway responsiveness. Taken together, the overall evidence supports a causal relationship between acute ambient O_3 exposures and increased respiratory morbidity outcomes resulting in increased emergency department visits and hospitalizations during the warm season (EPA, 2006a, p. 8–77).

[18] Discussion of the reasons for focusing on warm season studies is found in the section 2.A.3.a below.

ii. Effects on the Respiratory System of Long-Term O_3 Exposures

The 1996 Criteria Document concluded that there was insufficient evidence from the limited number of studies to determine whether long-term O_3 exposures resulted in chronic health effects at ambient levels observed in the U.S. However, the aggregate evidence suggested that O_3 exposure, along with other environmental factors, could be responsible for health effects in exposed populations. Animal toxicological studies carried out in the 1980's and 1990's demonstrated that long-term exposures can result in a variety of morphological effects, including permanent changes in the small airways of the lungs, including remodeling of the distal airways and CAR and deposition of collagen, possibly representing fibrotic changes. These changes result from the damage and repair processes that occur with repeated exposure. Fibrotic changes were also found to persist after months of exposure providing a potential pathophysiologic basis for changes in airway function observed in children in some recent epidemiological studies. It appears that variable seasonal ambient patterns of exposure may be of greater concern than continuous daily exposures.

Several studies published since 1996 have investigated lung function changes over seasonal time periods (EPA, 2006a, section 7.5.3). The Criteria Document (p. 7–114) summarizes these studies collectively indicate that seasonal O_3 exposure is associated with smaller growth-related increases in lung function in children than they would have experienced living in areas with lower O_3 levels and that there is some limited, as yet uncertain, evidence that seasonal O_3 also may affect lung function in young adults, although the uncertainty about the role of copollutants makes it difficult to attribute the effects to O_3 alone.

Lung capacity grows during childhood and adolescence as body size increases, reaches a maximum during the twenties, and then begins to decline steadily and progressively with age. Long-term exposure to air pollution has long been thought to contribute to slower growth in lung capacity, diminished maximally attained capacity, and/or more rapid decline in lung capacity with age (EPA, 2006a, section 7.5.4). Toxicological findings evaluated in the 1996 Criteria Document demonstrated that repeated daily exposure of rats to an episodic profile of O_3 caused small, but significant, decrements in growth-related lung function that were consistent with early indicators of focal fibrogenesis in the proximal alveolar region, without overt fibrosis. Because O_3 at sufficient concentrations is a strong respiratory irritant and has been shown to cause inflammation and restructuring of the respiratory airways, it is plausible that long-term O_3 exposures might have a negative impact on baseline lung function, particularly during childhood when these exposures might have long-term risks.

Several epidemiological studies published since 1996 have examined the relationship between lung function development and long-term O_3 exposure. The most extensive and robust study of respiratory effects in relation to long-term air pollution exposures among children in the U.S. is the Children's Health Study carried out in 12 communities of southern California starting in 1993. One analysis (Peters *et al.*, 1999a) examined the relationship between long-term O_3 exposures and self-reports of respiratory symptoms and asthma in a cross sectional analysis and found a limited relationship between outcomes of current asthma, bronchitis, cough and wheeze and a 0.040 ppm increase in 1-hour max O_3 (EPA, 2006a, p. 7–115). Another analysis (Peters *et al.*, 1999b) examined the relationship between lung function at baseline and levels of air pollution in the community. They reported evidence that annual mean O_3 levels were associated with decreases in FVC, FEV_1, PEF and forced expiratory flow (FEF_{25-75}) (the latter two being statistically significant) among females but not males. In a separate analysis (Gauderman *et al.*, 2000) of 4th, 7th, and 10th grade students, a longitudinal analysis of lung function development over four years found no association with O_3 exposure. The Children's Health Study enrolled a second cohort of more than 1500 fourth graders in 1996 (Gauderman *et al.*, 2002). While the strongest associations with negative lung function growth were observed with acid vapors in this cohort, children from communities with higher 4-year average O_3 levels also experienced smaller increases in various lung function parameters. The strongest relationship with O_3 was with PEF. Specifically, children from the least-polluted community had a small but statistically significant increase in PEF as compared to those from the most-polluted communities. In two-pollutant models, only 8-hour average O_3 and NO_2 were significant joint predictors of FEV_1 and maximal midexpiratory flow (MMEF). Although results from the second cohort of children are supportive of a weak association, the definitive 8-year follow-up analysis of the first cohort (Gauderman *et al.*, 2004a) provides little evidence that long-term exposure to ambient O_3 at current levels is associated with significant deficits in the growth rate of lung function in children. Avol *et al.* (2001) examined children who had moved away from participating communities in southern California to other states with improved air quality. They found that a negative, but not statistically significant, association was observed between O_3 and lung function parameters. Collectively, the results of these reports from the children's health cohorts provide little evidence to support an impact of long-term O_3 exposures on lung function development.

Evidence for a significant relationship between long-term O_3 exposures and decrements in maximally attained lung function was reported in a nationwide study of first year Yale students (Kinney *et al.*, 1998; Galizia and Kinney, 1999) (EPA, 2006a, p. 7–120). Males had much larger effect estimates than females, which might reflect higher outdoor activity levels and correspondingly higher O_3 exposures during childhood. A similar study of college freshmen at University of California at Berkeley also reported significant effects of long-term O_3 exposures on lung function (Künzli *et al.*, 1997; Tager *et al.*, 1998). In a comparison of students whose city of origin was either Los Angeles or San Francisco, long-term O_3 exposures were associated with significant changes in mid- and end-expiratory flow measures, which could be considered early indicators for pathologic changes that might progress to COPD.

There have been a few studies that investigated associations between long-term O_3 exposures and the onset of new cases of asthma (EPA, 2006a, section 7.5.6). The Adventist Health and Smog (AHSMOG) study cohort of about 4,000 was drawn from nonsmoking, non-Hispanic white adult Seventh Day Adventists living in California (Greer *et al.*, 1993; McDonnell *et al.*, 1999). During the ten-year follow-up in 1987, a statistically significant increased relative risk of asthma development was observed in males, compared to a nonsignificant relative risk in females (Greer *et al.*, 1993). In the 15-year follow-up in 1992, it was reported that for males, there was a statistically significant increased relative risk of developing asthma associated with 8-hour average O_3 exposures, but there was no evidence of an association in females. Consistency of results in the two studies with different follow-up

times provides supportive evidence of the potential for an association between long-term O_3 exposure and asthma incidence in adult males; however, representativeness of this cohort to the general U.S. population may be limited (EPA, 2006a, p. 7–125).

In a similar study (McConnell *et al.*, 2002) of incident asthma among children (ages 9 to 16 at enrollment), annual surveys of 3,535 children initially without asthma were used to identify new-onset asthma cases as part of the Children's Health Study. Six high-O_3 and six low-O_3 communities were identified where the children resided. There were 265 children who reported new-onset asthma during the follow-up period. Although asthma risk was no higher for all residents of the six high-O_3 communities versus the six low-O_3 communities, asthma risk was 3.3 times greater for children who played three or more sports as compared with children who played no sports within the high-O_3 communities. This association was absent in the communities with lower O_3 concentrations. No other pollutants were found to be associated with new-onset asthma (EPA, 2006a, p. 7–125). Playing sports may result in extended outdoor activity and exposure occurring during periods when O_3 levels are higher. It should be noted, however, that the results of the Children's Health Study were based on a small number of new-onset asthma cases among children who played three or more sports. Future replication of these findings in other cohorts would help determine whether a causal interpretation is appropriate.

In animal toxicology studies, the progression of morphological effects reported during and after a chronic exposure in the range of 0.50 to 1.00 ppm O_3 is complex, with inflammation peaking over the first few days of exposure, then dropping, then plateauing, and finally, largely disappearing (EPA, 2006a, section 5.2.4.4). By contrast, fibrotic changes in the tissue increase very slowly over months of exposure, and, after exposure ceases, the changes sometimes persist or increase. Epithelial hyperplasia peaks soon after the inflammatory response but is usually maintained in both the nose and lungs with continuous exposure; it also does not return to pre-exposure levels after the end of exposure. Patterns of exposure in this same concentration range determine effects, with 18 months of daily exposure, causing less morphologic damage than exposures on alternating months. This is important as environmental O_3 exposure is typically seasonal. Long-term studies by Plopper and colleagues (Evans *et al.*, 2003; Schelegle *et al.*, 2003; Chen *et al.*, 2003; Plopper and Fanucchi, 2000) investigated infant rhesus monkeys exposed to simulated, seasonal O_3 and demonstrated: (1) Remodeling in the distal airways, (2) abnormalities in tracheal basement membrane; (3) eosinophil accumulation in conducting airways; and (4) decrements in airway innervation (EPA, 2006a, p. 5–45). These findings provide additional information regarding possible injury-repair processes occurring with long-term O_3 exposures suggesting that these processes are only partially reversible and may progress following cessation of O_3 exposure. Further, these processes may lead to nonreversible structural damage to lung tissue; however, there is still too much uncertainty to characterize the significance of these findings to human exposure profiles and effect levels (EPA, 2006a, p. 8–25).

In summary, in the past decade, important new longitudinal studies have examined the effect of chronic O_3 exposure on respiratory health outcomes. Limited evidence from recent long-term morbidity studies have suggested in some cases that chronic exposure to O_3 may be associated with seasonal declines in lung function or reduced lung function development, increases in inflammation, and development of asthma in children and adults. Seasonal decrements or smaller increases in lung function measures have been reported in several studies; however, the extent to which these changes are transient remains uncertain. While there is supportive evidence from animal studies involving effects from chronic exposures, large uncertainties still remain as to whether current ambient levels and exposure patterns might cause these same effects in human populations. The Criteria Document concludes that epidemiological studies of new asthma development and longer-term lung function declines remain inconclusive at present (EPA, 2006a, p. 7–134).

iii. Effects on the Cardiovascular System of O_3 Exposure

At the time of the 1997 review, the possibility of O_3-induced cardiovascular effects was largely unrecognized. Since then, a very limited body of evidence from animal, controlled human exposure and epidemiologic studies has emerged that provides evidence for some potential plausible mechanisms for how O_3 exposures might exert cardiovascular system effects, however much needs to be done to substantiate these potential mechanisms. Possible mechanisms may involve O_3-induced secretions of vasoconstrictive substances and/or effects on neuronal reflexes that may result in increased arterial blood pressure and/or altered electrophysiologic control of heart rate or rhythm. Some animal toxicology studies have shown O_3-induced decreases in heart rate, mean arterial pressure, and core temperature. One controlled human exposure study that evaluated effects of O_3 exposure on cardiovascular health outcomes found no significant O_3-induced differences in ECG or blood pressure in healthy or hypertensive subjects but did observe a significant O_3-induced increase the alveolar-to-arterial PO_2 gradient and heart rate in both groups resulting in an overall increase in myocardial work and impairment in pulmonary gas exchange (Gong *et al.*, 1998). In another controlled human exposure study, inhalation of a mixture of $PM_{2.5}$ and O_3 by healthy subjects increased brachial artery vasoconstriction and reactivity (Brook *et al.*, 2002).

The evidence from a few animal studies also includes potential direct effects such as O_3-induced release from lung epithelial cells of platelet activating factor (PAF) that may contribute to blood clot formation that would have the potential to increase the risk of serious cardiovascular outcomes (*e.g.*, heart attack, stroke, mortality). Also, interactions of O_3 with surfactant components in epithelial lining fluid of the lung may result in production of oxysterols and reactive oxygen species that may exhibit PAF-like activity contributing to clotting and also may exert cytotoxic effects on lung and heart muscle cells.

Epidemiologic panel and field studies that examined associations between O_3 and various cardiac physiologic endpoints have yielded limited evidence suggestive of a potential association between acute O_3 exposure and altered heart rate variability, ventricular arrhythmias, and incidence of heart attacks. A number of epidemiological studies have also reported associations between short-term exposures and hospitalization for cardiovascular diseases. As shown in Figure 7–13 of the Criteria Document, many of the studies reported negative or inconsistent associations. Some other studies, especially those that examined the relationship when O_3 exposures were higher, have found robust positive associations between O_3 and cardiovascular hospital admissions (EPA, 2006a, p. 7–82). For example, one study reported a positive association between O_3 and cardiovascular hospital admissions in Toronto, Canada in a summer-only analysis (Burnett *et al.*,

1997b). The results were robust to adjustment for various PM indices, whereas the PM effects diminished when adjusting for gaseous pollutants. Other studies stratified their analysis by temperature, *i.e.*, by warm days versus cool days. Several analyses using warm season days consistently produced positive associations.

The epidemiologic evidence for cardiovascular morbidity is much weaker than for respiratory morbidity, with only one of several U.S./Canadian studies showing statistically significant positive associations of cardiovascular hospitalizations with warm-season O_3 concentrations. Most of the available European and Australian studies, all of which conducted all-year O_3 analyses, did not find an association between short-term O_3 concentrations and cardiovascular hospitalizations. Overall, the currently available evidence is inconclusive regarding an association between cardiovascular hospital admissions and ambient O_3 exposure (EPA, 2006a, p. 7–83).

In summary, based on the evidence from animal toxicology, human controlled exposure, and epidemiologic studies, from the Criteria Document concludes that this generally limited body of evidence is suggestive that O_3 can directly and/or indirectly contribute to cardiovascular-related morbidity, but that much needs to be done to more fully integrate links between ambient O_3 exposures and adverse cardiovascular outcomes (EPA, 2006a, p. 8–77).

b. Mortality

i. Mortality and Short-Term O_3 Exposure

The 1996 Criteria Document concluded that an association between daily mortality and O_3 concentration for areas with high O_3 levels (*e.g.*, Los Angeles) was suggested. However, due to a very limited number of studies available at that time, there was insufficient evidence to conclude that the observed association was likely causal.

The current Criteria Document includes results from numerous epidemiological analyses of the relationship between O_3 and mortality. Additional single city analyses have also been conducted since 1996, however, the most pivotal studies in EPA's (and CASAC's) finding of increased support for the relationship between premature mortality and O_3 is in part related to differences in study design—limiting analyses to warm seasons, better control for copollutants, particularly PM, and use of multicity designs (both time series and meta-analytic designs). Key findings are available from multi-city time-series studies that report associations between O_3 and mortality. These studies include analyses using data from 90 U.S. cities in the National Mortality, Morbidity and Air Pollution (NMMAPS) study (Dominici *et al.*, 2003) and from 95 U.S. communities in an extension to the NMMAPS analyses (Bell *et al.*, 2004).

The original 90-city NMMAPS analysis, with data from 1987 to 1994, was primarily focused on investigating effects of PM_{10} on mortality. A significant association was reported between mortality and 24-hour average O_3 concentrations in analyses using all available data as well as in the warm season only analyses (Dominici *et al.*, 2003). The estimate using all available data was about half that for the summer-only data at a lag of 1-day. The extended NMMAPS analysis included data from 95 U.S. cities and included an additional 6 years of data, from 1987–2000 (Bell *et al.*, 2004). Significant associations were reported between O_3 and mortality in analyses using all available data. The effect estimate for increased mortality was approximately 0.5 percent per 0.020 ppm change in 24-hour average O_3 measured on the same day, and approximately 1.04 percent per 0.020 ppm change in 24-hour average O_3 in a 7-day distributed lag model (EPA, 2006a, p. 7–88). In analyses using only data from the warm season, the results were not significantly different from the full-year results. The authors also report that O_3-mortality associations were robust to adjustment for PM (EPA, 2006a, p. 7–100). Using a subset of the NMMAPS data set, Huang *et al.* (2005) focused on associations between cardiopulmonary mortality and O_3 exposure (24-hour average) during the summer season only. The authors report an approximate 1.47 percent increase per 0.020 ppm change in O_3 concentration measured on the same day and an approximate 2.52 percent increase per 0.020 ppm change in O_3 concentration using a 7-day distributed lag model. These findings suggest that the effect of O_3 on mortality is immediate but also persists for several days.

As discussed below in section II.A.3.a, confounding by weather, especially temperature, is complicated by the fact that higher temperatures are associated with the increased photochemical activities that are important for O_3 formation. Using a case-crossover study design, Schwartz (2005) assessed associations between daily maximum concentrations and mortality, matching case and control periods by temperature, and using data only from the warm season. The reported effect estimate of approximately 0.92 percent change in mortality per 0.040 ppm O_3 (1-hour maximum) was similar to time-series analysis results with adjustment for temperature (approximately 0.76 percent per 0.040 ppm O_3), suggesting that associations between O_3 and mortality were robust to the different adjustment methods for temperature.

An initial publication from APHEA, a European multi-city study, reported statistically significant associations between daily maximum O_3 concentrations and mortality in four cities in a full year analysis (Toulomi *et al.*, 1997). An extended analysis was done using data from 23 cities throughout Europe (Gryparis *et al.*, 2004). In this report, a positive but not statistically significant association was found between mortality and 1-hour daily maximum O_3 in a full year analysis. Gryparis *et al.* (2004) noted that there was a considerable seasonal difference in the O_3 effect on mortality; thus, the small effect for the all-year data might be attributable to inadequate adjustment for confounding by seasonality. Focusing on analyses using summer measurements, the authors report statistically significant associations with total mortality, cardiovascular mortality and with respiratory mortality (EPA, 2006a, p. 7–93, 7–99).

Numerous single-city analyses have also reported associations between mortality and short-term O_3 exposure, especially for those analyses using warm season data. As shown in Figure 7–21 of the Criteria Document, the results of recent publications show a pattern of positive, often statistically significant associations between short-term O_3 exposure and mortality during the warm season. In considering results from year-round analyses, there remains a pattern of positive results but the findings are less consistent. In most single-city analyses, effect estimates were not substantially changed with adjustment for PM (EPA, 2006a, Figure 7–22).

In addition, several meta-analyses have been conducted on the relationship between O_3 and mortality. As described in section 7.4.4 of the Criteria Document, these analyses reported fairly consistent and positive combined effect estimates ranging from approximately 1.5 to 2.5 percent increase in mortality for a standardized change in O_3 (EPA, 2006a, Figure 7–20). Three recent meta-analyses evaluated potential sources of heterogeneity in O_3-mortality associations (Bell *et al.*, 2005; Ito *et al.*, 2005; Levy *et al.*, 2005). The

Criteria Document (p. 7–96) observes common findings across all three analyses, in that all reported that effect estimates were larger in warm season analyses, reanalysis of results using default convergence criteria in generalized additive models (GAM) did not change the effect estimates, and there was no strong evidence of confounding by PM. Bell *et al.* (2005) and Ito *et al.* (2005) both provided suggestive evidence of publication bias, but O_3-mortality associations remained after accounting for that potential bias. The Criteria Document concludes that the ''positive O_3 effects estimates, along with the sensitivity analyses in these three meta-analyses, provide evidence of a robust association between ambient O_3 and mortality'' (EPA, 2006a, p. 7–97).

Most of the single-pollutant model estimates from single-city studies range from 0.5 to 5 percent excess deaths per standardized increments. Corresponding summary estimates in large U.S. multi-city studies ranged between 0.5 to 1 percent with some studies noting heterogeneity across cities and studies (EPA, 2006a, p. 7–110).

Finally, from those studies that included assessment of associations with specific causes of death, it appears that effect estimates for associations with cardiovascular mortality are larger than those for total mortality. The meta-analysis by Bell *et al.* (2005) observed a slightly larger effect estimate for cardiovascular mortality compared to mortality from all causes. The effect estimate for respiratory mortality was approximately one-half that of cardiovascular mortality in the meta-analysis. However, other studies have observed larger effect estimates for respiratory mortality compared to cardiovascular mortality. The apparent inconsistency regarding the effect size of O_3-related respiratory mortality may be due to reduced statistical power in this subcategory of mortality (EPA, 2006a, p. 7–108).

In summary, many single- and multi-city studies observed positive associations of ambient O_3 concentrations with total nonaccidental and cardiopulmonary mortality. The Criteria Document finds that the results from U.S. multi-city time-series studies provide the strongest evidence to date for O_3 effects on acute mortality. Recent meta-analyses also indicate positive risk estimates that are unlikely to be confounded by PM; however, future work is needed to better understand the influence of model specifications on the risk coefficient (EPA, 2006a, p. 7–175). A meta-analysis that examined specific causes of mortality found that the cardiovascular mortality risk estimates were higher than those for total mortality. For cardiovascular mortality, the Criteria Document (Figure 7–25, p. 7–106) suggests that effect estimates are consistently positive and more likely to be larger and statistically significant in warm season analyses. The findings regarding the effect size for respiratory mortality have been less consistent, possibly because of lower statistical power in this subcategory of mortality. The Criteria Document (p. 8–78) concludes that these findings are highly suggestive that short-term O_3 exposure directly or indirectly contribute to non-accidental and cardiopulmonary-related mortality, but additional research is needed to more fully establish underlying mechanisms by which such effects occur.[19]

ii. Mortality and Long-Term O_3 Exposure

Little evidence was available in the last review on the potential for associations between mortality and long-term exposure to O_3. In the Harvard Six City prospective cohort analysis, the authors report that mortality was not associated with long-term exposure to O_3 (Dockery *et al.*, 1993). The authors note that the range of O_3 concentrations across the six cities was small, which may have limited the power of the study to detect associations between mortality and O_3 levels (EPA, 2006a, p. 7–127).

As discussed in section 7.5.8 of the Criteria Document, in this review there are results available from three prospective cohort studies: the American Cancer Society (ACS) study (Pope *et al.*, 2002), the Adventist Health and Smog (AHSMOG) study (Beeson *et al.*, 1998; Abbey *et al.*, 1999), and the U.S. Veterans Cohort study (Lipfert *et al.*, 2000, 2003). In addition, a major reanalysis report includes evaluation of data from the Harvard Six City cohort study (Krewski *et al.*, 2000).[20] This reanalysis also includes additional evaluation of data from the initial ACS cohort study report that had only reported results of associations between mortality and long-term exposure to fine particles and sulfates (Pope *et al.*, 1995). This reanalysis was discussed in the Staff Paper (section 3.3.2.2) but not in the Criteria Document.

In this reanalysis of data from the previous Harvard Six City prospective cohort study, the investigators replicated and validated the findings of the original studies, and the report included additional quantitative results beyond those available in the original report (Krewski *et al.*, 2000). In the reanalysis of data from the Harvard Six Cities study, the effect estimate for the association between long-term O_3 concentrations and mortality was negative and nearly statistically significant (relative risk = 0.87, 95 percent CI: 0.76, 1.00).

The ACS study is based on health data from a large prospective cohort of approximately 500,000 adults and air quality data from about 150 U.S. cities. The initial report (Pope *et al.*, 1995) focused on associations with fine particles and sulfates, for which significant associations had been reported in the earlier Harvard Six Cities study (Dockery *et al.*, 1993). As part of the major reanalysis of these data, results for associations with other air pollutants were also reported, and the authors report that no significant associations were found between O_3 and all-cause mortality. However, a significant association was reported for cardiopulmonary mortality in the warm season (Krewski *et al.*, 2000). The ACS II study (Pope *et al.*, 2002) reported results of associations with an extended data base; the mortality records for the cohort had been updated to include 16 years of follow-up (compared with 8 years in the first report) and more recent air quality data were included in the analyses. Similar to the earlier reanalysis, a marginally significant association was observed between long-term exposure to O_3 and cardiopulmonary mortality in the warm season. No other associations with mortality were observed in both the full-year and warm season analyses.

The Adventist Health and Smog (AHSMOG) cohort includes about 6,000 adults living in California. In two studies from this cohort, a significant association has been reported between long-term O_3 exposure and increased risk of lung cancer mortality among males only (Beeson *et al.*, 1998; Abbey

[19] In commenting on the Criteria Document, the CASAC Ozone Panel raised questions about the implications of these time-series results in a policy context, emphasizing that ''* * * while the time-series study design is a powerful tool to detect very small effects that could not be detected using other designs, it is also a blunt tool'' (Henderson, 2006b). They note that ''* * * not only is the interpretation of these associations complicated by the fact that the day-to-day variation in concentrations of these pollutants is, to a varying degree, determined by meteorology, the pollutants are often part of a large and highly correlated mix of pollutants, only a very few of which are measured'' (Henderson, 2006b). Even with these uncertainties, the CASAC Ozone Panel, in its review of the Staff Paper, found ''* * * premature total non-accidental and cardiorespiratory mortality for inclusion in the quantitative risk assessment to be appropriate.'' (Henderson, 2006b).

[20] This reanalysis report and the original prospective cohort study findings are discussed in more detail in section 8.2.3 of the *Air Quality Criteria for Particulate Matter* (EPA, 2004).

et al., 1999). No significant associations were reported between long-term O_3 exposure and mortality from all causes or cardiopulmonary causes. Due to the small numbers of lung cancer deaths (12 for males, 18 for females) and the precision of the effect estimate (*i.e.*, the wide confidence intervals), the Criteria Document discussed concerns about the plausibility of the reported association with lung cancer (EPA, 2006a, p. 7–130).

The U.S. Veterans Cohort study (Lipfert *et al.*, 2000, 2003) of approximately 50,000 middle-aged males diagnosed with hypertension, reported some positive associations between mortality and peak O_3 exposures (95th percentile level for several years of data). The study included numerous analyses using subsets of exposure and mortality follow-up periods which spanned the years 1960 to 1996. In the results of analyses using deaths and O_3 exposure estimates concurrently across the study period, there were positive, statistically significant associations between peak O_3 and mortality (EPA, 2006a, p. 7–129).

Overall, the Criteria Document concludes that consistent associations have not been reported between long-term O_3 exposure and all-cause, cardiopulmonary or lung cancer mortality (EPA, 2006a, p. 7–130).

c. Role of Ground-Level O_3 in Solar Radiation-Related Human Health Effects

Beyond the direct health effects attributable to inhalation exposure to O_3 in the ambient air discussed above, the Criteria Document also assesses potential indirect effects related to the presence of O_3 in the ambient air by considering the role of ground-level O_3 in mediating human health effects that may be directly attributable to exposure to solar ultraviolet radiation (UV–B). The Criteria Document (chapter 10) focuses this assessment on three key factors, including those factors that govern (1) UV–B radiation flux at the earth's surface, (2) human exposure to UV–B radiation, and (3) human health effects due to UV–B radiation. In so doing, the Criteria Document provides a thorough analysis of the current understanding of the relationship between reducing ground-level O_3 concentrations and the potential impact these reductions might have on increasing UV–B surface fluxes and indirectly contributing to UV–B related health effects.

There are many factors that influence UV–B radiation penetration to the earth's surface, including latitude, altitude, cloud cover, surface albedo, PM concentration and composition, and gas phase pollution. Of these, only latitude and altitude can be defined with small uncertainty in any effort to assess the changes in UV–B flux that may be attributable to any changes in tropospheric O_3 as a result of any revision to the O_3 NAAQS. Such an assessment of UV–B related health effects would also need to take into account human habits, such as outdoor activities (including age- and occupation-related exposure patterns), dress and skin care to adequately estimate UV–B exposure levels. However, little is known about the impact of these factors on individual exposure to UV–B.

Moreover, detailed information does not exist regarding other factors that are relevant to assessing changes in disease incidence, including: Type (*e.g.*, peak or cumulative) and time period (*e.g.*, childhood, lifetime, current) of exposures related to various adverse health outcomes (*e.g.*, damage to the skin, including skin cancer; damage to the eye, such as cataracts; and immune system suppression); wavelength dependency of biological responses; and interindividual variability in UV–B resistance to such health outcomes. Beyond these well recognized adverse health effects associated with various wavelengths of UV radiation, the Criteria Document (section 10.2.3.6) also discusses protective effects of UV–B radiation. Recent reports indicate the necessity of UV–B in producing vitamin D, and that vitamin D deficiency can cause metabolic bone disease among children and adults, and may also increase the risk of many common chronic diseases (*e.g.*, type I diabetes and rheumatoid arthritis) as well as the risk of various types of cancers. Thus, the Criteria Document concludes that any assessment that attempts to quantify the consequences of increased UV–B exposure on humans due to reduced ground-level O_3 must include consideration of both negative and positive effects. However, as with other impacts of UV–B on human health, this beneficial effect of UV–B radiation has not been studied in sufficient detail to allow for a credible health benefits or risk assessment. In conclusion, the effect of changes in surface-level O_3 concentrations on UV-induced health outcomes cannot yet be critically assessed within reasonable uncertainty (Criteria Document, p. 10–36).

The Agency last considered indirect effects of O_3 in the ambient air in its 2003 final response to a remand of the Agency's 1997 decision to revise the O_3 NAAQS. In so doing, based on the available information in the last review, the Administrator determined that the information linking (a) Changes in patterns of ground-level O_3 concentrations likely to occur as a result of programs implemented to attain the 1997 O_3 NAAQS to (b) changes in relevant exposures to UV–B radiation of concern to public health was too uncertain at that time to warrant any relaxation in the level of public health protection previously determined to be requisite to protect against the demonstrated direct adverse respiratory effects of exposure to O_3 in the ambient air (68 FR 614). At that time, the more recent information on protective effects of UV–B radiation was not available, such that only adverse UV–B-related effects could be considered. Taking into consideration the more recent information available in this review, the Criteria Document and Staff Paper conclude that the effect of changes in ground-level O_3 concentrations, likely to occur as a result of revising the O_3 NAAQS, on UV-induced health outcomes, including whether these changes would ultimately result in increased or decreased incidence of UV–B-related diseases, cannot yet be critically assessed. EPA requests comment on available studies or data that would be relevant to conducting a critical assessment with reasonable certainty of UV-induced health outcomes and how evidence of UV-induced health outcomes might inform the Agency's review of the primary O_3 standard.

3. Interpretation and Integration of Health Evidence

As discussed below, in assessing the new health evidence, the Criteria Document integrates findings from experimental (*e.g.*, toxicological, dosimetric and controlled human exposure) and epidemiological studies, to make judgments about the extent to which causal inferences can be made about observed associations between health endpoints and exposure to O_3. In evaluating the evidence from epidemiological studies, the EPA focuses on well-recognized criteria, including: The *strength* of reported associations, including the magnitude and precision of reported effect estimates and their statistical significance; the *robustness* of reported associations, or stability in the effect estimates after considering factors such as alternative models and model specification, potential confounding by co-pollutants, and issues related to the consequences of exposure measurement error; potential aggregation bias in pooling data; and the *consistency* of the effects associations as observed by looking across results of multiple- and

single-city studies conducted by different investigators in different places and times. Consideration is also given to evaluating *concentration-response relationships* observed in epidemiological studies to inform judgments about the potential for threshold levels for O_3-related effects. Integrating more broadly across epidemiological and experimental evidence, the Criteria Document also focuses on the *coherence* and *plausibility* of observed O_3-related health effects to reach judgments about the extent to which causal inferences can be made about observed associations between health endpoints and exposure to O_3 in the ambient air.

a. Assessment of Evidence From Epidemiological Studies

Key elements of the evaluation of epidemiological studies are briefly summarized below.

(1) The strength of associations most directly refers to the magnitude of the reported relative risk estimates. Taking a broader view, the Criteria Document draws upon the criteria summarized in a recent report from the U.S. Surgeon General, which define strength of an association as ''the magnitude of the association and its statistical strength'' which includes assessment of both effect estimate size and precision, which is related to the statistical power of the study (CDC, 2004). In general, when associations are strong in terms of yielding large relative risk estimates, it is less likely that the association could be completely accounted for by a potential confounder or some other source of bias, whereas with associations that yield small relative risk estimates it is especially important to consider potential confounding and other factors in assessing causality. Effect estimates between O_3 and some of the health outcomes are generally small in size and could thus be characterized as weak. For example, effect estimates for associations with mortality generally range from 0.5 to 5 percent increases per 0.040 ppm increase in 1-hour maximum O_3 or equivalent, whereas associations for hospitalization range up to 50 percent increases per standardized O_3 increment. However, the Criteria Document notes that there are large multicity studies that find small associations between short-term O_3 exposure and mortality or morbidity and have done so with great precision due to the statistical power of the studies (EPA, 2006a, p. 8–40). That is, the power of the studies allows the authors to reliably distinguish even weak relationships from the null hypothesis with statistical confidence.

(2) In evaluating the robustness of associations, the Criteria Document (sections 7.1.3 and 8.4.4.3) and Staff Paper (section 3.4.2) have primarily considered the impact of exposure error, potential confounding by copollutants, and alternative models and model specifications.

In time-series and panel studies, the temporal (*e.g.*, daily or hourly) changes in ambient O_3 concentrations measured at centrally-located ambient monitoring stations are generally used to represent a community's exposure to ambient O_3. In prospective cohort or cross-sectional studies, air quality data averaged over a period of months to years are used as indicators of a community's long-term exposure to ambient O_3 and other pollutants. In both types of analyses, exposure error is an important consideration, as actual exposures to individuals in the population will vary across the community.

Ozone concentrations measured at central ambient monitoring sites may explain, at least partially, the variance in individual exposures to ambient O_3; however, this relationship is influenced by various factors related to building ventilation practices and personal behaviors. Further, the pattern of exposure misclassification error and the influence of confounders may differ across the outcomes of interest as well as in susceptible populations. As discussed in the Criteria Document (section 3.9), only a limited number of studies have examined the relationship between ambient O_3 concentrations and personal exposures to ambient O_3. One of the strongest predictors of the relationship between ambient concentrations and personal exposures appears to be time spent outdoors. The strongest relationships were observed in outdoor workers (Brauer and Brook, 1995, 1997; O'Neill *et al.*, 2004). Statistically significant correlations between ambient concentrations and personal exposures were also observed for children, who likely spend more time outdoors in the warm season (Linn *et al.*, 1996; Xue *et al.*, 2005). There is some concern about the extent to which ambient concentrations are representative of personal O_3 exposures of another particularly susceptible group of individuals, the debilitated elderly, since those who suffer from chronic cardiovascular or respiratory conditions may tend to protect themselves more than healthy individuals from environmental threats by reducing their exposure to both O_3 and its confounders, such as high temperature and PM. Studies by Sarnat *et al.* (2001, 2005) that included this susceptible group reported mixed results for associations between ambient O_3 concentrations and personal exposures to O_3. Collectively, these studies observed that the daily averaged personal O_3 exposures tend to be well correlated with ambient O_3 concentrations despite the substantial variability that existed among the personal measurements. These studies provide supportive evidence that ambient O_3 concentrations from central monitors may serve as valid surrogate measures for mean personal exposures experienced by the population, which is of most relevance for time-series studies. A better understanding of the relationship between ambient concentrations and personal exposures, as well as of the other factors that affect relationship will improve the interpretation of concentration-population health response associations observed.

The Criteria Document (section 7.1.3.1) also discusses the potential influence of exposure error on epidemiologic study results. Zeger *et al.* (2000) outlined the components to exposure measurement error, finding that ambient exposure can be assumed to be the product of the ambient concentration and an attenuation factor (*i.e.*, building filter) and that panel studies and time-series studies that use ambient concentrations instead of personal exposure measurements will estimate a health risk that is attenuated by that factor. Navidi *et al.* (1999) used data from a children's cohort study to compare effect estimates from a simulated ''true'' exposure level to results of analyses from O_3 exposures determined by several methods, finding that O_3 exposures based on the use of ambient monitoring data overestimate the individual's O_3 exposure and thus generally result in O_3 effect estimates that are biased downward (EPA, 2006a, p. 7–8). Similarly, in a reanalysis of a study by Burnett *et al.* (1994) on the acute respiratory effects of ambient air pollution, Zidek *et al.* (1998) reported that accounting for measurement error, as well as making a few additional changes to the analysis, resulted in qualitatively similar conclusions, but the effects estimates were considerably larger in magnitude (EPA, 2006a, p. 7–8). A simulation study by Sheppard *et al.* (2005) also considered attenuation of the risk based on personal behavior, their microenvironment, and the qualities of the pollutant in time-series studies. Of particular interest is their finding that risk estimates were not further attenuated in time-series studies even when the correlations between personal exposures and ambient

concentrations were weak. In addition to overestimation of exposure and the resulting underestimation of effects, the use of ambient O_3 concentrations may obscure the presence of thresholds in epidemiologic studies (EPA, 2006a, p. 7–9).

As discussed in the Criteria Document (section 3.9), using ambient concentrations to determine exposure generally overestimates true personal O_3 exposures by approximately 2- to 4-fold in available studies, resulting in attenuated risk estimates. The implication is that the effects being estimated occur at fairly low exposures and the potency of O_3 is greater than these effects estimates indicate. As very few studies evaluating O_3 health effects with personal O_3 exposure measurements exist in the literature, effect estimates determined from ambient O_3 concentrations must be evaluated and used with caution to assess the health risks of O_3. In the absence of available data on personal O_3 exposure, the use of routinely monitored ambient O_3 concentrations as a surrogate for personal exposures is not generally expected to change the principal conclusions from O_3 epidemiologic studies. Therefore, population health risk estimates derived using ambient O_3 levels from currently available observational studies, with appropriate caveats about personal exposure considerations, remain useful. The Criteria Document recommends caution in the quantitative use of effect estimates calculated using ambient O_3 concentrations as they may lead to underestimation of the potency of O_3. However, the Staff Paper observes that the use of these risk estimates for comparing relative risk reductions between alternative ambient O_3 standards considered in the risk assessment (discussed below in section II.B.2) is less likely to suffer from this concern.

Confounding occurs when a health effect that is caused by one risk factor is attributed to another variable that is correlated with the causal risk factor; epidemiological analyses attempt to adjust or control for potential confounders. Copollutants (*e.g.*, PM, CO, SO_2 and NO_2) can meet the criteria for potential confounding in O_3-health associations if they are potential risk factors for the health effect under study and are correlated with O_3. Effect modifiers include variables that may influence the health response to the pollutant exposure (*e.g.*, co-pollutants, individual susceptibility, smoking or age). Both are important considerations for evaluating effects in a mixture of pollutants, but for confounding, the emphasis is on controlling or adjusting for potential confounders in estimating the effects of one pollutant, while the emphasis for effect modification is on identifying and assessing the effects for different modifiers. The Criteria Document (p. 7–148) observes that O_3 is generally not highly correlated with other criteria pollutants (*e.g.*, PM_{10}, CO, SO_2 and NO_2), but may be more highly correlated with secondary fine particles, especially during the summer months, and that the degree of correlation between O_3 and other pollutants may vary across seasons. For example, positive associations are observed between O_3 and pollutants such as fine particles during the warmer months, but negative correlations may be observed during the cooler months (EPA, 2006a, p. 7–17). Thus, the Criteria Document (section 7.6.4) pays particular attention to the results of season-specific analyses and studies that assess effects of PM in potential confounding of O_3-health relationships. The Criteria Document also discussed the limitations of commonly used multipollutant models that include the difficulty in interpreting results where the copollutants are highly colinear, or where correlations between pollutants change by season (EPA, 2006a, p. 7–150). This is particularly the situation where O_3 and a copollutant, such as sulfates, are formed under the same atmospheric condition; in such cases multipollutant models would produce unstable and possibly misleading results (EPA, 2006a, p. 7–152).

For mortality, the results from numerous multi-city and single-city studies indicate that O_3-mortality associations do not appear to be substantially changed in multipollutant models including PM_{10} or $PM_{2.5}$ (EPA, 2006a, p. 7–101; Figure 7–22). Focusing on results of warm season analyses, effect estimates for O_3-mortality associations are fairly robust to adjustment for PM in multipollutant models (EPA, 2006a, p. 7–102; Figure 7–23). The Criteria Document concludes that in the few multipollutant analyses conducted for these endpoints, copollutants generally do not confound the relationship between O_3 and respiratory hospitalization (EPA, 2006a, p. 7–79 to 7–80; Figure 7–12). Multipollutant models were not used as commonly in studies of relationships between respiratory symptoms or lung function with O_3, but the Criteria Document reports that results of available analyses indicate that such associations generally were robust to adjustment for $PM_{2.5}$ (EPA, 2006a, p. 7–154). For example, in a large multi-city study of asthmatic children (Mortimer *et al.*, 2002), the O_3 effect was attenuated, but there was still a positive association; in Gent *et al.* (2003), effects of O_3, but not $PM_{2.5}$, remained statistically significant and even increased in magnitude in two-pollutant models (EPA, 2006a, p. 7–53). Considering this body of studies, the Criteria Document concludes: ''Multipollultant regression analyses indicated that O_3 risk estimates, in general, were not sensitive to the inclusion of copollutants, including $PM_{2.5}$ and sulfate. These results suggest that the effects of O_3 on respiratory health outcomes appear to be robust and independent of the effects of other copollutants (EPA, 2006a, p. 7–154).''

The Criteria Document observes that another challenge of time-series epidemiological analysis is assessing the relationship between O_3 and health outcomes while avoiding bias due to confounding by other time-varying factors, particularly seasonal trends and weather variables (EPA, 2006a, p. 7–14). These variables are of particular interest because O_3 concentrations have a well-characterized seasonal pattern and are also highly correlated with changes in temperature, such that it can be difficult to distinguish whether effects are associated with O_3 or with seasonal or weather variables in statistical analyses.

The Criteria Document (section 7.1.3.4) discusses statistical modeling approaches that have been used to adjust for time-varying factors, highlighting a series of analyses that were done in a Health Effects Institute-funded reanalysis of numerous time-series studies. While the focus of these reanalyses was on associations with PM, a number of investigators also examined the sensitivity of O_3 coefficients to the extent of adjustment for temporal trends and weather factors. In addition, several recent studies, including U.S. multi-city studies (Bell *et al.*, 2005; Huang *et al.*, 2005; Schwartz *et al.*, 2005) and a meta-analysis study (Ito *et al.*, 2005), evaluated the effect of model specification on O_3-mortality associations. As discussed in the Criteria Document (section 7.6.3.1), these studies generally report that associations reported with O_3 are not substantially changed with alternative modeling strategies for adjusting for temporal trends and meteorologic effects. In the meta-analysis by Ito *et al.* (2005), a separate multi-city analysis was presented that found that alternative adjustments for weather resulted in up to 2-fold difference in the O_3 effect estimate. Significant confounding can occur when strong seasonal cycles are present, suggesting

that season-specific results are more generally robust than year-round results in such cases. A number of epidemiological studies have conducted season-specific analyses, and have generally reported stronger and more precise effect estimates for O_3 associations in the warm season than in analyses conducted in the cool seasons or over the full year.

(3) Consistency refers to the persistent finding of an association between exposure and outcome in multiple studies of adequate power in different persons, places, circumstances and times (CDC, 2004). In considering results from multi-city studies and single-city studies in different areas, the Criteria Document (p. 8–41) observes general consistency in effects of short-term O_3 exposure on mortality, respiratory hospitalization and other respiratory health outcomes. The variations in effects that are observed may be attributable to differences in relative personal exposure to O_3, as well as varying concentrations and composition of copollutants present in different regions. Thus, the Criteria Document (p. 8–41) concludes that ''consideration of consistency or heterogeneity of effects is appropriately understood as an evaluation of the similarity or general concordance of results, rather than an expectation of finding quantitative results with a very narrow range.''

(4) The Staff Paper recognizes that it is likely that there are biological thresholds for different health effects in individuals or groups of individuals with similar innate characteristics and health status. For O_3 exposure, individual thresholds would presumably vary substantially from person to person due to individual differences in genetic susceptibility, pre-existing disease conditions and possibly individual risk factors such as diet or exercise levels (and could even vary from one time to another for a given person). Thus, it would be difficult to detect a distinct threshold at the population level below which no individual would experience a given effect, especially if some members of a population are unusually sensitive even down to very low concentrations (EPA, 2004, p. 9–43, 9–44).

Some studies have tested associations between O_3 and health outcomes after removal of days with higher O_3 levels from the data set; such analyses do not necessarily indicate the presence or absence of a threshold, but provide some information on whether the relationship is found using only lower-concentration data. For example, using data from 95 U.S. cities, Bell *et al.* (2004) found that the effect estimate for an association between short-term O_3 exposure and mortality was little changed when days exceeding 0.060 ppm (24-hour average) were excluded in the analysis. Bell *et al.* (2006) found no difference in estimated effect even when all days with 24-hour O_3 concentrations <0.020 ppm were excluded (EPA, 2006a, p. 8–43). Using data from 8 U.S. cities, Mortimer and colleagues (2002) also reported that associations between O_3 and both lung function and respiratory symptoms remained statistically significant and of the same or greater magnitude in effect size when concentrations greater than 0.080 ppm (8-hour average) were excluded (EPA, 2006a, p. 7–46). Several single-city studies also report similar findings of associations that remain or are increased in magnitude and statistical significance when data at the upper end of the concentration range are removed (EPA, 2006a, section 7.6.5).

Other time-series epidemiological studies have used statistical modeling approaches to evaluate whether thresholds exist in associations between short-term O_3 exposure and mortality. As discussed in section 7.6.5 of the Criteria Document, one European multi-city study included evaluation of the shape of the concentration-response curve, and observed no deviation from a linear function across the range of O_3 measurements from the study (Gryparis *et al.*, 2004; EPA, 2006a, p. 7–154). Several single-city studies also observed a monotonic increase in associations between O_3 and morbidity that suggest that no population threshold exists (EPA, 2006a, p. 7–159).

On the other hand, a study in Korea used several different modeling approaches and reported that a threshold model provided the best fit for the data. The results suggested a potential threshold level of about 0.045 ppm (1-hour maximum concentration; <0.035 ppm, 8-hour average) for an association between mortality and short-term O_3 exposure during the summer months (Kim *et al.*, 2004; EPA, 2006a, p. 8–43). The authors reported larger effect estimates for the association for data above the potential threshold level, suggesting that an O_3-mortality association might be underestimated in the non-threshold model. A threshold analysis recently reported by Bell *et al.* (2006) for 98 U.S. communities, including the same 95 communities in Bell *et al.* (2004), indicated that if a population threshold existed for mortality, it would likely fall below a 24-hour average O_3 concentration of 0.015 ppm (<0.025 ppm, 8-hour average). In addition, Burnett and colleagues (1997a,b) plotted the relationships between air pollutant concentrations and both respiratory and cardiovascular hospitalization, and it appears in these results that the associations with O_3 are found in the concentration range above about 0.030 ppm (1-hour maximum; <0.025 ppm, 8-hour average). Vedal and colleagues (2003) reported a significant association between O_3 and mortality in British Columbia where O_3 concentrations were quite low (mean 1-hour maximum concentration of 0.0273 ppm). The authors did not specifically test for threshold levels, but the fact that the association was found in an area with such low O_3 concentrations suggests that any potential threshold level would be quite low in this data set.

In summary, the Criteria Document finds that, taken together, the available evidence from clinical and epidemiological studies suggests that no clear conclusion can now be reached with regard to possible threshold levels for O_3-related effects (EPA, 2006a, p. 8–44). Thus, the available epidemiological evidence neither supports nor refutes the existence of thresholds at the population level for effects such as increased hospital admissions and premature mortality. There are limitations in epidemiological studies that make discerning thresholds in populations difficult, including low data density in the lower concentration ranges, the possible influence of exposure measurement error, and interindividual differences in susceptibility to O_3-related effects in populations. There is the possibility that thresholds for individuals may exist in reported associations at fairly low levels within the range of air quality observed in the studies but not be detectable as population thresholds in epidemiological analyses.

b. Biological Plausibility and Coherence of Evidence

The body of epidemiological studies discussed in the Staff Paper emphasizes the role of O_3 in association with a variety of adverse respiratory and cardiovascular effects. While recognizing a variety of plausible mechanisms, there exists a general consensus suggesting that O_3 could, either directly or through initiation, interfere with basic cellular oxidation processes responsible for inflammation, reduced antioxidant capacity, atherosclerosis and other effects. Reasoning that O_3 influences cellular chemistry through basic oxidative properties (as opposed to a unique chemical interaction), other reactive oxidizing species (ROS) in the

atmosphere acting either independently or in combination with O_3 may also contribute to a number of adverse respiratory and cardiovascular health effects. Consequently, the role of O_3 should be considered more broadly as O_3 behaves as a generator of numerous oxidative species in the atmosphere.

In considering the biological plausibility of reported O_3-related effects, the Staff Paper (section 3.4.6) considers this broader question of health effects of pollutant mixtures containing O_3. The potential for O_3-related enhancements of PM formation, particle uptake, and exacerbation of PM-induced cardiovascular effects underscores the importance of considering contributions of O_3 interactions with other often co-occurring air pollutants to health effects due to O_3-containing pollutant mixes. The Staff Paper summarizes some examples of important pollutant mixture effects from studies that evaluate interactions of O_3 with other co-occurring pollutants, as discussed in chapters 4, 5, and 6 of the Criteria Document.

All of the types of interactive effects of O_3 with other co-occurring gaseous and nongaseous viable and nonviable PM components of ambient air mixes noted above argue that O_3 acts not only alone but that O_3 also is a surrogate indicator for air pollution mixes which may enhance the risk of adverse effects due to O_3 acting in combination with other pollutants. Viewed from this perspective, those epidemiologic findings of morbidity and mortality associations, with ambient O_3 concentrations extending to quite low levels in many cases, become more understandable and plausible.

The Criteria Document integrates epidemiological studies with mechanistic information from controlled human exposure studies and animal toxicological studies to draw conclusions regarding the coherence of evidence and biological plausibility of O_3-related health effects to reach judgments about the causal nature of observed associations. As summarized below, coherence and biological plausibility are discussed for each of the following types of O_3-related effects: short-term effects on the respiratory system, effects on the cardiovascular system, effects related to long-term O_3 exposure, and short-term mortality-related health endpoints.

i. Coherence and Plausibility of Short-Term Effects on the Respiratory System

Acute respiratory morbidity effects that have been associated with short-term exposure to O_3 include such health endpoints as decrements in lung function, increased airway responsiveness, airway inflammation, increased permeability related to epithelial injury, immune system effects, emergency department visits for respiratory diseases, and hospitalization due to respiratory illness.

Recent epidemiological studies have supported evidence available in the previous O_3 NAAQS review on associations between ambient O_3 exposure and decline in lung function for children. The Criteria Document (p. 8–34) concludes that exposure to ambient O_3 has a significant effect on lung function and is associated with increased respiratory symptoms and medication use, particularly in asthmatics. Short-term exposure to O_3 has also been associated with more severe morbidity endpoints, such as emergency department visits and hospital admissions for respiratory cases, including specific respiratory illness (*e.g.*, asthma) (EPA, 2006a, sections 7.3.2 and 7.3.3). In addition, a few epidemiological studies have reported positive associations between short-term O_3 exposure and respiratory mortality, though the associations are not generally statistically significant (EPA, 2006a, p. 7–108).

Considering the evidence from epidemiological studies, the results described above provide evidence for coherence in O_3-related effects on the respiratory system. Effect estimates from U.S. and Canadian studies are shown in Figure 1, where it can be seen that mostly positive associations have been reported with respiratory effects ranging from respiratory symptoms, such as cough or wheeze, to hospitalization for various respiratory diseases, and there is suggestive evidence for associations with respiratory mortality. Many of the reported associations are statistically significant, particularly in the warm season. In Figure 1, the central effect estimate is indicated by a square for each result, with the vertical bar representing the 95 percent confidence interval around the estimate. In the discussions that follow, an individual study result is considered to be statistically significant if the 95 percent confidence interval does not include zero.[21] Positive effect estimates indicate increases in the health outcome with O_3 exposure. In considering these results as a whole, it is important to consider not only whether statistical significance at the 95 percent confidence level is reported in individual studies but also the general pattern of results, focusing in particular on studies with greater statistical power that report relatively more precise results.

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[21] Results for studies of respiratory symptoms are presented as odds ratios; an odds ratio of 1.0 is equivalent to no effect, and thus is presented as equivalent to the zero effect estimate line.

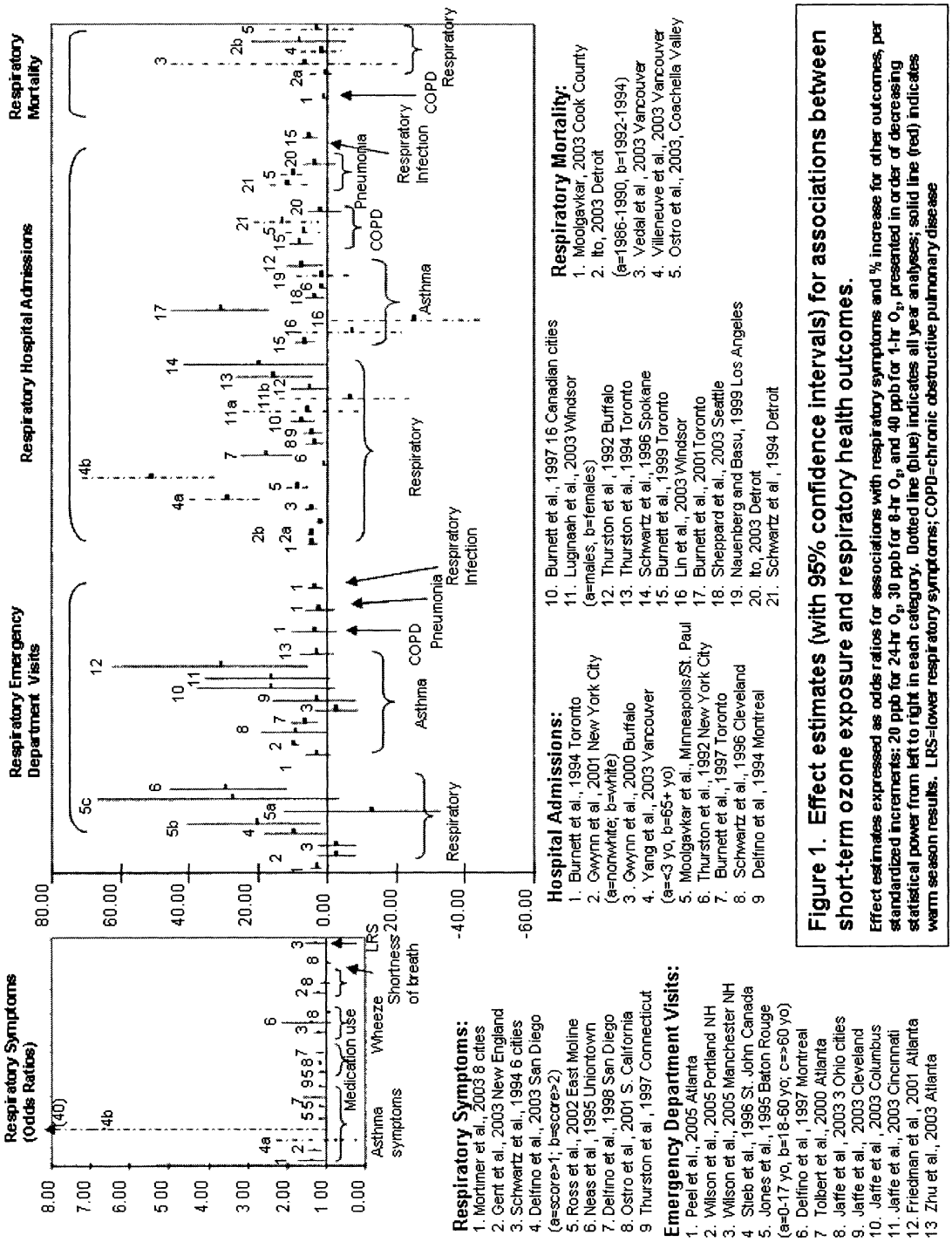

Figure 1. Effect estimates (with 95% confidence intervals) for associations between short-term ozone exposure and respiratory health outcomes.

Effect estimates expressed as odds ratios for associations with respiratory symptoms and % increase for other outcomes, per standardized increments: 20 ppb for 24-hr O_3, 30 ppb for 8-hr O_3, and 40 ppb for 1-hr O_3, presented in order of decreasing statistical power from left to right in each category. Dotted line (blue) indicates all year analyses; solid line (red) indicates warm season results. LRS=lower respiratory symptoms; COPD=chronic obstructive pulmonary disease

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Considering also evidence from toxicological, chamber, and field studies, the Criteria Document (section 8.6) discusses biological plausibility and coherence of evidence for acute O_3-induced respiratory health effects. Inhalation of O_3 for several hours while subjects are physically active can elicit both acute adverse pathophysiological changes and subjective respiratory tract symptoms (EPA, 2006a, section 8.4.2). Acute pulmonary responses observed in healthy humans exposed to O_3 at ambient concentrations include: decreased inspiratory capacity; mild bronchoconstriction; rapid, shallow breathing during exercise; subjective symptoms of tracheobronchial airway irritation, including cough and pain on deep inspiration; decreases in measures of lung function; and increased airway resistance. The severity of symptoms and magnitude of response depends on inhaled dose, individual O_3 sensitivity, and the degree of attenuation or enhancement of response resulting from previous O_3 exposures. Lung function studies of several animal species acutely exposed to relatively low O_3 levels (0.25 to 0.4 ppm) show responses similar to those observed in humans, including increased breathing frequency, decreased tidal volume, increased resistance, and decreased FVC. Alterations in breathing pattern return to normal within hours of exposure, and attenuation in functional responses

following repeated O_3 exposures is similar to those observed in humans.

Physiological and biochemical alterations investigated in controlled human exposure and animal toxicology studies tend to support certain hypotheses of underlying pathological mechanisms which lead to the development of respiratory-related effects reported in epidemiology studies (*e.g.*, increased hospitalization and medication use). Some of these are: (a) Decrements in lung function, (b) bronchoconstriction, (c) increased airway responsiveness, (d) airway inflammation, (e) epithelial injury, (f) immune system activation, (g) host defense impairment, and (h) sensitivity of individuals, which depends on at least a person's age, disease status, genetic susceptibility, and the degree of attenuation present due to prior exposures. The time sequence, magnitude, and overlap of these complex events, both in terms of development and recovery, illustrate the inherent difficulty of interpreting the biological plausibility of O_3-induced cardiopulmonary health effects (EPA, 2006a, p. 8–48).

The interaction of O_3 with airway epithelial cell membranes and ELF to form lipid ozonation products and ROS is supported by numerous human, animal and in vitro studies. Ozonation products and ROS initiate a cascade of events that lead to oxidative stress, injury, inflammation, airway epithelial damage and increased epithelial damage and increased alveolar permeability to vascular fluids. Repeated respiratory inflammation can lead to a chronic inflammatory state with altered lung structure and lung function and may lead to chronic respiratory diseases such as fibrosis and emphysema (EPA, 2006a, section 8.6.2). Continued respiratory inflammation also can alter the ability to respond to infectious agents, allergens and toxins. Acute inflammatory responses to O_3 are well documented, and lung injury can become apparent within 3 hours after exposure in humans.

Taken together, the Criteria Document concludes that the evidence from experimental human and animal toxicology studies indicates that acute O_3 exposure is causally associated with respiratory system effects, including O_3-induced pulmonary function decrements, respiratory symptoms, lung inflammation, and increased lung permeability, airway hyperresponsiveness, increased uptake of nonviable and viable particles, and consequent increased susceptibility to PM-related toxic effects and respiratory infections (EPA, 2006a, p. 8–48).

ii. Coherence and Plausibility of Effects on the Cardiovascular System

There is very limited experimental evidence of animals and humans that has evaluated possible mechanisms or physiological pathways by which acute O_3 exposures may induce cardiovascular system effects. Ozone induces lung injury, inflammation, and impaired mucociliary clearance, with a host of associated biochemical changes all leading to increased lung epithelial permeability. As noted above in section II.A.2.b, the generation of lipid ozonation products and ROS in lung tissues can influence pulmonary hemodynamics, and ultimately the cardiovascular system. Other potential mechanisms by which O_3 exposure may be associated with cardiovascular disease outcomes have been described. Laboratory animals exposed to relatively high O_3 concentrations (≥0.5 ppm) demonstrate tissue edema in the heart and lungs. Ozone-induced changes in heart rate, edema of heart tissue, and increased tissue and serum levels of ANF found with 8-hour 0.5 ppm O_3 exposure in animal toxicology studies (Vesely *et al.*, 1994a, b, c) also raise the possibility of potential cardiovascular effects of acute ambient O_3 exposures.

Animal toxicology studies have found both transient and persistent ventilatory responses with and without progressive decreases in heart rate (Arito *et al.*, 1997). Observations of O_3-induced vasoconstriction in a controlled human exposure study by Brook *et al.* (2002) suggests another possible mechanism for O_3-related exacerbations of preexisting cardiovascular disease. One controlled human study (Gong *et al.*, 1998) evaluated potential cardiovascular health effects of O_3 exposure. The overall results did not indicate acute cardiovascular effects of O_3 in either the hypertensive or control subjects. The authors observed an increase in rate-pressure product and heart rate, a decrement for FEV_1, and a >10 mm Hg increase in the alveolar/arterial pressure difference for O_2 following O_3 exposure. Foster *et al.* (1993) demonstrated that even in relatively young healthy adults, O_3 exposure can cause ventilation to shift away from the well-perfused basal lung. This effect of O_3 on ventilation distribution may persist beyond 24-hours post-exposure (Foster *et al.*, 1997). These findings suggest that O_3 may exert cardiovascular effects indirectly by impairing alveolar-arterial O_2 transfer and potentially reducing O_2 supply to the myocardium. Ozone exposure may increase myocardial work and impair pulmonary gas exchange to a degree that could perhaps be clinically important in persons with significant preexisting cardiovascular impairment.

As noted above in section II.A.2.b, a limited number of new epidemiological studies have reported associations between short-term O_3 exposure and effects on the cardiovascular system. Among these studies, three were population-based and involved relatively large cohorts; two of these studies evaluated associations between O_3 and heart rate variability (HRV) and the other study evaluated the association between O_3 levels and the relative risk of myocardial infarction (MI). Such studies may offer more informative results based on their large subject-pool and design. Results from these three studies were suggestive of an association between O_3 exposure and the cardiovascular endpoints studied. In other recent studies on the incidence of MI and some more subtle cardiovascular health endpoints, such as changes in HRV or cardiac arrhythmia, some but not all studies reported associations with short-term exposure to O_3 (EPA, 2006a, section 7.2.7.1). From these studies, the Criteria Document concludes that the ''current evidence is rather limited but suggestive of a potential effect on HRV, ventricular arrhythmias, and MI incidence'' (EPA, 2006a, p. 7–65).

An increasing number of studies have evaluated the association between O_3 exposure and cardiovascular hospital admissions. As discussed in section 7.3.4 of the Criteria Document, many reported negative or inconsistent associations, whereas other studies, especially those that examined the relationship when O_3 exposures were higher, have found positive and robust associations between O_3 and cardiovascular hospital admissions. The Criteria Document finds that the overall evidence from these studies remains inconclusive regarding the effect of O_3 on cardiovascular hospitalizations (EPA, 2006a, p. 7–83).

The Criteria Document notes that the suggestive positive epidemiologic findings of O_3 exposure on cardiac autonomic control, including effects on HRV, ventricular arrhythmias and MI, and reported associations between O_3 exposure and cardiovascular hospitalizations generally in the warm season gain credibility and scientific support from the results of experimental animal toxicology and human clinical studies, which are indicative of plausible pathways by which O_3 may exert cardiovascular effects (EPA, 2006a, section 8.6.1).

iii. Coherence and Plausibility of Effects Related to Long-Term O_3 Exposure

Human chamber studies can not evaluate effects of long-term exposures to O_3; there is some evidence available from toxicological studies. While early animal toxicology studies of long-term O_3 exposures were conducted using continuous exposures, more recent studies have focused on exposures which mimic diurnal and seasonal patterns and more realistic O_3 exposure levels (EPA, 2006a, p. 8–50). Studies of monkeys that compared these two exposure scenarios found increased airway pathology only with the latter design. Persistent and irreversible effects reported in chronic animal toxicology studies suggest that additional complementary human data are needed from epidemiologic studies (EPA, 2006a, p. 8–50).

There is limited evidence from human studies for long-term O_3-induced effects on lung function. As discussed in section 8.6.2 of the Criteria Document, previous epidemiological studies have provided only inconclusive evidence for either mortality or morbidity effects of long-term O_3 exposure. The Criteria Document observes that the inconsistency in findings may be due to a lack of precise exposure information, the possibility of selection bias, and the difficulty of controlling for confounders (EPA, 2006a, p. 8–50). Several new longitudinal epidemiology studies have evaluated associations between long-term O_3 exposures and morbidity and mortality and suggest that these long-term exposures may be related to changes in lung function in children; however, little evidence is available to support a relationship between chronic O_3 exposure and mortality or lung cancer incidence (EPA, 2006a, p. 8–50).

The Criteria Document (p. 8–51) concludes that evidence from animal toxicology studies strongly suggests that chronic O_3 exposure is capable of damaging the distal airways and proximal alveoli, resulting in lung tissue remodeling leading to apparent irreversible changes. Such structural changes and compromised pulmonary function caused by persistent inflammation may exacerbate the progression and development of chronic lung disease. Together with the limited evidence available from epidemiological studies, these findings offer some insight into potential biological mechanisms for suggested associations between long-term or seasonal exposures to O_3 and reduced lung function development in children which have been observed in epidemiologic studies (EPA, 2006a, p. 8–51).

iv. Coherence and Plausibility of Short-Term Mortality-Related Health Endpoints

An extensive epidemiological literature on air pollution related mortality risk estimates from the U.S., Canada, and Europe is discussed in the Criteria Document (sections 7.4 and 8.6.3). These single- and multi-city mortality studies coupled with meta-analyses generally indicate associations between acute O_3 exposure and elevated risk for all-cause mortality, even after adjustment for the influence of season and PM. Several single-city studies that specifically evaluated the relationship between O_3 exposure and cardiopulmonary mortality also reported results suggestive of a positive association (EPA, 2006a, p. 8–51). These mortality studies suggest a pattern of effects for causality that have biologically plausible explanations, but our knowledge regarding potential underlying mechanisms is very limited at this time and requires further research. Most of the physiological and biochemical parameters investigated in human and animal studies suggest that O_3-induced biochemical effects are relatively transient and attenuate over time. The Criteria Document (p. 8–52) hypothesizes a generic pathway of O_3-induced lung damage, potentially involving oxidative lung damage with subsequent inflammation and/or decline in lung function leading to respiratory distress in some sensitive population groups (*e.g.*, asthmatics), or other plausible pathways noted below that may lead to O_3-related contributions to cardiovascular effects that ultimately increase risk of mortality.

The third National Health and Nutrition Examination Follow-up data analysis indicates that about 20 percent of the adult population has reduced FEV_1 values, suggesting impaired lung function in some portion of the population. Most of these individuals have COPD, asthma or fibrotic lung disease (Manino *et al.*, 2003), which are associated with persistent low-grade inflammation. Furthermore, patients with COPD are at increased risk for cardiovascular disease. Also, lung disease with underlying inflammation may be linked to low-grade systemic inflammation associated with atherosclerosis, independent of cigarette smoking (EPA, 2006a, p. 8–52). Lung function decrements in persons with cardiopulmonary disease have been associated with inflammatory markers, such as C-reactive protein (CRP) in the blood. At a population level it has been found that individuals with the lowest FEV_1 values have the highest levels of CRP, and those with the highest FEV_1 values have the lowest CRP levels (Manino *et al.*, 2003; Sin and Man, 2003). This complex series of physiological and biochemical reactions following O_3 exposure may tilt the biological homeostasis mechanisms which could lead to adverse health effects in people with compromised cardiopulmonary systems.

Of much interest are several other types of newly available data that support reasonable hypotheses that may help to explain the findings of O_3-related increases in cardiovascular mortality observed in some epidemiological studies. These include the direct effect of O_3 on increasing PAF in lung tissue that can then enter the general circulation and possibly contribute to increased risk of blood clot formation and the consequent increased risk of MI, cerebrovascular events (stroke), or associated cardiovascular-related mortality. Ozone reactions with cholesterol in lung surfactant to form epoxides and oxysterols that are cytotoxic to lung and heart muscles and that contribute to atherosclerotic plaque formation in arterial walls represent another potential pathway. Stimulation of airway irritant receptors may lead to increases in tissue and serum levels of ANF, changes in heart rate, and edema of heart tissue. A few new field and panel studies of human adults have reported associations between ambient O_3 concentrations and changes in cardiac autonomic control (*e.g.*, HRV, ventricular arrhythmias, and MI). These represent plausible pathways that may lead to O_3-related contributions to cardiovascular effects that ultimately increase the risk of mortality.

In addition, O_3-induced increases in lung permeability allow more ready entry for inhaled PM into the blood stream, and O_3 exposure may increase the risk of PM-related cardiovascular effects. Furthermore, increased ambient O_3 levels contribute to ultrafine PM formation in the ambient air and indoor environments. Thus, the contributions of elevated ambient O_3 concentrations to ultrafine PM formation and human exposure, along with the enhanced uptake of inhaled fine particles, consequently may contribute to exacerbation of PM-induced cardiovascular effects in addition to those more directly induced by O_3 (EPA, 2006a, p. 8–53).

c. Summary

Judgments concerning the extent to which relationships between various health endpoints and ambient O_3

exposures are likely causal are informed by the conclusions and discussion in the Criteria Document as discussed above and summarized in section 3.7.5 of the Staff Paper. These judgments reflect the nature of the evidence and overall weight of the evidence, and are taken into consideration in the quantitative risk assessment discussed below in section II.B.2.

For example, there is a very high level of confidence that O_3 induces lung function decrements in healthy adults and children due in part to the dozens of controlled human exposure and epidemiological studies consistently showing such effects. The Criteria Document (p. 8–74) states that these studies provide clear evidence of causality for associations between short-term O_3 exposures and statistically significant declines in lung function in children, asthmatics and adults who exercise outdoors. An increase in respiratory symptoms (*e.g.*, cough, shortness of breath) has been observed in controlled human exposure studies of short-term O_3 exposures, and significant associations between ambient O_3 exposures and a wide variety of symptoms have been reported in epidemiology studies (EPA, 2006a, p. 8–75). Aggregate population time-series studies showing robust associations with respiratory hospital admissions and emergency department visits are strongly supported by human clinical, animal toxicologic, and epidemiologic evidence for O_3-related lung function decrements, respiratory symptoms, airway inflammation, and airway hyperreactivity. The Criteria Document (p. 8–77) concludes that, taken together, the overall evidence supports the inference of a causal relationship between acute ambient O_3 exposures and increased respiratory morbidity outcomes resulting in increased emergency department visits and hospitalizations during the warm season. Further, recent epidemiologic evidence has been characterized in the Criteria Document (p. 8–78) as highly suggestive that O_3 directly or indirectly contributes to non-accidental and cardiopulmonary-related mortality.

4. O_3-Related Impacts on Public Health

The following discussion draws from chapters 6 and 7 and section 8.7 of the Criteria Document and section 3.6 of the Staff Paper to characterize factors which modify responsiveness to O_3, subpopulations potentially at risk for O_3-related health effects, the adversity of O_3-related effects, and the size of the at-risk subpopulations in the U.S. These considerations are all important elements in characterizing the potential public health impacts associated with exposure to ambient O_3.

a. Factors That Modify Responsiveness to Ozone

There are numerous factors that can modify individual responsiveness to O_3. These include: influence of physical activity; age; gender and hormonal influences; racial, ethnic and socioeconomic status (SES) factors; environmental factors; and oxidant-antioxidant balance. These factors are discussed in more detail in section 6.5 of the Criteria Document.

It is well established that physical activity increases an individual's minute ventilation and will thus increase the dose of O_3 inhaled (EPA, 2006a, section 6.5.4). Increased physical activity results in deeper penetration of O_3 into more distal regions of the lungs, which are more sensitive to acute O_3 response and injury. This will result in greater lung function decrements for acute exposures of individuals during increased physical activity. Research has shown that respiratory effects are observed at lower O_3 concentrations if the level of exertion is increased and/or duration of exposure and exertion are extended. Predicted O_3-induced decrements in lung function have been shown to be a function of exposure concentration, duration and exercise level for healthy, young adults (McDonnell *et al.*, 1997).

Most of the studies investigating the influence of age have used lung function decrements and symptoms as measures of response. For healthy adults, lung function and symptom responses to O_3 decline as age increases. The rate of decline in O_3 responsiveness appears greater in those 18 to 35 years old compared to those 35 to 55 years old, while there is very little change after age 55. In one study (Seal *et al.*, 1996) analyzing a large data set, a 5.4% decrement in FEV1 was estimated for 20 year old individuals exposed to 0.12 ppm O_3, whereas similar exposure of 35 year old individuals were estimated to have a 2.6% decrement. While healthy children tend not to report respiratory symptoms when exposed to low levels of O_3, for subjects 18 to 36 years old symptom responses induced by O_3 tend to decrease with increasing age (McDonnell *et al.*, 1999).

Limited evidence of gender differences in response to O_3 exposure has suggested that females may be predisposed to a greater susceptibility to O_3. Lower plasma and NL fluid levels of the most prevalent antioxidant, uric acid, in females relative to males may be a contributing factor. Consequently, reduced removal of O_3 in the upper airways may promote deeper penetration. However, most of the evidence on gender differences appears to be equivocal, with one study (Hazucha *et al.*, 2003) suggesting that physiological responses of young healthy males and females may be comparable (EPA, 2006a, section 6.5.2).

A few studies have suggested that ethnic minorities might be more responsive to O_3 than Caucasian population groups (EPA, 2006a, section 6.5.3). This may be more the result of a lack of adequate health care and socioeconomic status (SES) than any differences in sensitivity to O_3. The limited data available, which have investigated the influence of race, ethnic or other related factors on responsiveness to O_3, prevent drawing any clear conclusions at this time.

Few human studies have examined the potential influence of environmental factors such as the sensitivity of individuals who voluntarily smoke tobacco (*i.e.*, smokers) and the effect of high temperatures. New controlled human exposure studies have confirmed that smokers are less responsive to O_3 than nonsmokers; however, time course of development and recovery of these effects, as well as reproducibility, was not different from nonsmokers (EPA, 2006a, section 6.5.5). Influence of ambient temperature on pulmonary effects induced by O_3 has been studied very little, but additive effects of heat and O_3 exposure have been reported.

Antioxidants, which scavenge free radicals and limit lipid peroxidation in the ELF, are the first line of defense against oxidative stress. Ozone exposure leads to absorption of O_3 in the ELF with subsequent depletion of antioxidant in the nasal ELF, but concentration and antioxidant enzyme activity in ELF or plasma do not appear related to O_3 responsiveness (EPA 2006a, section 6.5.6). Controlled studies of dietary antioxidant supplements have shown some protective effects on lung function decrements but not on symptoms and airway inflammatory responses. Dietary antioxidant supplements have provided some protection to asthmatics by attenuating post-exposure airway hyperresponsiveness. Animal studies have also supported the protective effects of ELF antioxidants.

b. At-Risk Subgroups for O_3-Related Effects

Several characteristics may increase the extent to which a population group shows increased susceptibility or vulnerability. Information on potentially susceptible and vulnerable groups is summarized in section 8.7 of the

Criteria Document. As described there, the term *susceptibility* refers to innate (*e.g.*, genetic or developmental) or acquired (*e.g.*, personal risk factors, age) factors that make individuals more likely to experience effects with exposure to pollutants. A number of population groups have been identified as potentially susceptible to health effects as a result of O_3 exposure, including people with existing lung diseases, including asthma, children and older adults, and people who have larger than normal lung function responses that may be due to genetic susceptibility. In addition, some population groups have been identified as having increased *vulnerability* to O_3-related effects due to increased likelihood of exposure while at elevated ventilation rates, including healthy children and adults who are active outdoors, for example, outdoor workers, and joggers. Taken together, the susceptible and vulnerable groups make up ''at-risk'' groups.[22]

i. Active People

A large group of individuals at risk from O_3 exposure consists of outdoor workers and children, adolescents, and adults who engage in outdoor activities involving exertion or exercise during summer daylight hours when ambient O_3 concentrations tend to be higher. This conclusion is based on a large number of controlled-human exposure studies and several epidemiologic field/panel studies which have been conducted with healthy children and adults and those with preexisting respiratory diseases (EPA 2006a, sections 6.2, 6.3, 7.2, and 8.4.4). The controlled human exposure studies show a clear O_3 exposure-response relationship with increasing spirometric and symptomatic response as exercise level increases. Furthermore, O_3-induced response increases as time of exposure increases. Studies of outdoor workers and others who participate in outdoor activities indicate that extended exposures to O_3 at elevated exertion levels can produce marked effects on lung function, as discussed above in section IIA.2 (Brauer *et al.*, 1996; Höppe *et al.*, 1995; Korrick *et al.*, 1998; McConnell *et al.*, 2002).

These field studies with subjects at elevated exertion levels support the extensive evidence derived from controlled human exposure studies. The majority of human chamber studies have examined the effects of O_3 exposure in subjects performing continuous or intermittent exercise for variable periods of time. Significant O_3-induced respiratory responses have been observed in clinical studies of exercising individuals. The epidemiologic studies discussed above also indicate that prolonged exposure periods, combined with elevated levels of exertion or exercise, may magnify O_3 effects on lung function. Thus, outdoor workers and others who participate in higher exertion activities outdoors during the time of day when high peak O_3 concentrations occur appear to be particularly vulnerable to O_3 effects on respiratory health. Although these studies show a wide variability of response and sensitivity among subjects and the factors contributing to this variability continue to be incompletely understood, the effect of increased exertion is consistent. It should be noted that this wide variability of response and sensitivity among subjects may be in part due to the wide range of other highly reactive photochemical oxidants coexisting with O_3 in the ambient air.

ii. People With Lung Disease

People with preexisting pulmonary disease are likely to be among those at increased risk from O_3 exposure. Altered physiological, morphological and biochemical states typical of respiratory diseases like asthma, COPD and chronic bronchitis may render people sensitive to additional oxidative burden induced by O_3 exposure. At the time of the last review, it was concluded that this group was at greater risk because the impact of O_3-induced responses on already-compromised respiratory systems would noticeably impair an individual's ability to engage in normal activity or would be more likely to result in increased self-medication or medical treatment. At that time there was little evidence that people with pre-existing disease were more responsive than healthy individuals in terms of the magnitude of pulmonary function decrements or symptomatic responses. The new results from controlled exposure and epidemiologic studies continue to indicate that individuals with preexisting pulmonary disease are a sensitive subpopulation for O_3 health effects.

Several clinical studies reviewed in the 1996 Criteria Document on atopic and asthmatic subjects had suggested but not clearly demonstrated enhanced responsiveness to acute O_3 exposure compared to healthy subjects. The majority of the newer studies reviewed in Chapter 6 of the Criteria Document indicate that asthmatics are as sensitive as, if not more sensitive than, normal subjects in manifesting O_3-induced pulmonary function decrements. In one key study (Horstman *et al.*, 1995), the FEV1 decrement observed in the asthmatics was significantly larger than in the healthy subjects (19% versus 10%, respectively). There was also a notable tendency for a greater O_3-induced decrease in FEF_{25-75} in asthmatics relative to the healthy subjects (24% versus 15%, respectively). A significant positive correlation in asthmatics was also reported between O_3-induced spirometric responses and baseline lung function, *i.e.*, responses increased with severity of disease.

Asthmatics present a differential response profile for cellular, molecular, and biochemical parameters (Criteria Document, Figure 8–1) that are altered in response to acute O_3 exposure. Ozone-induced increases in neutrophils, IL–8 and protein were found to be significantly higher in the BAL fluid from asthmatics compared to healthy subjects, suggesting mechanisms for the increased sensitivity of asthmatics (Basha *et al.*, 1994; McBride *et al.*, 1994; Scannell *et al.*, 1996; Hiltermann *et al.*, 1999; Holz *et al.*, 1999; Bosson *et al.*, 2003). Neutrophils, or PMNs, are the white blood cell most associated with inflammation. IL–8 is an inflammatory cytokine with a number of biological effects, primarily on neutrophils. The major role of this cytokine is to attract and activate neutrophils. Protein in the airways is leaked from the circulatory system, and is a marker for increased cellular permeability.

Bronchial constriction following provocation with O_3 and/or allergens presents a two-phase response. The early response is mediated by release of histamine and leukotrienes that leads to contraction of smooth muscle cells in the bronchi, narrowing the lumen and decreasing the airflow. In people with allergic airway disease, including people with rhinitis and asthma, these mediators also cause accumulation of eosinophils in the airways (Bascom *et al.*, 1990; Jorres *et al.*, 1996; Peden *et al.*, 1995 and 1997; Frampton *et al.*, 1997a; Michelson *et al.*, 1999; Hiltermann *et al.*, 1999; Holz *et al.*, 2002; Vagaggini *et al.*, 2002). In asthma, the eosinophil, which increases inflammation and allergic responses, is the cell most frequently associated with exacerbations of the disease. A study by Bosson *et al.* (2003) evaluated the difference in O_3-induced bronchial epithelial cytokine expression between healthy and asthmatic subjects. After O_3 exposure the epithelial expression of IL–5 and GM-CSF increased significantly in

[22] In the Staff Paper and documents from previous O_3 NAAQS reviews, ''at-risk'' groups have also been called ''sensitive'' groups, to mean both groups with greater inherent susceptibility and those more likely to be exposed.

asthmatics, compared to healthy subjects. Asthma is associated with Th2-related airway response (allergic response), and IL–5 is an important Th2-related cytokine. The O_3-induced increase in IL–5, and also in GM-CSF, which affects the growth, activation and survival of eosinophils, may indicate an effect on the Th2-related airway response and on airway eosinophils. The authors reported that the O_3-induced Th2-related cytokine responses that were found within the asthmatic group may indicate a worsening of their asthmatic airway inflammation and thus suggest a plausible link to epidemiological data indicating O_3-associated increases in bronchial reactivity and hospital admissions.

The accumulation of eosinophils in the airways of asthmatics is followed by production of mucus and a late-phase bronchial constriction and reduced airflow. In a study of 16 intermittent asthmatics, Hiltermann *et al.* (1999) found that there was a significant inverse correlation between the O_3-induced change in the percentage of eosinophils in induced sputum and the change in PC_{20}, the concentration of methacholine causing a 20% decrease in FEV_1. Characteristic O_3-induced inflammatory airway neutrophilia at one time was considered a leading mechanism of airway hyperresponsiveness. However, Hiltermann *et al.* (1999) determined that the O_3-induced change in percentage neutrophils in sputum was not significantly related to the change in PC_{20}. These results are consistent with the results of Zhang *et al.* (1995), which found neutrophilia in a murine model to be only coincidentally associated with airway hyperresponsiveness, *i.e.*, there was no cause and effect relationship. (Criteria Document, AX 6–26). Hiltermann *et al.* (1999) concluded that the results point to the role of eosinophils in O_3-induced airway hyperresponsiveness. Increases in O_3-induced nonspecific airway responsiveness incidence and duration could have important clinical implications for asthmatics.

Two studies (Jörres *et al.*, 1996; Holz *et al.*, 2002) observed increased airway responsiveness to O_3 exposure with bronchial allergen challenge in subjects with preexisting allergic airway disease. Jörres *et al.* (1996) found that O_3 causes an increased response to bronchial allergen challenge in subjects with allergic rhinitis and mild allergic asthma. The subjects were exposed to 0.25 ppm O_3 for 3 hours with IE. Airway responsiveness to methacholine was determined 1 hour before and after exposure; responsiveness to allergen was determined 3 hours after exposure. Statistically significant decreases in FEV_1 occurred in subjects with allergic rhinitis (13.8%) and allergic asthma (10.6%), and in healthy controls (7.3%). Methacholine responsiveness was statistically increased in asthmatics, but not in subjects with allergic rhinitis or healthy controls. Airway responsiveness to an individual's historical allergen (either grass and birch pollen, house dust mite, or animal dander) was significantly increased after O_3 exposure when compared to FA exposure. In subjects with asthma and allergic rhinitis, a maximum percent fall in FEV_1 of 27.9% and 7.8%, respectively, occurred 3 days after O_3 exposure when they were challenged with of the highest common dose of allergen. The authors concluded that subjects with asthma or allergic rhinitis, without asthma, could be at risk if a high O_3 exposure is followed by a high dose of allergen. Holz *et al.* (2002) reported an early phase lung function response in subjects with rhinitis after a consecutive 4-day exposure to 0.125 ppm O_3 that resulted in a clinically relevant (>20%) decrease in FEV1. Ozone-induced exacerbation of airway responsiveness persists longer and attenuates more slowly than O_3-induced lung function decrements and respiratory symptom responses and can have important clinical implications for asthmatics.

A small number of in vitro studies corroborate the differences in the responses of asthmatic and healthy subject generally found in controlled human exposure studies. In vitro studies (Schierhorn *et al.*, 1999) of nasal mucosal biopsies from atopic and nonatopic subjects exposed to 0.1 ppm O_3 found significant differences in release of IL–4, IL–6, IL–8, and TNF-α. Another study by Schierhorn *et al.* (2002) found significant differences in the O_3-induced release of the neuropeptides neurokinin A and substance P for allergic patients in comparison to nonallergic controls, suggesting increased activation of sensory nerves by O_3 in the allergic tissues. Another study by Bayram *et al.* (2002) using in vitro culture of bronchial epithelial cells recovered from atopic and nonatopic asthmatics also found significant increases in epithelial permeability in response to O_3 exposure.

The new data on airway responsiveness, inflammation, and various molecular markers of inflammation and bronchoconstriction indicate that people with asthma and allergic rhinitis (with or without asthma) comprise susceptible groups for O_3-induced adverse effects. This body of evidence indicates that human clinical and epidemiological panel studies of lung function decrements and respiratory symptoms that evaluate only healthy, non-asthmatic subjects likely underestimate the effects of O_3 exposure on asthmatics and other susceptible populations. The effects of O_3 on lung function, inflammation, and increased airway responsiveness demonstrated in subjects with asthma and other allergic airway diseases, provide plausible mechanisms underlying the more serious respiratory morbidity effects, such as emergency department visits and hospital admissions, and respiratory mortality effects.

A number of epidemiological studies have been conducted using asthmatic study populations. The majority of epidemiological panel studies that evaluated respiratory symptoms and medication use related to O_3 exposures focused on children. These studies suggest that O_3 exposure may be associated with increased respiratory symptoms and medication use in children with asthma. Other reported effects include respiratory symptoms, lung function decrements, and emergency department visits, as discussed in the Criteria Document (section 7.6.7.1). Strong evidence from a large multi-city study (Mortimer *et al.*, 2002), along with support from several single-city studies suggest that O_3 exposure may be associated with increased respiratory symptoms and medication use in children with asthma. With regard to ambient O_3 levels and increased hospital admissions and emergency department visits for asthma and other respiratory causes, strong and consistent evidence establishes a correlation between O_3 exposure and increased exacerbations of preexisting respiratory disease for 1-hour maximum O_3 concentrations <0.12 ppm. As discussed in the Criteria Document, section 7.3, several hospital admission and emergency department visit studies in the U.S., Canada, and Europe have reported positive associations between increase in O_3 and increased risk of emergency department visits and hospital admissions for asthma and other respiratory diseases, especially during the warm season. Finally, from epidemiological studies that included assessment of associations with specific causes of death, some studies have observed larger effects estimates for respiratory mortality and others have observed larger effects estimates for cardiovascular mortality. The apparent inconsistency regarding the effect size of O_3-related respiratory mortality may be due to reduced statistical power in this

subcategory of mortality (EPA, 2006a, p. 7–108).

Newly available reports from controlled human exposure studies (see chapter 6 in the Criteria Document) utilized subjects with preexisting cardiopulmonary diseases such as COPD, asthma, allergic rhinitis, and hypertension. The data generated from these studies that evaluated changes in spirometry did not find clear differences between filtered air and O_3 exposure in COPD subjects. However, the new data on airway responsiveness, inflammation, and various molecular markers of inflammation and bronchoconstriction indicate that people with atopic asthma and allergic rhinitis comprise susceptible groups for O_3-induced adverse health effects.

Although controlled human exposure studies have not found evidence of larger spirometric changes in people with COPD relative to healthy subjects, this may be due to the fact that most people with COPD are older adults who would not be expected to have such changes based on their age. However, in section 8.7.1, the Criteria Document notes that new epidemiological evidence indicates that people with COPD may be more likely to experience other effects, including emergency room visits, hospital admissions, or premature mortality. For example, results from an analysis of five European cities indicated strong and consistent O_3 effects on unscheduled respiratory hospital admissions, including COPD (Anderson *et al.*, 1997). Also, an analysis of a 9-year data set for the whole population of the Netherlands provided risk estimates for more specific causes of mortality, including COPD (Hoek *et al.*, 2000, 2001; reanalysis, Hoek, 2003); a positive, but nonsignificant, excess risk of COPD-related mortality was found to be associated with short-term O_3 concentrations. Moreover, as indicated by Gong *et al.* (1998), the effects of O_3 exposure on alveolar-arterial oxygen gradients may be more pronounced in patients with preexisting obstructive lung diseases. Relative to healthy elderly subjects, COPD patients have reduced gas exchange and low SaO2. Any inflammatory or edematous responses due to O_3 delivered to the well-ventilated regions of the COPD lung could further inhibit gas exchange and reduce oxygen saturation. In addition, O_3-induced vasoconstriction could also acutely induce pulmonary hypertension. Inducing pulmonary vasoconstriction and hypertension in these patients would perhaps worsen their condition, especially if their right ventricular function was already compromised (EPA, 2006a, section 6.10).

iii. Children and Older Adults

Supporting evidence exists for heterogeneity in the effects of O_3 by age. As discussed in section 6.5.1 of the Criteria Document, children, adolescents, and young adults (<18 yrs of age) appear, on average, to have nearly equivalent spirometric responses to O_3, but have greater responses than middle-aged and older adults when exposed to comparable O_3 doses. Symptomatic responses to O_3 exposure, however, do not appear to occur in healthy children, but are observed in asthmatic children, particularly those who use maintenance medications. For adults (>17 yrs of age) symptoms gradually decrease with increasing age. In contrast to young adults, the diminished symptomatic responses in children and the diminished symptomatic and spirometric responses in older adults increases the likelihood that these groups continue outdoor activities leading to greater O_3 exposure and dose.

As described in the section 7.6.7.2 of the Criteria Document, many epidemiological field studies focused on the effect of O_3 on the respiratory health of school children. In general, children experienced decrements in pulmonary function parameters, including PEF, FEV_1, and FVC. Increases in respiratory symptoms and asthma medication use were also observed in asthmatic children. In one German study, children with and without asthma were found to be particularly susceptible to O_3 effects on lung function. Approximately 20% of the children, both with and without asthma, experienced a greater than 10% change in FEV_1, compared to only 5% of the elderly population and athletes (Höppe *et al.*, 2003).

The American Academy of Pediatrics (2004) notes that children and infants are among the population groups most susceptible to many air pollutants, including O_3. This is in part because their lungs are still developing. For example, eighty percent of alveoli are formed after birth, and changes in lung development continue through adolescence (Dietert *et al.*, 2000). Children are also likely to spend more time outdoors than adults, which results in increased exposure to air pollutants (Wiley *et al.*, 1991a,b). Moreover, children have high minute ventilation rates and high levels of physical activity which also increases their dose (Plunkett *et al.*, 1992).

Several mortality studies have investigated age-related differences in O_3 effects (EPA, 2006a, section 7.6.7.2). Older adults are also often classified as being particularly susceptible to air pollution. The basis for increased O_3 sensitivity among the elderly is not known, but one hypothesis is that it may be related to changes in the respiratory tract lining fluid antioxidant defense network (Kelly *et al.*, 2003). (EPA 2006a, p. 8–60) Older adults have lower baseline lung function than younger people, and are also more likely to have preexisting lung and heart disease. Increased susceptibility of older adults to O_3 health effects is most clearly indicated in the newer mortality studies. Among the studies that observed positive associations between O_3 and mortality, a comparison of all age or younger age (≤65 years of age) O_3-mortality effect estimates to that of the elderly population (>65 years) indicates that, in general, the elderly population is more susceptible to O_3 mortality effects. The meta-analysis by Bell *et al.* (2005) found a larger mortality effect estimate for the elderly than for all ages. In the large U.S. 95 communities study (Bell *et al.*, 2004), mortality effect estimates were slightly higher for those aged 65 to 74 years, compared to individuals less than 65 years and 75 years or greater. The absolute effect of O_3 on premature mortality may be substantially greater in the elderly population because of higher rates of preexisting respiratory and cardiac diseases. The Criteria Document concludes that the elderly population (>65 years of age) appear to be at greater risk of O_3-related mortality and hospitalizations compared to all ages or younger populations (EPA, 2006a, p. 7–177).

The Criteria Document notes that, collectively, there is supporting evidence of age-related differences in susceptibility to O_3 lung function effects. The elderly population (>65 years of age) appear to be at increased risk of O_3-related mortality and hospitalizations, and children (<18 years of age) experience other potentially adverse respiratory health outcomes with increased O_3 exposure (EPA, 2006a, section 7.6.7.2).

iv. People With Increased Responsiveness to Ozone

New animal toxicology studies using various strains of mice and rats have identified O_3-sensitive and resistant strains and illustrated the importance of genetic background in determining O_3 susceptibility (EPA, 2006a, section 8.7.4). Controlled human exposure studies have also indicated a high degree of variability in some of the pulmonary physiological parameters. The variable effects in individuals have

been found to be reproducible, in other words, a person who has a large lung function response after exposure to O_3 will likely have about the same response if exposed again to the same dose of O_3. In human clinical studies, group mean responses are not representative of this segment of the population that has much larger than average responses to O_3. Recent studies of asthmatics by David *et al.* (2003) and Romieu *et al.* (2004) reported a role for genetic polymorphism in observed differences in antioxidant enzymes and genes involved in inflammation to modulate pulmonary function and inflammatory responses to O_3 exposure.[23]

Biochemical and molecular parameters extensively evaluated in these experiments were used to identify specific loci on chromosomes and, in some cases, to relate the differential expression of specific genes to biochemical and physiological differences observed among these species. Utilizing O_3-sensitive and O_3-resistant species, it has been possible to identify the involvement of increased airway reactivity and inflammation processes in O_3 susceptibility. However, most of these studies were carried out using relatively high doses of O_3, making the relevance of these studies questionable in human health effects assessment. The genes and genetic loci identified in these studies may serve as useful biomarkers and, ultimately, can likely be integrated with epidemiological studies.

v. Other Population Groups

There is limited, new evidence supporting associations between short-term O_3 exposures and a range of effects on the cardiovascular system. Some but not all, epidemiological studies have reported associations between short-term O_3 exposures and the incidence of MI and more subtle cardiovascular health endpoints, such as changes in HRV and cardiac arrhythmia. Others have reported associations with hospitalization or emergency department visits for cardiovascular diseases, although the results across the studies are not consistent. Studies also report associations between short-term O_3 exposure and mortality from cardiovascular or cardiopulmonary causes. The Criteria Document concludes that current cardiovascular effects evidence from some field studies is rather limited but supportive of a potential effect of short-term O_3 exposure and HRV, cardiac arrhythmia, and MI incidence (EPA, 2006a, p. 7–65). In the Criteria Document's evaluation of studies of hospital admissions for cardiovascular disease (EPA 2006a, section 7.3.4), it is concluded that evidence from this growing group of studies is generally inconclusive regarding an association with O_3 in studies conducted during the warm season (EPA 2006a, p. 7–83). This body of evidence suggests that people with heart disease may be at increased risk from short-term exposures to O_3; however, more evidence is needed to conclude that people with heart disease are a susceptible population.

Other groups that might have enhanced sensitivity to O_3, but for which there is currently very little evidence, include groups based on race, gender and SES, and those with nutritional deficiencies, which presents factors which modify responsiveness to O_3.

c. Adversity of Effects

In making judgments as to when various O_3-related effects become regarded as adverse to the health of individuals, the Administrator has looked to guidelines published by the American Thoracic Society (ATS) and the advice of CASAC. While recognizing that perceptions of ''medical significance'' and ''normal activity'' may differ among physicians, lung physiologists and experimental subjects, the ATS (1985)[24] defined adverse respiratory health effects as ''medically significant physiologic changes generally evidenced by one or more of the following: (1) Interference with the normal activity of the affected person or persons, (2) episodic respiratory illness, (3) incapacitating illness, (4) permanent respiratory injury, and/or (5) progressive respiratory dysfunction.'' During the 1997 review, it was concluded that there was evidence of causal associations from controlled human exposure studies for effects in the first of these five ATS-defined categories, evidence of statistically significant associations from epidemiological studies for effects in the second and third categories, and evidence from animal toxicology studies, which could be extrapolated to humans only with a significant degree of uncertainty, for the last two categories.

For ethical reasons, clear causal evidence from controlled human exposure studies still covers only effects in the first category. However, for this review there are results from epidemiological studies, upon which to base judgments about adversity, for effects in all of the categories. Statistically significant and robust associations have been reported in epidemiology studies falling into the second and third categories. These more serious effects include respiratory events (*e.g.*, triggering asthma attacks) that may require medication (*e.g.*, asthma), but not necessarily hospitalization, as well as respiratory hospital admissions and emergency department visits for respiratory causes. Less conclusive, but still positive associations have been reported for school absences and cardiovascular hospital admissions. Human health effects for which associations have been suggested through evidence from epidemiological and animal toxicology studies, but have not been conclusively demonstrated still fall primarily into the last two categories. In the last review of the O_3 standard, evidence for these more serious effects came from studies of effects in laboratory animals. Evidence from animal studies evaluated in this Criteria Document strongly suggests that O_3 is capable of damaging the distal airways and proximal alveoli, resulting in lung tissue remodeling leading to apparently irreversible changes. Recent advancements of dosimetry modeling also provide a better basis for extrapolation from animals to humans. Information from epidemiological studies provides supporting, but limited evidence of irreversible respiratory effects in humans than was available in the prior review. Moreover, the findings from single-city and multi-city time-series epidemiology studies and meta-analyses of these epidemiology studies are highly suggestive of an association between short-term O_3 exposure and mortality particularly in the warm season.

While O_3 has been associated with effects that are clearly adverse, application of these guidelines, in particular to the least serious category of effects related to ambient O_3 exposures, involves judgments about which medical experts on the CASAC panel and public commenters have expressed diverse views in the past. To help frame such judgments, EPA staff have defined specific ranges of functional responses

[23] Similar to animal toxicology studies referred above, a polymorphism in a specific proinflammatory cytokine gene has been implicated in O_3-induced lung function changes in healthy, mild asthmatics and individuals with rhinitis. These observations suggest a potential role for these markers in the innate susceptibility to O_3, however, the validity of these markers and their relevance in the context of prediction to population studies needs additional experimentation.

[24] In 2000, the American Thoracic Society (ATS) published an official statement on ''What Constitutes an Adverse Health Effect of Air Pollution?'' (ATS, 2000), which updated its earlier guidance (ATS, 1985). Overall, the new guidance does not fundamentally change the approach previously taken to define adversity, nor does it suggest a need at this time to change the structure or content of the tables describing gradation of severity and adversity of effects described below.

(*e.g.*, decrements in FEV_1 and airway responsiveness) and symptomatic responses (*e.g.*, cough, chest pain, wheeze), together with judgments as to the potential impact on individuals experiencing varying degrees of severity of these responses, that have been used in previous NAAQS reviews. These ranges of pulmonary responses and their associated potential impacts are summarized in Tables 3–2 and 3–3 of the Staff Paper.

For active healthy people, moderate levels of functional responses (*e.g.*, FEV_1 decrements of ≥10% but <20%, lasting up to 24 hours) and/or moderate symptomatic responses (*e.g.*, frequent spontaneous cough, marked discomfort on exercise or deep breath, lasting up to 24 hours) would likely interfere with normal activity for relatively few responsive individuals. On the other hand, EPA staff determined that large functional responses (*e.g.*, FEV_1 decrements ≥20%, lasting longer than 24 hours) and/or severe symptomatic responses (*e.g.*, persistent uncontrollable cough, severe discomfort on exercise or deep breath, lasting longer than 24 hours) would likely interfere with normal activities for many responsive individuals. EPA staff determined that these would be considered adverse under ATS guidelines. In the context of standard setting, CASAC indicated that a focus on the mid to upper end of the range of moderate levels of functional responses (*e.g.*, FEV_1 decrements ≥15% but <20%) is appropriate for estimating potentially adverse lung function decrements in active healthy people. However, for people with lung disease, even moderate functional (*e.g.*, FEV_1 decrements ≥10% but <20%, lasting up to 24 hours) or symptomatic responses (*e.g.*, frequent spontaneous cough, marked discomfort on exercise or with deep breath, wheeze accompanied by shortness of breath, lasting up to 24 hours) would likely interfere with normal activity for many individuals, and would likely result in more frequent use of medication. For people with lung disease, large functional responses (*e.g.*, FEV_1 decrements ≥20%, lasting longer than 24 hours) and/or severe symptomatic responses (*e.g.*, persistent uncontrollable cough, severe discomfort on exercise or deep breath, persistent wheeze accompanied by shortness of breath, lasting longer than 24 hours) would likely interfere with normal activity for most individuals and would increase the likelihood that these individuals would seek medical treatment. In the context of standard setting, the CASAC indicated (Henderson, 2006c) that a focus on the lower end of the range of moderate levels of functional responses (*e.g.*, FEV_1 decrements ≥10%) is most appropriate for estimating potentially adverse lung function decrements in active healthy people.

In judging the extent to which these impacts represent effects that should be regarded as adverse to the health status of individuals, an additional factor that has been considered in previous NAAQS reviews is whether such effects are experienced repeatedly during the course of a year or only on a single occasion. While some experts would judge single occurrences of moderate responses to be a ''nuisance,'' especially for healthy individuals, a more general consensus view of the adversity of such moderate responses emerges as the frequency of occurrence increases.

The new guidance builds upon and expands the 1985 definition of adversity in several ways. There is an increased focus on quality of life measures as indicators of adversity. There is also a more specific consideration of population risk. Exposure to air pollution that increases the risk of an adverse effect to the entire population is adverse, even though it may not increase the risk of any individual to an unacceptable level. For example, a population of asthmatics could have a distribution of lung function such that no individual has a level associated with significant impairment. Exposure to air pollution could shift the distribution to lower levels that still do not bring any individual to a level that is associated with clinically relevant effects. However, this would be considered to be adverse because individuals within the population would have diminished reserve function, and therefore would be at increased risk if affected by another agent.

Of the various effects of O_3 exposure that have been studied, many would meet the ATS definition of adversity. Such effects include, for example, any detectible level of permanent lung function loss attributable to air pollution, including both reductions in lung growth or acceleration of the age-related decline of lung function; exacerbations of disease in individuals with chronic cardiopulmonary diseases; reversible loss of lung function in combination with the presence of symptoms; as well as more serious effects such as those requiring medical care including hospitalization and, obviously, mortality.

d. Size of At-Risk Subpopulations

Although O_3-related health risk estimates may appear to be small, their significance from an overall public health perspective is determined by the large numbers of individuals in the subpopulations potentially at-risk for O_3-related health effects discussed above. For example, a population of concern includes people with respiratory disease, including approximately 11 percent of U.S. adults and 13 percent of children who have been diagnosed with asthma and 6 percent of adults with chronic obstructive pulmonary disease (chronic bronchitis and/or emphysema) in 2002 and 2003 (Table 8–4 in the Criteria Document, section 8.7.5.2). More broadly, individuals with preexisting cardiopulmonary disease may constitute an additional population of concern, with potentially tens of millions of people included in each disease category. In addition, subpopulations based on age group also comprise substantial segments of the population that may be potentially at risk for O_3-related health impacts. Based on U.S. census data from 2003, about 26 percent of the U.S. population are under 18 years of age and 12 percent are 65 years of age or older. Hence, large proportions of the U.S. population are included in age groups include those most likely to have increased susceptibility to the health effects of O_3 and or those with the highest ambient O_3 exposures.

The Criteria Document (section 8.7.5.2) notes that the health statistics data illustrate what is known as the ''pyramid'' of effects. At the top of the pyramid, there are approximately 2.5 millions deaths from all causes per year in the U.S. population, with about 100,000 deaths from chronic lower respiratory diseases. For respiratory health diseases, there are nearly 4 million hospital discharges per year, 14 million emergency department visits, 112 million ambulatory care visits, and an estimated 700 million restricted activity days per year due to respiratory conditions from all causes per year. Applying small risk estimates for the O_3-related contribution to such health effects with relatively large baseline levels of health outcomes can result in quite large public health impacts related to ambient O_3 exposure. Thus, even a small percentage reduction in O_3 health impacts on cardiopulmonary diseases would reflect a large number of avoided cases. In considering this information together with the concentration-response relationships that have been observed between exposure to O_3 and various health endpoints, the Criteria

Document (section 8.7.5.2) concludes that exposure to ambient O_3 likely has a significant impact on public health in the U.S.

B. Human Exposure and Health Risk Assessments

To put judgments about health effects that are adverse for individuals into a broader public health context, EPA has developed and applied models to estimate human exposures and health risks. This broader context includes consideration of the size of particular population groups at risk for various effects, the likelihood that exposures of concern will occur for individuals in such groups under varying air quality scenarios, estimates of the number of people likely to experience O_3-related effects, the variability in estimated exposures and risks, and the kind and degree of uncertainties inherent in assessing the exposures and risks involved.

As discussed below there are a number of important uncertainties that affect the exposure and health risk estimates. It is also important to note that there have been significant improvements in both the exposure and health risk model. CASAC expressed the view that the exposure analysis represents a state-of-the-art modeling approach and that the health risk assessment was ''well done, balanced and reasonably communicated'' (Henderson, 2006c). While recognizing and considering the kind and degree of uncertainties in both the exposure and health risk estimates, the Staff Paper judged that the quality of the estimates is such that they are suitable to be used as an input to the Administrator's decisions on the O_3 primary standard (Staff Paper, p. 6–20—6–21).

In modeling exposures and health risks associated with just meeting the current and alternative O_3 standards, EPA has simulated air quality to represent conditions just meeting these standards based on O_3 air quality patterns in several recent years and on how the shape of the O_3 air quality distribution has changed over time based on historical trends in monitored O_3 air quality data. As described in the Staff Paper (section 4.5.8) and discussed below, recent O_3 air quality distributions have been statistically adjusted to simulate just meeting the current and selected alternative standards. These simulations do not reflect any consideration of specific control programs or strategies designed to achieve the reductions in emissions required to meet the specified standards. Further, these simulations do not represent predictions of when, whether, or how areas might meet the specified standards.[25]

As noted in section I.C above, around the time of the release of the final Staff Paper in January 2007, EPA discovered a small error in the exposure model that when corrected resulted in slight increases in the simulated exposures. Since the exposure estimates are an input to the lung function portion of the health risk assessment, this correction also resulted in slight increases in the lung function risk estimates as well. The exposure and risk estimates discussed in this notice reflect the corrected estimates, and thus are slightly different than the exposure and risk estimates cited in the January 31, 2007 Staff Paper.[26]

1. Exposure Analyses

a. Overview

The EPA conducted exposure analyses using a simulation model to estimate O_3 exposures for the general population, school age children (ages 5–18), and school age children with asthma living in 12 U.S. metropolitan areas representing different regions of the country where the current 8-hour O_3 standard is not met. The emphasis on children reflects the finding of the last O_3 NAAQS review that children are an important at-risk group. The 12 modeled areas combined represent a significant fraction of the U.S. urban population, 89 million people, including 18 million school age children of whom approximately 2.6 million have asthma. The selection of urban areas to include in the exposure analysis took into consideration the location of O_3 epidemiological studies, the availability of ambient O_3 data, and the desire to represent a range of geographic areas, population demographics, and O_3 climatology. These selection criteria are discussed further in chapter 5 of the Staff Paper. The geographic extent of each modeled area consists of the census tracts in the combined statistical area (CSA) as defined by OMB (OMB, 2005).[27]

Exposure estimates were developed using a probabilistic exposure model that is designed to explicitly model the numerous sources of variability that affect people's exposures. As discussed below, the model estimates population exposures by simulating human activity patterns, air conditioning prevalence, air exchange rates, and other factors. The modeled exposure estimates were developed for three recent years of ambient O_3 concentrations (2002, 2003, and 2004), as well as for O_3 concentrations adjusted to simulate conditions associated with just meeting the current NAAQS and various alternative 8-hour standards based on the three year period 2002–2004.[28] This exposure assessment is more fully described and presented in the Staff Paper and in a technical support document, *Ozone Population Exposure Analysis for Selected Urban Areas* (US EPA, 2006b; hereafter Exposure Analysis TSD). The scope and methodology for this exposure assessment were developed over the last few years with considerable input from the CASAC Ozone Panel and the public.[29]

The goals of the O_3 exposure assessment were: (1) To provide estimates of the size of at-risk populations exposed to various levels associated with recent O_3 concentrations, and with just meeting the current O_3 NAAQS and alternative O_3 standards, in specific urban areas; (2) to provide distributions of exposure estimates over the entire range of ambient O_3 concentrations as an important input to the lung function risk assessment summarized below in section II.B.2; (3) to develop a better understanding of the influence of various inputs and assumptions on the exposure estimates; and (4) to gain insight into the distribution of exposures and patterns of exposure

[25] Modeling that projects whether and how areas might attain alternative standards in a future year is presented in the Regulatory Impact Analysis being prepared in connection with this rulemaking.

[26] EPA plans to make available corrected versions of the final Staff Paper, and human exposure and health risk assessment technical support documents on or around July 16, 2007 on the EPA web site listed in the Availability of Related Information section of this notice.

[27] The 12 CSAs modeled are: Atlanta-Sandy Springs-Gainesville, GA–AL; Boston-Worcester-Manchester, MA–NH; Chicago-Naperville-Michigan City, IL–IN–WI; Cleveland-Akron-Elyria, OH; Detroit-Warren-Flint, MI; Houston-Baytown-Huntsville, TX; Los Angeles-Long Beach-Riverside, CA; New York-Newark-Bridgeport, NY–NJ–CT–PA; Philadelphia-Camden-Vineland, PA–NJ–DE–MD; Sacramento-Arden-Arcade-Truckee, CA–NV; St. Louis-St. Charles-Farmington, MO–IL; Washington-Baltimore-N. Virginia, DC–MD–VA–WV.

[28] All 12 of the CSAs modeled did not meet the current O_3 NAAQS for the three year period examined.

[29] The general approach used in the current exposure assessment was described in the draft Health Assessment Plan (EPA, 2005a) that was released to the CASAC and general public in April 2005 and was the subject of a consultation with the CASAC O_3 Panel on May 5, 2005. In October 2005, OAQPS released the first draft of the Staff Paper containing a chapter discussing the exposure analyses and first draft of the Exposure Analyses TSD for CASAC consultation and public review on December 8, 2005. In July 2006, OAQPS released the second draft of the Staff Paper and second draft of the Exposure Analyses TSD for CASAC review and public comment which was held by the CASAC O_3 Panel on August 24–25, 2006.

reductions associated with meeting alternative O_3 standards.

EPA recognizes that there are many sources of variability and uncertainty inherent in the inputs to this assessment and that there is uncertainty in the resulting O_3 exposure estimates. With respect to variability, the exposure modeling approach accounts for variability in ambient O_3 levels, demographic characteristics, physiological attributes, activity patterns, and factors affecting microenvironmental (*e.g.*, indoor) concentrations. In EPA's judgment, the most important uncertainties affecting the exposure estimates are related to the modeling of human activity patterns over an O_3 season, the modeling of variations in ambient concentrations near roadways, and the modeling of air exchange rates that affect the amount of O_3 that penetrates indoors. Another important uncertainty that affects the estimation of how many exposures are associated with moderate or greater exertion, is the characterization of energy expenditure for children engaged in various activities. As discussed in more detail in the Staff Paper (section 4.3.4.7), the uncertainty in energy expenditure values carries over to the uncertainty of the modeled breathing rates, which are important since they are used to classify exposures occurring at moderate or greater exertion which are the relevant exposures since O_3-related effects observed in clinical studies only are observed when individuals are engaged in some form of exercise. The uncertainties in the exposure model inputs and the estimated exposures have been assessed using quantitative uncertainty and sensitivity analyses. Details are discussed in the Staff Paper (section 4.6) and in a technical memorandum describing the exposure modeling uncertainty analysis (Langstaff, 2007).

b. Scope and Key Components

Population exposures to O_3 are primarily driven by ambient outdoor concentrations, which vary by time of day, location, and peoples' activities. Outdoor O_3 concentration estimates used in the exposure assessment are provided by measurements and statistical adjustments to the measured concentrations. The current exposure analysis allows comparisons of population exposures to O_3 within each urban area, associated with current O_3 levels and with O_3 levels just meeting several potential alternative air quality standards or scenarios. Human exposure, regardless of the pollutant, depends on where individuals are located and what they are doing. Inhalation exposure models are useful in realistically estimating personal exposures to O_3 based on activity-specific breathing rates, particularly when recognizing that large scale population exposure measurement studies have not been conducted that are representative of the overall population or at-risk subpopulations.

The model EPA used to simulate O_3 population exposure is the Air Pollutants Exposure Model (APEX), the human inhalation exposure model within the Total Risk Integrated Methodology (TRIM) framework (EPA, 2006c,d). APEX is conceptually based on the probabilistic NAAQS exposure model for O_3 (pNEM/O_3) used in the last O_3 NAAQS review. Since that time, the model has been restructured, improved, and expanded to reflect conceptual advances in the science of exposure modeling and newer input data available for the model. Key improvements to algorithms include replacement of the cohort approach with a probabilistic sampling approach focused on individuals, accounting for fatigue and oxygen debt after exercise in the calculation of breathing rates, and a new approach for construction of longitudinal activity patterns for simulated persons. Major improvements to data input to the model include updated air exchange rates, more recent census and commuting data, and a greatly expanded daily time-activities database.

APEX is a probabilistic model designed to explicitly model the numerous sources of variability that affect people's exposures. APEX simulates the movement of individuals through time and space and estimates their exposures to O_3 in indoor, outdoor, and in-vehicle microenvironments. The exposure model takes into account the most significant factors contributing to total human O_3 exposure, including the temporal and spatial distribution of people and O_3 concentrations throughout an urban area, the variation of O_3 levels within each microenvironment, and the effects of exertion on breathing rate in exposed individuals. A more detailed description of APEX and its application is presented in chapter 4 of the Staff Paper and associated technical documents (EPA, 2006b, c, d).

Several methods have been used to evaluate the APEX model and to characterize the uncertainty of the model estimates. These include conducting model evaluation, sensitivity analyses, and a detailed uncertainty analysis for one urban area. These are discussed fully in the Staff Paper (section 4.6) and in Langstaff (2007). The uncertainty of model structure was judged to be of lesser importance than the uncertainties of the model inputs and parameters. Model structure refers to the algorithms in APEX designed to simulate the processes that result in people's exposures, for example, the way that APEX models exposures to individuals when they are near roads. The uncertainties in the model input data (*e.g.*, measurement error, ambient concentrations, air exchange rates, and activity pattern data) have been assessed individually, and their impact on the uncertainty in the modeled exposure estimates was assessed in a unified quantitative analysis with results expressed in the form of estimated confidence ranges around the estimated measures of exposure. This uncertainty analysis was conducted for one urban area (Boston) using the observed 2002 O_3 concentrations and 2002 concentrations adjusted to simulate just meeting the current standard, with the expectation that the results would be similar for other cities and years. One significant source of uncertainty, due to limitations in the database used to model peoples' daily activities, was not included in the unified analysis, and was assessed through separate sensitivity analyses. This analysis indicates that the uncertainty of the exposure results is relatively small. For example, 95 percent uncertainty intervals were calculated for the APEX estimates of the percent of children or asthmatic children with exposures above 0.060, 0.070, or 0.080 ppm under moderate exertion, for two air quality scenarios (current 2002 and 2002 adjusted to simulate just meeting the current standard) in Boston (Tables 26 and 27 in Langstaff, 2007). The 95 percent uncertainty intervals for this set of 12 exposure estimates indicate the possibility of underpredictions of the exposure estimates ranging from 3 to 25 percent of the modeled estimates, and overpredictions ranging from 4 to 11 percent of the estimates. For example, APEX estimates the percent of asthmatic children with exposures above 0.070 ppm under moderate exertion to be 24 percent, for Boston 2002 O_3 concentrations adjusted to simulate just meeting the current standard. The 95 percent uncertainty interval for this estimate is 23–30 percent, or −4 to +25 percent of the estimate. These uncertainty intervals do not include the uncertainty engendered by limitations of the activity database, which is in the range of one to ten percent.

The exposure periods modeled here are the O_3 seasons in 2002, 2003, and

2004. The O_3 season in each area includes the period of the year where elevated O_3 levels tend to be observed and for which routine hourly O_3 monitoring data are available. Typically this period spans from March or April through September or October, or in some areas, spanning the entire year. Three years were modeled to reflect the substantial year-to-year variability that occurs in O_3 levels and related meteorological conditions, and because the standard is specified in terms of a three-year period. The year-to-year variability observed in O_3 levels is due to a combination of different weather patterns and the variation in emissions of O_3 precursors. Nationally, 2002 was a relatively high year with respect to the 4th highest daily maximum 8-hour O_3 levels observed in urban areas across the U.S. (EPA, 2007, Figure 2–16), with the mean of the distribution of O_3 levels for the urban monitors being in the upper third among the years 1990 through 2006. In contrast, on a national basis, 2004 is the lowest year on record through 2006 for this same air quality statistic, and 8-hour daily maximum O_3 levels observed in most, but not all of the 12 urban areas included in the exposure and risk analyses were relatively low compared to other recent years. The 4th highest daily maximum 8-hour O_3 levels observed in 2003 in the 12 urban areas and nationally generally were between those observed in 2002 and 2004.

Regulatory scenarios examined include the current 0.08 ppm, average of the 4th daily maximum 8-hour averages over a three year period standard; standards with the same form but with alternative levels of 0.080, 0.074, 0.070, and 0.064 ppm; standards specified as the average of the 3rd highest daily maximum 8-hour averages over a three year period with alternative levels of 0.084 and 0.074 ppm; and a standard specified as the average of the 5th highest daily maximum 8-hour averages over a three year period with a level of 0.074 ppm.[30] The current standard uses a rounding convention that allows areas to have an average of the 4th daily maximum 8-hour averages as high as 0.084 ppm and still meet the standard. All alternative standards analyzed were intended to reflect improved precision in the measurement of ambient concentrations, where the precision would extend to three instead of two decimal places (in ppm).

The current standard and all alternative standards were modeled using a quadratic rollback approach to adjust the hourly concentrations observed in 2002–2004 to yield a design value[31] corresponding to the standard being analyzed. The quadratic rollback technique reduces higher concentrations more than lower concentrations near ambient background levels.[32] This procedure was considered in a sensitivity analysis in the last review of the O_3 standard and has been shown to be more realistic than a linear, proportional rollback method, where all of the ambient concentrations are reduced by the same factor.

c. Exposure Estimates and Key Observations

The exposure assessment, which provides estimates of the number of people exposed to different levels of ambient O_3 while at specified exertion levels[33] serve two purposes. First, the entire range of modeled personal exposures to ambient O_3 is an essential input to the portion of the health risk assessment based on exposure-response functions from controlled human exposure studies, discussed in the next section. Second, estimates of personal exposures to ambient O_3 concentrations at and above specific benchmark levels provide some perspective on the public health impacts of health effects that we cannot currently evaluate in quantitative risk assessments that may occur at current air quality levels, and the extent to which such impacts might be reduced by meeting the current and alternative standards. This is especially true when there are exposure levels at which we know or can reasonably infer that specific O_3-related health effects are occurring. We refer to exposures at and above these benchmark concentrations as ''exposures of concern.''

EPA emphasizes that, although the analysis of ''exposures of concern'' was conducted using three discrete benchmark levels (*i.e.*, 0.080, 0.070, and 0.060 ppm), the concept is more appropriately viewed as a continuum with greater confidence and less uncertainty about the existence of health effects at the upper end and less confidence and greater uncertainty as one considers increasingly lower O_3 exposure levels. EPA recognizes that there is no sharp breakpoint within the continuum ranging from at and above 0.080 ppm down to 0.060 ppm. In considering the concept of exposures of concern, it is important to balance concerns about the potential for health effects and their severity with the increasing uncertainty associated with our understanding of the likelihood of such effects at lower O_3 levels.

Within the context of this continuum, estimates of exposures of concern at discrete benchmark levels provide some perspective on the public health impacts of O_3-related health effects that have been demonstrated in human clinical and toxicological studies but cannot be evaluated in quantitative risk assessments, such as lung inflammation, increased airway responsiveness, and changes in host defenses. They also help in understanding the extent to which such impacts have the potential to be reduced by meeting the current and alternative standards. In the selection of specific benchmark concentrations for this analysis, we first considered the exposure level of 0.080 ppm, at which there is a substantial amount of clinical evidence demonstrating a range of O_3-related health effects including lung inflammation and airway responsiveness in healthy individuals. Thus, as in the last review, this level was selected as a benchmark level for this assessment of exposures of concern. Evidence newly available in this review is the basis for identifying additional, lower benchmark levels of 0.070 and 0.060 ppm for this assessment.

More specifically, as discussed above in section II.A.2, evidence available from controlled human exposure and epidemiology studies indicates that people with asthma have larger and more serious effects than healthy individuals, including lung function, respiratory symptoms, increased airway

[30] The current O_3 standard is 0.08 ppm, but the current rounding convention specifies that the average of the 4th daily maximum 8-hour average concentrations over a three-year period must be at 0.084 ppm or lower to be in attainment of the standard. When EPA staff selected alternative standards to analyze, it was presumed that the same type of rounding convention would be used, and thus alternative standards of 0.084, 0.074, 0.064 ppm were chosen.

[31] A design value is a statistic that describes the air quality status of a given area relative to the level of the NAAQS. Design values are often based on multiple years of data, consistent with specification of the NAAQS in Part 50 of the CFR. For the current O_3 NAAQS, the 3-year average of the annual 4th-highest daily maximum 8-hour average concentrations, based on the monitor within (or downwind of) an urban area yielding the highest 3-year average, is the design value.

[32] The quadratic rollback approach and evaluation of this approach are described by Johnson (1997), Duff *et al.* (1998) and Rizzo (2005, 2006).

[33] As discussed above in Section II.A., O_3 health responses observed in human clinical studies are associated with exposures while engaged in moderate or greater exertion and, therefore, these are the exposure measures of interest. The level of exertion of individuals engaged in particular activities is measured by an equivalent ventilation rate (EVR), ventilation normalized by body surface area (BSA, in m^2), which is calculated as VE/BSA, where VE is the ventilation rate (liters/minute). Moderate and greater exertion levels were defined as EVR > 13 liters/min-m^2 (Whitfield *et al.*, 1996) to correspond to the exertion levels measured in most subjects studied in the controlled human exposure studies that reported health effects associated with 6.6 hour O_3 exposures.

responsiveness, and pulmonary inflammation, which has been shown to be a more sensitive marker than lung function responses. Further, a substantial new body of evidence from epidemiology studies shows associations with serious respiratory morbidity and cardiopulmonary mortality effects at O_3 levels that extend below 0.080 ppm. Additional, but very limited new evidence from controlled human exposure studies shows lung function decrements and respiratory symptoms in healthy subjects at an O_3 exposure level of 0.060 ppm. The selected benchmark level of 0.070 ppm reflects the new information that asthmatics have larger and more serious effects than healthy people and therefore controlled human exposure studies done with healthy subjects may underestimate effects in this group, as well as the substantial body of epidemiological evidence of associations with O_3 levels below 0.080 ppm. The selected benchmark level of 0.060 ppm additionally reflects the very limited new evidence from controlled human exposure studies that show lung function decrements and respiratory symptoms in some healthy subjects at the 0.060 ppm exposure level, recognizing that asthmatics are likely to have more serious responses and that lung function is not likely to be as sensitive a marker for O_3 effects as is lung inflammation.

The estimates of exposures of concern were reported in terms of both ''people exposed'' (the number and percent of people who experience a given level of O_3 concentrations, or higher, at least one time during the O_3 season in a given year) and ''occurrences of exposure'' (the number of times a given level of pollution is experienced by the population of interest, expressed in terms of person-days of occurrences). Estimating exposures of concern is important because it provides some indication of the potential public health impacts of a range of O_3-related health outcomes, such as lung inflammation, increased airway responsiveness, and changes in host defenses. These particular health effects have been demonstrated in controlled human exposure studies of healthy individuals to occur at levels as low as 0.080 ppm O_3, but have not been evaluated at lower levels in controlled human exposure studies. EPA has not included these effects in the quantitative risk assessment due to a lack of adequate information on the exposure-response relationships.

The 1997 O_3 NAAQS review estimated exposures associated with 1-hour heavy exertion, 1-hour moderate exertion, and 8-hour moderate exertion for children, outdoor workers, and the general population. EPA's analysis in the 1997 Staff Paper showed that exposure estimates based on the 8-hour moderate exertion scenario for children yielded the largest number of children experiencing exposures at or above exposures of concern. Consequently, EPA has chosen to focus on the 8-hour moderate and greater exertion exposures in all and asthmatic school age children in the current exposure assessment. While outdoor workers and other adults who engage in moderate or greater exertion for prolonged durations while outdoors during the day in areas experiencing elevated O_3 concentrations also are at risk for experiencing exposures associated with O_3-related health effects, EPA did not focus on quantitative estimates for these populations due to the lack of information about the number of individuals who regularly work or exercise outdoors. Thus, the exposure estimates presented here and in the Staff Paper are most useful for making relative comparisons across alternative air quality scenarios and do not represent the total exposures in all children or other groups within the general population associated with the air quality scenarios.

Population exposures to O_3 were estimated in 12 urban areas for 2002, 2003, and 2004 air quality, and also using O_3 concentrations adjusted to just meet the current and several alternative standards. The estimates of 8-hour exposures of concern at and above benchmark levels of 0.080, 0.070, and 0.060 ppm aggregated across all 12 areas are shown in Table 1 for air quality scenarios just meeting the current and four alternative 8-hour average standards.[34] Table 1 provides estimates of the number and percent of school age children and asthmatic school age children exposed, with daily 8-hour maximum exposures at or above each O_3 benchmark level of exposures of concern, while at intermittent moderate or greater exertion and based on O_3 concentrations observed in 2002 and 2004. Table 1 summarizes estimates for 2002 and 2004, because these years reflect years that bracket relatively higher and lower O_3 levels, with year 2003 generally containing O_3 levels in between when considering the 12 urban areas modeled. This table also reports the percent change in the number of persons exposed when a given alternative standard is compared with the current standard.

Key observations important in comparing exposure estimates associated with just meeting the current NAAQS and alternative standards under consideration include:

(1) As shown in Table 6–1 of the Staff Paper, the patterns of exposure in terms of percentages of the population exceeding a given exposure level are very similar for the general population and for asthmatic and all school age (5–18) children, although children are about twice as likely to be exposed, based on the percent of the population exposed, at any given level.

(2) As shown in Table 1 below, the number and percentage of asthmatic and all school-age children aggregated across the 12 urban areas estimated to experience 1 or more exposures of concern decline from simulations of just meeting the current standard to simulations of alternative 8-hour standards by varying amounts depending on the benchmark level, the population subgroup considered, and the year chosen. For example, the estimated percentage of school age children experiencing one or more exposures ≥ 0.070 ppm, while engaged in moderate or greater exertion, during an O_3 season is about 18 percent of this population when the current standard is met using the 2002 simulation; this is reduced to about 12, 4, 1, and 0.2 percent of children upon meeting alternative standards of 0.080, 0.074, 0.070, and 0.064 ppm, respectively (all specified in terms of the 4th highest daily maximum 8-hour average), using the 2002 simulation.

[34] The full range of quantitative exposure estimates associated with just meeting the current and alternative O_3 standards are presented in chapter 4 and Appendix 4A of the Staff Paper.

TABLE 1.—NUMBER AND PERCENT OF ALL AND ASTHMATIC SCHOOL AGE CHILDREN IN 12 URBAN AREAS ESTIMATED TO EXPERIENCE 8-HOUR OZONE EXPOSURES ABOVE 0.080, 0.070, AND 0.060 PPM WHILE AT MODERATE OR GREATER EXERTION, ONE OR MORE TIMES PER SEASON AND THE NUMBER OF OCCURRENCES ASSOCIATED WITH JUST MEETING ALTERNATIVE 8-HOUR STANDARDS BASED ON ADJUSTING 2002 AND 2004 AIR QUALITY DATA[1, 2]

Benchmark levels of exposures of concern (ppm)	8-Hour air quality standards[3] (ppm)	All children, ages 5–18 aggregate for 12 urban areas, number of children exposed (% of all) [%reduction from current standard]		Asthmatic children, ages 5–18 Aggregate for 12 urban areas, number of children exposed (% of group) [% reduction from current standard]	
		2002	2004	2002	2004
0.080	0.084	700,000 (4%)	30,000 (0%)	110,000 (4%)	0 (0%)
	0.080	290,000 (2%) [70%]	10,000 (0%) [67%]	50,000 (2%) [54%]	0 (0%)
	0.074	60,000 (0%) [91%]	0 (0%) [100%]	10,000 (0%) [91%]	0 (0%)
	0.070	10,000 (0%) [98%]	0 (0%) [100%]	0 (0%) [100%]	0 (0%)
	0.064	0 (0%) [100%]	0 (0%) [100%]	0 (0%) [100%]	0 (0%)
0.070	0.084	3,340,000 (18%)	260,000 (1%)	520,000 (20%)	40,000 (1%)
	0.080	2,160,000 (12%) [35%]	100,000 (1%) [62%]	330,000 (13%) [36%]	10,000 (0%) [75%]
	0.074	770,000 (4%) [77%]	20,000 (0%) [92%]	120,000 (5%) [77%]	0 (0%) [100%]
	0.070	270,000 (1%) [92%]	0 (0%) [100%]	50,000 (2%) [90%]	0 (0%) [100%]
	0.064	30,000 (0.2%) [99%]	0 (0%) [100%]	10,000 (0.2%) [98%]	0 (0%) [100%]
0.060	0.084	7,970,000 (44%)	1,800,000 (10%)	1,210,000 (47%)	270,000 (11%)
	0.080	6,730,000 (37%) [16%]	1,050,000 (6%) [42%]	1,020,000 (40%) [16%]	150,000 (6%) [44%]
	0.074	4,550,000 (25%) [43%]	350,000 (2%) [80%]	700,000 (27%) [42%]	50,000 (2%) [81%]
	0.070	3,000,000 (16%) [62%]	110,000 (1%) [94%]	460,000 (18%) [62%]	10,000 (1%) [96%]
	0.064	950,000 (5%) [88%]	10,000 (0%) [99%]	150,000 (6%) [88%]	0 (0%) [100%]

[1] Moderate or greater exertion is defined as having an 8-hour average equivalent ventilation rate ≥ 13 l-min/m^2.

[2] Estimates are the aggregate results based on 12 combined statistical areas (Atlanta, Boston, Chicago, Cleveland, Detroit, Houston, Los Angeles, New York, Philadelphia, Sacramento, St. Louis, and Washington, DC). Estimates are for the ozone season which is all year in Houston, Los Angeles and Sacramento and March or April to September or October for the remaining urban areas.

[3] All standards summarized here have the same form as the current 8-hour standard which is specified as the 3-year average of the annual 4th highest daily maximum 8-hour average concentrations must be at or below the concentration level specified. As described in the Staff Paper (section 4.5.8), recent O_3 air quality distributions have been statistically adjusted to simulate just meeting the current and selected alternative standards. These simulations do not represent predictions of when, whether, or how areas might meet the specified standards.

(3) Substantial year-to-year variability in exposure estimates is observed over the three-year modeling period. For example, the estimated number of school age children experiencing one or more exposures ≥0.070 ppm during an O_3 season when the current standard is met in the 12 urban areas included in the analysis is 3.3, 1.0, or 0.3 million for the 2002, 2003, and 2004 simulations, respectively.

(4) There is substantial variability observed across the 12 urban areas in the percent of the population subgroups estimated to experience exposures of concern. For example, when 2002 O_3 concentrations are simulated to just meet the current standard, the aggregate 12 urban area estimate is 18 percent of all school age children are estimated to experience O_3 exposures (≥0.070 ppm (Table 1 below), while the range of exposure estimates in the 12 urban areas considered separately for all children range from 1 to 38 percent (EPA, 2007, Exhibit 2, p. 4–48). There was also variability in exposure estimates among the modeled areas when using the 2004 air quality simulation for the same scenario; however it was reduced and ranged from 0 to 7 percent in the 12 urban areas (EPA, 2007, Exhibit 8, p. 4–60).

(5) Of particular note, as discussed above in section II.A. of this notice, high inter-individual variability in responsiveness means that only a subset of individuals in these groups who are exposed at and above a given benchmark level would actually be expected to experience such adverse health effects.

(6) In considering these observations, it is important to take into account the variability, uncertainties, and limitations associated with this assessment, including the degree of uncertainty associated with a number of model inputs and uncertainty in the model itself, as discussed above.

2. Quantitative Health Risk Assessment

This section discusses the approach used to develop quantitative health risk estimates associated with exposures to O_3 building upon a more limited risk assessment that was conducted during the last review.[35] As part of the last review, EPA conducted a health risk assessment that produced risk estimates for the number and percent of children and outdoor workers experiencing lung function and respiratory symptoms associated with O_3 exposures for 9 urban areas.[36] The risk assessment for the last review also included risk estimates for excess respiratory-related hospital admissions related to O_3 concentrations for New York City. In the last review, the risk estimates played a significant role in both the staff recommendations and in the proposed and final decisions to revise the O_3 standards. The health risk assessment conducted for the current review builds upon the methodology and lessons learned from the prior review.

a. Overview

The updated health risk assessment conducted as part of this review includes estimates of (1) Risks of lung function decrements in all and asthmatic school age children, respiratory symptoms in asthmatic children, respiratory-related hospital admissions, and non-accidental and cardiorespiratory-related mortality associated with recent ambient O_3 levels; (2) risk reductions and remaining

[35] The methodology, scope, and results from the risk assessment conducted in the last review are described in Chapter 6 of the 1996 Staff Paper (EPA, 1996) and in several technical reports (Whitfield *et al.*, 1996; Whitfield, 1997) and publication (Whitfield *et al.*, 1998).

[36] The 9 urban study areas included in the exposure and risk analyses conducted during the last review were: Chicago, Denver, Houston, Los Angeles, Miami, New York City, Philadephia, St. Louis, and Washington, DC.

risks associated with just meeting the current 8-hour O_3 NAAQS; and (3) risk reductions and remaining risks associated with just meeting various alternative 8-hour O_3 NAAQS in a number of example urban areas. This risk assessment is more fully described and presented in the Staff Paper (EPA, 2007, chapter 5) and in a technical support document (TSD), *Ozone Health Risk Assessment for Selected Urban Areas* (Abt Associates, 2006, hereafter referred to as ''Risk Assessment TSD''). The scope and methodology for this risk assessment were developed over the last few years with considerable input from the CASAC O_3 Panel and the public.[37] The information contained in these documents included specific criteria for the selection of health endpoints, studies, and locations to include in the assessment. In a peer review letter sent by CASAC to the Administrator documenting its advice in October 2006 (Henderson, 2006c), the CASAC O_3 Panel concluded that the risk assessment was ''well done, balanced, and reasonably communicated'' and that the selection of health endpoints for inclusion in the quantitative risk assessment was appropriate.

The goals of the risk assessment are: (1) To provide estimates of the potential magnitude of several morbidity effects and mortality associated with current O_3 levels, and with meeting the current and alternative 8-hour O_3 standards in specific urban areas; (2) to develop a better understanding of the influence of various inputs and assumptions on the risk estimates; and (3) to gain insights into the distribution of risks and patterns of risk reductions associated with meeting alternative O_3 standards. The health risk assessment is intended to be dependent on and reflect the overall weight and nature of the health effects evidence discussed above in section II.A and in more detail in the Criteria Document and Staff Paper. While not independent of the overall evaluation of the health effects evidence, the quantitative health risk assessment provides additional insights regarding the relative public health implications associated with just meeting the current and several alternative 8-hour standards.

The risk assessment covers a variety of health effects for which there is adequate information to develop quantitative risk estimates. However, as noted by CASAC (Henderson, 2007) and in the Staff Paper, there are a number of health endpoints (*e.g.*, increased lung inflammation, increased airway responsiveness, impaired host defenses, increased medication usage for asthmatics, increased emergency department visits for respiratory causes, and increased school absences) for which there currently is insufficient information to develop quantitative risk estimates, but which are important to consider in assessing the overall public health impacts associated with exposures to O_3. These additional health endpoints are discussed above in section II.A.2 and are also taken into account in considering the level of exposures of concern in populations particularly at risk, discussed above in this notice.

There are two parts to the health risk assessment: one based on combining information from controlled human exposure studies with modeled population exposure and the other based on combining information from community epidemiological studies with either monitored or adjusted ambient concentrations levels. Both parts of the risk assessment were implemented within a new probabilistic version of TRIM.Risk, the component of EPA's Total Risk Integrated Methodology (TRIM) model framework that estimates human health risks.

EPA recognizes that there are many sources of uncertainty and variability in the inputs to this assessment and that there is significant variability and uncertainty in the resulting O_3 risk estimates. As discussed in chapters 2, 5, and 6 of the Staff Paper, there is significant year-to-year and city-to-city variability related to the air quality data that affects both the controlled human exposure studies-based and epidemiological studies-based parts of the risk assessment. There are also uncertainties associated with the air quality adjustment procedure used to simulate just meeting the current and selected alternative standards In the prior review, different statistical approaches using alternative functional forms (*i.e.*, quadratic, proportional, Weibull) were used to reflect how O_3 air quality concentrations have historically changed. Based on sensitivity analyses conducted in the prior review, the choice of alternative air quality adjustment procedures had only a modest impact on the risk estimates (EPA, 2007, p. 6–20). With respect to uncertainties about estimated background concentrations, as discussed below and in the Staff Paper (EPA 2007b, section 5.4.3), alternative assumptions about background levels have a variable impact depending on the location, standard, and health endpoint analyzed.

With respect to the lung function part of the health risk assessment, key uncertainties include uncertainties in the exposure estimates, discussed above, and uncertainties associated with the shape of the exposure-response relationship, especially at levels below 0.08 ppm, 8-hour average, where only very limited data are available down to 0.04 ppm and there is an absence of data below 0.04 ppm (EPA, 2007, pp. 6–20—6–21). Concerning the part of the risk assessment based on effects reported in epidemiological studies, important uncertainties include uncertainties (1) Surrounding estimates of the O_3 coefficients for concentration-response relationships used in the assessment, (2) involving the shape of the concentration-response relationship and whether or not a population threshold or non-linear relationship exists within the range of concentrations examined in the studies, (3) related to the extent to which concentration-response relationships derived from studies in a given location and time when O_3 levels were higher or behavior and /or housing conditions were different provide accurate representations of the relationships for the same locations with lower air quality distributions and/or different behavior and/or housing conditions, and (4) concerning the possible role of co-pollutants which also may have varied between the time of the studies and the current assessment period. An important additional uncertainty for the mortality risk estimates is the extent to which the associations reported between O_3 and non-accidental and cardiorespiratory mortality actually reflect causal relationships.

As discussed below, some of these uncertainties have been addressed quantitatively in the form of estimated confidence ranges around central risk estimates; others are addressed through separate sensitivity analyses (*e.g.*, the influence of alternative estimates for policy-relevant background levels) or are characterized qualitatively. For both parts of the health risk assessment, statistical uncertainty due to sampling error has been characterized and is expressed in terms of 95 percent credible intervals. EPA recognizes that these credible intervals do not reflect all of the uncertainties noted above.

[37] The general approach used in the current risk assessment was described in the draft Health Assessment Plan (EPA, 2005a) that was released to the CASAC and general public in April 2005 and was the subject of a consultation with the CASAC O_3 Panel on May 5, 2005. In October 2005, OAQPS released the first draft of the Staff Paper containing a chapter discussing the risk assessment and first draft of the Risk Assessment TSD for CASAC consultation and public review on December 8, 2005. In July 2006, OAQPS released the second draft of the Staff Paper and second draft of the Risk Assessment TSD for CASAC review and public comment which was held by the CASAC O_3 Panel on August 24–25, 2006.

b. Scope and Key Components

The current health risk assessment is based on the information evaluated in the final Criteria Document. The risk assessment includes several categories of health effects and estimates risks associated with just meeting the current and alternative 8-hour O_3 NAAQS and with several individual recent years of air quality (*i.e.*, 2002, 2003, and 2004). The risk assessment considers the same alternative air quality scenarios that were examined in the human exposure analyses described above. Risk estimates were developed for up to 12 urban areas selected to illustrate the public health impacts associated with these air quality scenarios.[38] As discussed above in section II.B.1, the selection of urban areas was largely determined by identifying areas in the U.S. which represented a range of geographic areas, population demographics, and climatology; with an emphasis on areas that do not meet the current 8-hour O_3 NAAQS and which included the largest areas with O_3 nonattainment problems. The selection criteria also included whether or not there were acceptable epidemiological studies available that reported concentration-response relationships for the health endpoints selected for inclusion in the assessment.

The short-term exposure related health endpoints selected for inclusion in the quantitative risk assessment include those for which the final Criteria Document and or Staff Paper concluded that the evidence as a whole supports the general conclusion that O_3, acting alone and/or in combination with other components in the ambient air pollution mix, is either clearly causal or is judged to be likely causal. Some health effects met this criterion of likely causality, but were not included in the risk assessment for other reasons, such as insufficient exposure-response data or lack of baseline incidence data.

As discussed in the section above describing the exposure analysis, in order to estimate the health risks associated with just meeting the current and alternative 8-hour O_3 NAAQS, it is necessary to estimate the distribution of hourly O_3 concentrations that would occur under any given standard. Since compliance is based on a 3-year average, the amount of control has been applied to each year of data (*i.e.*, 2002 to 2004) to estimate risks for a single O_3 season or single warm O_3 season, depending on the health effect, based on a simulation that adjusted each of these individual years so that the three year period would just meet the specified standard.

Consistent with the risk assessment approach used in the last review, the risk estimates developed for both recent air quality levels and just meeting the current and selected alternative 8-hour standards represent risks associated with O_3 levels attributable to anthropogenic sources and activities (*i.e.*, risk associated with concentrations above ''policy-relevant background''). Policy-relevant background O_3 concentrations used in the O_3 risk assessment were defined in chapter 2 of the Staff Paper (EPA, 2007, pp. 2–48—2–55) as the O_3 concentrations that would be observed in the U.S. in the absence of anthropogenic emissions of precursors (*e.g.*, VOC, NO_X, and CO) in the U.S., Canada, and Mexico. The results of a global tropospheric O_3 model (GEOS–CHEM) have been used to estimate monthly background daily diurnal profiles for each of the 12 urban areas for each month of the O_3 season using meteorology for the year 2001. Based on the results of the GEOS–CHEM model, the Criteria Document indicates that background O_3 concentrations are generally predicted to be in the range of 0.015 to 0.035 ppm in the afternoon, and they are generally lower under conditions conducive to man-made O_3 episodes.[39]

This approach of estimating risks in excess of background is judged to be more relevant to policy decisions regarding ambient air quality standards than risk estimates that include effects potentially attributable to uncontrollable background O_3 concentrations. Sensitivity analyses examining the impact of alternative estimates for background on lung function and mortality risk estimates have been developed and are included in the Staff Paper and Risk Assessment TSD and key observations are discussed below. Further, CASAC noted the difficulties and complexities associated with available approaches to estimating policy-relevant background concentrations (Henderson, 2007). Recognizing these complexities, EPA requests comments on the new approach used in this review for estimating these levels as an input to the health risk assessment.[40]

In the first part of the current risk assessment, lung function decrement, as measured by FEV_1, is the only health response that is based on data from controlled human exposure studies. As discussed above, there is clear evidence of a causal relationship between lung function decrements and O_3 exposures for school age children engaged in moderate exertion based on numerous controlled human exposure and summer camp field studies conducted by various investigators. Risk estimates have been developed for O_3-related lung function decrements (measured as changes in FEV_1) for all school age children (ages 5 to 18) and a subset of this group, asthmatic school age children (ages 5 to 18), whose average exertion over an 8-hour period was moderate or greater. The exposure period and exertion level were chosen to generally match the exposure period and exertion level used in the controlled human exposure studies that were the basis for the exposure-response relationships. A combined data set including individual level data from the Folinsbee *et al.* (1988), Horstman *et al.* (1990), and McDonnell *et al.* (1991) studies, used in the previous risk assessment, and more recent data from Adams (2002, 2003, 2006) have been used to estimate probabilistic exposure-response relationships for 8-hour exposures under different definitions of lung function response (*i.e.*, ≥10, 15, and 20 percent decrements in FEV_1). As discussed in the Staff Paper (EPA, 2007, p. 5–27), while these specific controlled human exposure studies only included healthy adults aged 18–35, findings from other controlled human exposure studies and summer camp field studies involving school age children in at least six different locations in the northeastern United States, Canada, and Southern California indicated changes in lung function in healthy children similar to those observed in healthy adults exposed to O_3 under controlled chamber conditions.

Consistent with advice from CASAC (Henderson, 2006c), EPA has considered both linear and logistic functional forms in estimating the probabilistic exposure-response relationships for lung function responses. A Bayesian Markov Chain Monte Carlo approach, described in more detail in the Risk Assessment TSD, has been used that incorporates both model uncertainty and uncertainty due

[38] The 12 urban areas are the same urban areas evaluated in the exposure analysis discussed in the prior section. However, for most of the health endpoints based on findings from epidemiological studies, the geographic areas and populations examined in the health risk assessment were limited to those counties included in the original epidemiological studies that served as the basis for the concentration-response relationships.

[39] EPA notes that the estimated level of policy-relevant background O_3 used in the prior risk assessment was a single concentration of 0.04 ppm, which was the midpoint of the range of levels for policy-relevant background that was provided in the 1996 Criteria Document.

[40] Recognizing the importance of this issue, EPA intends to conduct additional sensitivity analyses related to policy-relevant background and its implications for the risk assessment.

to sample size in the combined data set that served as the basis for the assessment. EPA has chosen a model reflecting a 90 percent weighting on a logistic form and a 10 percent weighting on a linear form as the base case for the current risk assessment. The basis for this choice is that the logistic form provides a very good fit to the combined data set, but a linear model cannot be entirely ruled out since there are only very limited data (*i.e.*, 30 subjects) at the two lowest exposure levels (*i.e.*, 0.040 and 0.060 ppm). EPA has conducted a sensitivity analysis which examines the impact on the lung function risk estimates of two alternative choices, an 80 percent logistic/20 percent linear split and a 50 percent logistic/50 percent linear split.

As noted above, risk estimates have been developed for three measures of lung function response (*i.e.*, ≥10, 15, and 20 percent decrements in FEV_1). However, the Staff Paper and risk estimates summarized below focus on FEV_1 decrements ≥15 percent for all school age children and ≥10 percent for asthmatic school age children, consistent with the advice from CASAC (Henderson, 2006c) that these levels of response represent indicators of adverse health effects in these populations. The Risk Assessment TSD and Staff Paper present the broader range of risk estimates including all three measures of lung function response.

Developing risk estimates for lung function decrements involved combining probabilistic exposure-response relationships based on the combined data set from several controlled human exposure studies with population exposure distributions for all and asthmatic school age children associated with recent air quality and air quality simulated to just meet the current and alternative 8-hour O_3 NAAQS based on the results from the exposure analysis described in the previous section. The risk estimates have been developed for 12 large urban areas for the O_3 season.[41] These 12 urban areas include approximately 18.3 million school age children, of which 2.6 million are asthmatic school age children.[42]

In addition to uncertainties arising from sample size considerations, which are quantitatively characterized and presented as 95 percentile credible intervals, there are additional uncertainties and caveats associated with the lung function risk estimates. These include uncertainties about the shape of the exposure-response relationship, particularly at levels below 0.080 ppm, and about policy-relevant background levels, for which sensitivity analyses have been conducted. Additional important caveats and uncertainties concerning the lung function portion of the health risk assessment include: (1) The uncertainties and limitations associated with the exposure estimates discussed above and (2) the inability to account for some factors which are known to affect the exposure-response relationships (*e.g.*, assigning healthy and asthmatic children the same responses as observed in healthy adult subjects and not adjusting response rates to reflect the increase and attenuation of responses that have been observed in studies of lung function responses upon repeated exposures). A more complete discussion of assumptions and uncertainties is contained in chapter 5 of the Staff Paper and in the Risk Assessment TSD (Abt Associates, 2006).

The second part of the risk assessment is based on health effects observed in epidemiological studies. Based on a review of the evidence evaluated in the Criteria Document and Staff Paper, as well as the criteria discussed in chapter 5 of the Staff Paper, the following categories of health endpoints associated with short-term exposures to ambient O_3 concentrations were included in the risk assessment: respiratory symptoms in moderate to severe asthmatic children, hospital admissions for respiratory causes, and non-accidental and cardiorespiratory mortality. As discussed above, there is strong evidence of a causal relationship for the respiratory morbidity endpoints included in the current risk assessment. With respect to nonaccidental and cardiorespiratory mortality, the Criteria Document concludes that there is strong evidence which is highly suggestive of a causal relationship between nonaccidental and cardiorespiratory-related mortality and O_3 exposures during the warm O_3 season. As discussed in the Staff Paper (chapter 5), EPA also recognizes that for some of the effects observed in epidemiological studies, such as increased respiratory-related hospital admissions and nonaccidental and cardiorespiratory mortality, O_3 may be serving as an indicator for reactive oxidant species in the overall photochemical oxidant mix and that these other constituents may be responsible in whole or part for the observed effects.

Risk estimates for each health endpoint category were only developed for areas that were the same or close to the location where at least one concentration-response function for the health endpoint had been estimated.[43] Thus, for respiratory symptoms in moderate to severe asthmatic children only the Boston urban area was included and four urban areas were included for respiratory-related hospital admissions. Nonaccidental mortality risk estimates were developed for 12 urban areas and 8 urban areas were included for cardiorespiratory mortality.

The concentration-response relationships used in the assessment are based on findings from human epidemiological studies that have relied on fixed-site ambient monitors as a surrogate for actual ambient O_3 exposures. In order to estimate the incidence of a particular health effect associated with recent air quality in a specific county or set of counties attributable to ambient O_3 exposures in excess of background, as well as the change in incidence corresponding to a given change in O_3 levels resulting from just meeting the current or alternative 8-hour O_3 standards, three elements are required for this part of the risk assessment. These elements are: (1) Air quality information (including recent air quality data for O_3 from ambient monitors for the selected location, estimates of background O_3 concentrations appropriate for that location, and a method for adjusting the recent data to reflect patterns of air quality estimated to occur when the area just meets a given O_3 standard); (2) relative risk-based concentration-response functions that provide an estimate of the relationship between the health endpoints of interest and ambient O_3 concentration; and (3) annual or seasonal baseline health effects incidence rates and population data, which are needed to provide an estimate of the seasonal baseline incidence of health effects in an area before any changes in O_3 air quality.

A key component in the portion of the risk assessment based on epidemiological studies is the set of concentration-response functions which provide estimates of the relationships

[41] As discussed above in section II.B.1, the urban areas were defined using the consolidated statistical areas definition and the total population residing in the 12 urban areas was approximately 88.5 million people.

[42] For 9 of the 12 urban areas, the O_3 season is defined as a period running from March or April to September or October. In 3 of the urban areas (Houston, Los Angeles, and Sacramento), the O_3 season is defined as the entire year.

[43] The geographic boundaries for the urban areas included in this portion of the risk assessment were generally matched to the geographic boundaries used in the epidemiological studies that served as the basis for the concentration-response functions. In most cases, the urban areas were defined as either a single county or a few counties for this portion of the risk assessment.

between each health endpoint of interest and changes in ambient O_3 concentrations. Studies often report more than one estimated concentration-response function for the same location and health endpoint. Sometimes models include different sets of co-pollutants and/or different lag periods between the ambient concentrations and reported health responses. For some health endpoints, there are studies that estimated multi-city and single-city O_3 concentration-response functions. While the Risk Assessment TSD and chapter 5 of the Staff Paper present a more comprehensive set of risk estimates, EPA has focused on estimates based on multi-city studies where available. The advantages of relying more heavily on concentration-response functions based on multi-city studies include: (1) More precise effect estimates due to larger data sets, reducing the uncertainty around the estimated coefficient; (2) greater consistency in data handling and model specification that can eliminate city-to-city variation due to study design; and (3) less likelihood of publication bias or exclusion of reporting of negative or nonsignificant findings. Where studies reported different effect estimates for varying lag periods, consistent with the Criteria Document, single day lag periods of 0 to 1 days were used for associations with respiratory hospital admissions and mortality. For mortality associated with exposure to O_3 which may result over a several day period after exposure, distributed lag models, which take into account the contribution to mortality effects over several days, were used where available.

One of the most important elements affecting uncertainties in the epidemiological-based portion of the risk assessment is the concentration-response relationships used in the assessment. The uncertainty resulting from the statistical uncertainty associated with the estimate of the O_3 coefficient in the concentration-response function was characterized either by confidence intervals or by Bayesian credible intervals around the corresponding point estimates of risk. Confidence and credible intervals express the range within which the true risk is likely to fall if the only uncertainty surrounding the O_3 coefficient involved sampling error. Other uncertainties, such as differences in study location, time period (*i.e.*, the years in which the study was conducted), and model uncertainties are not represented by the confidence or credible intervals presented, but were addressed by presenting estimates for different urban areas, by including risk estimates based on studies using different time periods and models, where available, and/or are discussed throughout section 5.3 of the Staff Paper. Because O_3 effects observed in the epidemiological studies have been more clearly and consistently shown for warm season analyses, all analyses for this portion of the risk assessment were carried out for the same time period, April through September.

The Criteria Document finds that no definitive conclusion can be reached with regard to the existence of population thresholds in epidemiological studies (Criteria Document, pp. 8–44). EPA recognizes, however, the possibility that thresholds for individuals may exist for reported associations at fairly low levels within the range of air quality observed in the studies, but not be detectable as population thresholds in epidemiological analyses. Based on the Criteria Document's conclusions, EPA judged and CASAC concurred, that there is insufficient evidence to support use of potential population threshold levels in the quantitative risk assessment. However, EPA recognizes that there is increasing uncertainty about the concentration-response relationship at lower concentrations which is not captured by the characterization of the statistical uncertainty due to sampling error. Therefore, the risk estimates for respiratory symptoms in moderate to severe asthmatic children, respiratory-related hospital admissions, and premature mortality associated with exposure to O_3 must be considered in light of uncertainties about whether or not these O_3-related effects occur in these populations at very low O_3 concentrations.

With respect to variability within this portion of the risk assessment, there is variability among concentration-response functions describing the relation between O_3 and both respiratory-related hospital admissions and nonaccidental and cardiorespiratory mortality across urban areas. This variability is likely due to differences in population (*e.g.*, age distribution), population activities that affect exposure to O_3 (*e.g.*, use of air conditioning), levels and composition of co-pollutants, baseline incidence rates, and/or other factors that vary across urban areas. The current risk assessment incorporates some of the variability in key inputs to the analysis by using location-specific inputs (*e.g.*, location-specific concentration-response functions, baseline incidence rates, and air quality data). Although spatial variability in these key inputs across all U.S. locations has not been fully characterized, variability across the selected locations is imbedded in the analysis by using, to the extent possible, inputs specific to each urban area.

c. Risk Estimates and Key Observations

The Staff Paper (chapter 5) and Risk Assessment TSD present risk estimates associated with just meeting the current and several alternative 8-hour standards, as well as three recent years of air quality as represented by 2002, 2003, and 2004 monitoring data. As discussed in the exposure analysis section above, there is considerable city-to-city and year-to-year variability in the O_3 levels during this period, which results in significant variability in both portions of the health risk assessment.

In the 1997 risk assessment, risks for lung function decrements associated with 1-hour heavy exertion, 1-hour moderate exertion, and 8-hour moderate exertion exposures were estimated. Since the 8-hour moderate exertion exposure scenario for children clearly resulted in the greatest health risks in terms of lung function decrements, EPA has chosen to include only the 8-hour moderate exertion exposures in the current risk assessment for this health endpoint. Thus, the risk estimates presented here and in the Staff Paper are most useful for making relative comparisons across alternative air quality scenarios and do not represent the total risks for lung function decrements in children or other groups within the general population associated with any of the air quality scenarios. Thus, some outdoor workers and adults engaged in moderate exertion over multi-hour periods (*e.g.*, 6–8-hour exposures) also would be expected to experience similar lung function decrements. However, the percentage of each of these other subpopulations expected to experience these effects is expected to be smaller than all school age children who tend to spend more hours outdoors while active based on the exposure analyses conducted during the prior review.

Table 2 presents a summary of the risk estimates for lung function decrements for the current standard and several alternative 8-hour standard levels with the same form as the current 8-hour standard. The estimates are for the aggregate number and percent of all school age children across 12 urban areas and the aggregate number and percent of asthmatic school age children

across 5 urban areas [44] who are estimated to have at least 1 moderate or greater lung function response (defined as FEV_1 ≥15 percent in all children and ≥10 percent in asthmatic children) associated with 8-hour exposures to O_3 while engaged in moderate or greater exertion on average over the 8-hour period. The lung function risk estimates summarized in Table 2 illustrate the year-to-year variability in both remaining risk associated with a relatively high year (*i.e.*, based on adjusting 2002 O_3 air quality data) and relatively low year (based on adjusting 2004 O_3 air quality data) as well as the year-to-year variability in the risk reduction estimated to occur associated with various alternative standards relative to just meeting the current standard. For example, it is estimated that about 610,000 school age children (3.2 percent of school age children) would experience 1 or more moderate lung function decrements for the 12 urban areas associated with O_3 levels just meeting the current standard based on 2002 air quality data compared to 230,000 (1.2 percent of children) associated with just meeting the current standard based on 2004 air quality data.

TABLE 2.—NUMBER AND PERCENT OF ALL AND ASTHMATIC SCHOOL AGE CHILDREN IN SEVERAL URBAN AREAS ESTIMATED TO EXPERIENCE MODERATE OR GREATER LUNG FUNCTION RESPONSES 1 OR MORE TIMES PER SEASON ASSOCIATED WITH 8-HOUR OZONE EXPOSURES ASSOCIATED WITH JUST MEETING ALTERNATIVE 8-HOUR STANDARDS BASED ON ADJUSTING 2002 AND 2004 AIR QUALITY DATA [1, 2]

8-Hour air quality standards [3]	All children, ages 5–18, FEV_1 ≥15 percent, aggregate for 12 urban areas, number of children affected (% of all) [% reduction from current standard]		Asthmatic children, ages 5–18, FEV_1 ≥10 percent, aggregate for 5 urban areas, number of children affected (% of group) [% reduction from current standard]	
	2002	2004	2002	2004]
0.084 ppm (Current standard).	610,000 (3.3%)	230,000 (1.2%)	130,000 (7.8%)	70,000 (4.2%).
0.080 ppm	490,000 (2.7%) [20% reduction].	180,000 (1.0%) [22% reduction].	NA [4]	NA.
0.074 ppm	340,000 (1.9%) [44% reduction].	130,000 (0.7%) [43% reduction].	90,000 (5.0%) [31 % reduction].	40,000 (2.7%) [43% reduction].
0.070 ppm	260,000 (1.5%) [57% reduction].	100,000 (0.5%) [57% reduction].	NA	NA.
0.064 ppm	180,000 (1.0%) [70% reduction].	70,000 (0.4%) [70% reduction].	50,000 (3.0%) [62% reduction].	20,000 (1.5%) [71% reduction].

[1] Associated with exposures while engaged in moderate or greater exertion which is defined as having an 8-hour average equivalent ventilation rate ≥13 l-min/m [2].

[2] Estimates are the aggregate central tendency results based on either 12 urban areas (Atlanta, Boston, Chicago, Cleveland, Detroit, Houston, Los Angeles, New York, Philadelphia, Sacramento, St. Louis, and Washington, DC) or 5 urban areas (Atlanta, Chicago, Houston, Los Angeles, New York). Estimates are for the O_3 season which is all year in Houston, Los Angeles and Sacramento and March or April to September or October for the remaining urban areas.

[3] All standards summarized here have the same form as the current 8-hour standard which is specified as the 3-year average of the annual 4th highest daily maximum 8-hour average concentrations must be at or below the stated concentration level. As described in the Staff Paper (section 4.5.8), recent O_3 air quality distributions have been statistically adjusted to simulate just meeting the current and selected alternative standards. These simulations do not represent predictions of when, whether, or how areas might meet the specified standards

[4] NA (not available) indicates that EPA did not develop risk estimates for these scenarios for the asthmatic school age children population.

As discussed in the Staff Paper, a child may experience multiple occurrences of a lung function response during the O_3 season. For example, upon meeting the current 8-hour standard, the median estimates are that about 610,000 children would experience a moderate or greater lung function response 1 or more times for the aggregate of the 12 urban areas over a single O_3 season (based on the 2002 simulation), and that there would be almost 3.2 million total occurrences. Thus, on average it is estimated that there would be about 5 occurrences per O_3 season per responding child for air quality just meeting the current 8-hour standard across the 12 urban areas. While the estimated number of occurrences per O_3 season is lower when based on the 2004 simulation than for the 2002 simulation, the estimated number of occurrences per responding child is similar. EPA recognizes that some children in the population might have only 1 or 2 occurrences while others may have 6 or more occurrences per O_3 season. Risk estimates based on adjusting 2003 air quality to simulate just meeting the current and alternative 8-hour standards are intermediate to the estimates presented in Table 2 above in this notice and are presented in the Staff Paper (chapter 5) and Risk Assessment TSD.

For just meeting the current 8-hour standard, Table 5–8 in the Staff Paper shows that median estimates across the 12 urban areas for all school age children experiencing 1 or more moderate lung function decrements ranges from 0.9 to 5.4 percent based on the 2002 simulation and from 0.8 to 2.2 percent based on the 2004 simulation. Risk estimates for each urban area included in the assessment, for each of the three years analyzed, and for additional alternative standards are presented in chapter 5 of the Staff Paper and in the Risk Assessment TSD.

For just meeting the current 8-hour standard, the median estimates across the 5 urban areas for asthmatic school age children range from 3.4 to 10.9 percent based on the 2002 simulation and from 3.2 to 6.9 percent based on the 2004 simulation.

Key observations important in comparing estimated lung function risks associated with attainment of the current NAAQS and alternative standards under consideration include:

(1) As discussed above, there is significant year to year variability in the range of median estimates of the number of school age children (ages 5–18) estimated to experience at least one FEV_1 decrement ≥15 percent due to 8-hour O_3 exposures across the 12 urban

[44] Due to time constraints, lung function risk estimates for asthmatic school age children were developed for only 5 of the 12 urban areas, and the areas were selected to represent different geographic regions. The 5 areas were: Atlanta, Chicago, Houston, Los Angeles, and New York City.

areas analyzed, and similarly across the 5 urban areas analyzed for asthmatic school age children (ages 5–18) estimated to experience at least one FEV_1 decrement ≥10 percent, when the current and alternative 8-hour standards are just met.

(2) For asthmatic school age children, the median estimates of occurrences of FEV_1 decrements ≥10% range from 52,000 to nearly 510,000 responses associated with just meeting the current standard (based on the 2002 simulation) and range from 61,000 to about 240,000 occurrences (based on the 2004 simulation). These risk estimates would be reduced to a range of 14,000 to about 275,000 occurrences (2002 simulation) and to about 18,000 to nearly 125,000 occurrences (2004 simulation) upon just meeting the most stringent alternative 8-hour standard (0.064 ppm, 4th highest). The average number of occurrences per asthmatic child in an O_3 season ranged from about 6 to 11 associated with just meeting the current standard (2002 simulation). The average number of occurrences per asthmatic child ranged from 4 to 12 upon meeting the most stringent alternative examined (0.064 ppm, 4th-highest) based on the 2002 simulation. The number of occurrences per asthmatic child is similar for the scenarios based on the 2004 simulation.

As discussed above, several epidemiological studies have reported increased respiratory morbidity outcomes (*e.g.*, respiratory symptoms in moderate to severe asthmatic children, respiratory-related hospital admissions) and increased nonaccidental and cardiorespiratory mortality associated with exposure to ambient O_3 concentrations. The results and key observations from this portion of the risk assessment are presented below:

(1) Estimates for increased respiratory symptoms (*i.e.*, chest tightness, shortness of breath, and wheeze) in moderate/severe asthmatic children (ages 0–12) were developed for the Boston urban area only. The median estimated number of days involving chest tightness (using the concentration-response relationship with only O_3 in the model) is about 6,100 (based on the 2002 simulation) and about 4,500 (based on the 2004 simulation) upon meeting the current 8-hour standard and this is reduced to about 4,600 days (2002 simulation) and 3,100 days (2004 simulation) upon meeting the most stringent alternative examined (0.064 ppm, 4th-highest daily maximum 8-hour average). This corresponds to 11 percent (2002 simulation) and 8 percent (2004 simulation) of total incidence of chest tightness upon meeting the current 8-hour standard and to about 8 percent (2002 simulation) and 5.5 percent (2004 simulation) of total incidence of chest tightness upon meeting a 0.064 ppm, 4th-highest daily maximum 8-hour average standard. Similar patterns of effects and reductions in effects are observed for each of the respiratory symptoms examined.

(2) The Staff Paper and Risk Assessment TSD present unscheduled hospital admission risk estimates for respiratory illness and asthma in New York City associated with short-term exposures to O_3 concentrations in excess of background levels from April through September for several recent years (2002, 2003, and 2004) and upon just meeting the current and alternative 8-hour standards based on simulating O_3 levels using 2002–2004 O_3 air quality data. For total respiratory illness, EPA estimates about 6.4 cases per 100,000 relevant population (2002 simulation) and about 4.6 cases per 100,000 relevant population (2004 simulation), which represents 1.5 percent (2002 simulation) and 1.0 percent (2004 simulation) of total incidence or about 510 cases (2002 simulation) and about 370 cases (2004 simulation) upon just meeting the current 8-hour standard. For asthma-related hospital admissions, which are a subset of total respiratory illness admissions, the estimates are about 5.5 cases per 100,000 relevant population (2002 simulation) and about 3.9 cases per 100,000 relevant population (2004 simulation), which represents about 3.3 percent (2002 simulation) and 2.4 percent (2004 simulation) of total incidence or about 440 cases (2002) and about 310 cases (2004) for this same air quality scenario.

For increasingly more stringent alternative 8-hour standards, there is a gradual reduction in respiratory illness cases per 100,000 relevant population from 6.4 cases per 100,000 upon just meeting the current 8-hour standard to 4.6 cases per 100,000 under the most stringent 8-hour standard (*i.e.*, 0.064 ppm, average 4th-highest daily maximum) analyzed based on the 2002 simulation. Similarly, based on the 2004 simulation there is a gradual reduction from 4.6 cases per 100,000 relevant population upon just meeting the current 8-hour standard to 3.0 cases per 100,000 under the 0.064 ppm, average 4th-highest daily maximum standard.

Additional respiratory-related hospital admission estimates for three other locations are provided in the Risk Assessment TSD. EPA notes that the concentration-response functions for each of these locations examined different outcomes in different age groups (*e.g.*, > age 30 in Los Angeles, > age 64 in Cleveland and Detroit, vs. all ages in New York City), making comparison of the risk estimates across the areas very difficult.

(3) Based on the median estimates for incidence for nonaccidental mortality (based on the Bell *et al.* (2004) 95 cities concentration-response function), meeting the most stringent standard (0.064 ppm) is estimated to reduce mortality by 40 percent of what it would be associated with just meeting the current standard (based on the 2002 simulation). The patterns for cardiorespiratory mortality are similar. The aggregate O_3-related cardiorespiratory mortality upon just meeting the most stringent standard shown is estimated to be about 42 percent of what it would be upon just meeting the current standard, using simulated O_3 concentrations that just meet the current and alternative 8-hour standards based on the 2002 simulation. Using the 2004 simulation, the corresponding reductions show a similar pattern but are somewhat greater.

(4) Much of the contribution to the risk estimates for non-accidental and cardiorespiratory mortality upon just meeting the current 8-hour standard is associated with 24-hour O_3 concentrations between background and 0.040 ppm. Based on examining relationships between 24-hour concentrations averaged across the monitors within an urban area and 8-hour daily maximum concentrations, 8-hour daily maximum levels at the highest monitor in an urban area associated with these averaged 24-hour levels are generally about twice as high as the 24-hour levels. Thus, most O_3-related nonaccidental mortality is estimated to occur when O_3 concentrations are between background and when the highest monitor in the urban area is at or below 0.080 ppm, 8-hour average concentration.

The discussion below highlights additional observations and insights from the O_3 risk assessment, together with important uncertainties and limitations.

(1) As discussed in the Staff Paper (section 5.4.5) EPA has greater confidence in relative comparisons in risk estimates between alternative standards than in the absolute magnitude of risk estimates associated with any particular standard.

(2) Significant year-to-year variability in O_3 concentrations combined with the use of a 3-year design value to determine the amount of air quality adjustment to be applied to each year analyzed, results in significant year-to-year variability in the annual health risk

estimates upon just meeting the current and potential alternative 8-hour standards.

(3) There is noticeable city-to-city variability in estimated O_3-related incidence of morbidity and mortality across the 12 urban areas analyzed for both recent years of air quality and for air quality adjusted to simulate just meeting the current and selected potential alternative standards. This variability is likely due to differences in air quality distributions, differences in exposure related to many factors including varying activity patterns and air exchange rates, differences in baseline incidence rates, and differences in susceptible populations and age distributions across the 12 urban areas.

(4) With respect to the uncertainties about estimated policy-relevant background concentrations, as discussed in the Staff Paper (section 5.4.3), alternative assumptions about background levels had a variable impact depending on the health effect considered and the location and standard analyzed in terms of the absolute magnitude and relative changes in the risk estimates. There was relatively little impact on either absolute magnitude or relative changes in lung function risk estimates due to alternative assumptions about background levels. With respect to O_3-related non-accidental mortality, while notable differences (*i.e.*, greater than 50 percent)[45] were observed for nonaccidental mortality in some areas, particularly for more stringent standards, the overall pattern of estimated reductions, expressed in terms of percentage reduction relative to the current standard, was significantly less impacted.

C. Conclusions on the Adequacy of the Current Primary Standard

1. Background

The initial issue to be addressed in the current review of the primary O_3 standard is whether, in view of the advances in scientific knowledge and additional information, the existing standard should be revised. In evaluating whether it is appropriate to retain or revise the current standard, the Administrator builds upon the last review and reflects the broader body of evidence and information now available. The Administrator has taken into account both evidence-based and quantitative exposure- and risk-based considerations in developing conclusions on the adequacy of the current primary O_3 standard. Evidence-based considerations include the assessment of evidence from controlled human exposure, animal toxicological, field, and epidemiological studies for a variety of health endpoints. For those endpoints based on epidemiological studies, greater weight has been placed on associations with health endpoints that are causal or likely causal based on an integrative synthesis of the entire body of evidence, including not only all available epidemiological evidence but also evidence from animal toxicological and controlled human exposure studies. Less weight has been placed on evidence of associations that were judged to be only suggestive of possible causal relationships. Consideration of quantitative exposure- and risk-based information draws from the results of the exposure and risk assessments described above. More specifically, estimates of the magnitude of O_3-related exposures and risks associated with recent air quality levels, as well as the exposure and risk reductions likely to be associated with just meeting the current 8-hour primary O_3 NAAQS, have been considered.

In this review, a series of general questions frames the approach to reaching a decision on the adequacy of the current standard, such as the following: (1) To what extent does newly available information reinforce or call into question evidence of associations of O_3 exposures with effects identified in the last review?; (2) to what extent has evidence of new effects and/or at-risk populations become available since the last review?; (3) to what extent have important uncertainties identified in the last review been reduced and have new uncertainties emerged?; (4) to what extent does newly available information reinforce or call into question any of the basic elements of the current standards?

The question of whether the available evidence supports consideration of a standard that is more protective than the current standard includes consideration of: (1) Whether there is evidence that associations, especially likely causal associations, extend to ambient O_3 concentration levels that are as low as or lower than had previously been observed, and the important uncertainties associated with that evidence; (2) the extent to which exposures of concern and health risks are estimated to occur in areas upon meeting the current standard and the important uncertainties associated with the estimated exposures and risks; and (3) the extent to which the O_3-related health effects indicated by the evidence and the exposure and risk assessments are considered important from a public health perspective, taking into account the nature and severity of the health effects, the size of the at-risk populations, and the kind and degree of the uncertainties associated with these considerations.

The current primary O_3 standard is an 8-hour standard, which was set at a level of 0.08 ppm,[46] with a form of the annual fourth-highest daily maximum 8-hour average concentration, averaged over three years. This standard was chosen to provide protection to the public, especially children and other at-risk populations, against a wide range of O_3-induced health effects. As an introduction to this discussion of the adequacy of the current O_3 standard, it is useful to summarize the key factors that formed the basis of the decision in the last review to revise the averaging time, level, and form of the then current 1-hour standard.

In the last review, the key factor in deciding to revise the averaging time of the primary standard was evidence from controlled human exposure studies of healthy young adult subjects exposed for 1 to 8 hours to O_3. The best documented health endpoints in these studies were decrements in indices of lung function, such as forced expiratory volume in 1 second (FEV_1), and respiratory symptoms, such as cough and chest pain on deep inspiration. For short-term exposures of 1 to 3 hours, group mean FEV1 decrements were statistically significant for O_3 concentrations only at and above 0.12 ppm, and only when subjects engaged in very heavy exertion. By contrast, evidence available in the prior review showed that prolonged exposures of 6 to 8 hours produced statistically significant group mean FEV_1 decrements at the lowest O_3 concentrations evaluated in those studies, 0.080 ppm, even when experimental subjects were engaged in more realistic intermittent moderate exertion levels. The health significance of this newer evidence led to the conclusion in the 1997 final decision that the 8-hour averaging time is more directly associated with health effects of concern at lower O_3 concentrations than is the 1-hour averaging time.

[45] For example, assuming lower background levels resulted in increased estimates of non-accidental mortality incidence per 100,000 that were often 50 to 100 percent greater than the base case estimates; assuming higher background levels resulted in decreased estimates of non-accidental mortality incidence per 100,000 that were less than the base case estimates by 50 percent or more in many of the areas.

[46] If the standard were to be specified to the nearest thousandth ppm, the current 0.08 ppm 8-hour standard would be equivalent to a standard set at 0.084 ppm, reflecting the data rounding conventions that are part of the definition of the current 8-hour standard.

Based on the available evidence of O_3-related health effects, the following factors were of particular importance in the last review in informing the selection of the level and form of a new 8-hour standard: (1) Quantitative estimates of O_3-related risks to active children, who were judged to be an at-risk subgroup of concern, in terms of transient and reversible respiratory effects judged to be adverse, including moderate to large decreases in lung function and moderate to severe pain on deep inspiration, and the uncertainty and variability in such estimates; (2) consideration of both the estimated percentages, total numbers of children, and number of times they were likely to experience such effects; (3) epidemiological evidence of associations between ambient O_3 and increased respiratory hospital admissions, and quantitative estimates of percentages and total numbers of asthma-related admissions in one example urban area that were judged to be indicative of a pyramid of much larger effects, including respiratory-related hospital admissions, emergency department visits, doctor visits, and asthma attacks and related increased medication use; (4) quantitative estimates of the number of ''exposures of concern[47]'' (defined as exposures ≥ 0.080 ppm for 6 to 8 hour) that active children are likely to experience, and the uncertainty and variability in such estimates; (5) the judgment that such exposures are an important indicator of public health impacts of O_3-related effects for which information is too limited to develop quantitative risk estimates, including increased nonspecific bronchial responsiveness (*e.g.*, related to aggravation of asthma), decreased pulmonary defense mechanisms (suggestive of increased susceptibility to respiratory infection), and indicators of pulmonary inflammation (related to potential aggravation of chronic bronchitis or long-term damage to the lungs); (6) the broader public health perspective of the number of people living in areas that would breathe cleaner air as a result of the revised standard; (7) consideration of the relative seriousness of various health effects and the relative degree of certainty in both the likelihood that people will experience various health effects and their medical significance; (8) the relationship of a standard level to estimated ''background'' levels associated with nonanthropogenic sources of O_3; and (9) CASAC's advice and recommendations. Additional factors considered in selecting the form of the standard included balancing the public health implications of the estimated number of times in an O_3 season that the standard level might be exceeded in an area that is in attainment with the standard with the year-to-year stability of the air quality statistic, which can be particularly affected by years with unusual meteorology. A more stable air quality statistic serves to avoid disruptions to ongoing control programs that could result from moving into and out of attainment, thereby interrupting the public health protection afforded by such control programs.

In reaching a final decision in the last review, the Administrator was mindful that O_3 exhibits a continuum of effects, such that there is no discernible threshold above which public health protection requires that no exposures be allowed or below which all risks to public health can be avoided. The final decision reflected a recognition that important uncertainties remained, for example with regard to interpreting the role of other pollutants co-occurring with O_3 in observed associations, understanding biological mechanisms of O_3-related health effects, and estimating human exposures and quantitative risks to at-risk populations for these health effects.

2. Evidence- and Exposure/Risk-Based Considerations in the Staff Paper

The Staff Paper (section 6.3.1) considers the evidence presented in the Criteria Document as discussed above in section II.A as a basis for evaluating the adequacy of the current O_3 standard, recognizing that important uncertainties remain. The extensive body of human clinical, toxicological, and epidemiological evidence serves as the basis for the judgments about O_3-related health effects discussed above, including judgments about causal relationships with a range of respiratory morbidity effects, including lung function decrements, increased respiratory symptoms, airway inflammation, increased airway responsiveness, and respiratory-related hospitalizations and emergency department visits in the warm season, and about the evidence being highly suggestive that O_3 directly or indirectly contributes to non-accidental and cardiopulmonary-related mortality.

These judgments take into account important uncertainties that remain in interpreting this evidence. For example, with regard to the utility of time-series epidemiological studies to inform judgments about a NAAQS for an individual pollutant, such as O_3, within a mix of highly correlated pollutants, such as the mix of oxidants produced in photochemical reactions in the atmosphere, the Staff Paper notes that there are limitations especially at ambient O_3 concentrations below levels at which O_3-related effects have been observed in controlled human exposure studies. The Staff Paper (section 3.4.5) also recognizes that the available epidemiological evidence neither supports nor refutes the existence of thresholds at the population level for effects such as increased hospital admissions and premature mortality. There are limitations in epidemiological studies that make discerning thresholds in populations difficult, including low data density in the lower concentration ranges, the possible influence of exposure measurement error, and variability in susceptibility to O_3-related effects in populations.

While noting these limitations in the interpretation of the findings from the epidemiological studies, the Staff Paper (section 3.4.5) concludes that if a population threshold level does exist, it would likely be well below the level of the current O_3 standard and possibly within the range of background levels. As discussed above in section II.A.3.a, this conclusion is supported by several epidemiological studies that have explored the question of potential thresholds directly, either using a statistical curve-fitting approach to evaluate whether linear or non-linear models fit the data better using sub-sets of the data, where days over or under a specific cutpoint (*e.g.*, 0.080 ppm or even lower O_3 levels) were excluded and then evaluating the association for statistical significance. In addition to direct consideration of the epidemiological studies, findings from controlled human exposure studies discussed above in section II.A.2.a.i(a)(i) indicate that prolonged exposures produced statistically significant group mean FEV_1 decrements and symptoms in healthy adult subjects at levels down to at least 0.060 ppm, with a small percentage of subjects experiencing notable effects (*e.g.*, >10 percent FEV_1 decrement, pain on deep inspiration). Controlled human exposure studies evaluated in the last review also found significant responses in indicators of lung inflammation and cell injury at 0.080 ppm in healthy adult subjects. The effects in these controlled human exposure studies were observed in healthy young adult subjects, and it is likely that more serious responses, and

[47] In the last review, ''exposures of concern'' referred to exposures at and above 0.08 ppm, 8-hour average, at which a range of health effects have been observed in controlled human studies, but for which data were too limited to allow for quantitative risk assessment. (62 FR 38860, July 18, 1997).

responses at lower levels, would occur in people with asthma and other respiratory diseases. These physiological effects have been linked to aggravation of asthma and increased susceptibility to respiratory infection, potentially leading to increased medication use, increased school and work absences, increased visits to doctors' offices and emergency departments, and increased hospital admissions. The observations provide additional support for the conclusion in the Staff Paper that the associations observed in the epidemiological studies, particularly for respiratory-related effects and potentially for cardiovascular effects, extend down to O_3 levels well below the current standard (*i.e.*, 0.084 ppm) (EPA, 2007, p. 6–7).

As discussed above in section II.A and in the Staff Paper (section 3.7), the newly available information reinforces the judgments about the likelihood of causal relationships between O_3 exposure and respiratory effects observed in the last review and broadens the evidence of O_3-related associations to include additional respiratory-related endpoints, newly identified cardiovascular-related health endpoints, and mortality. Newly available evidence also has shown that people with asthma are likely to experience more serious effects than people who do not have asthma (section II.A.4.b.ii above). The Staff Paper also concludes that substantial progress has been made since the last review in advancing the understanding of potential mechanisms by which ambient O_3, alone and in combination with other pollutants, is causally linked to a range of respiratory-related health endpoints, and may be causally linked to a range of cardiovascular-related health endpoints. Thus, the Staff Paper (section 6.3.6) finds strong support in the evidence developed since the last review, for consideration of an O_3 standard that is at least as protective as the current standard and finds no support for consideration of an O_3 standard that is less protective than the current standard. This conclusion is consistent with the advice and recommendations of CASAC and with the views expressed by all interested parties who provided comments on drafts of the Staff Paper. While CASAC and some commenters supported revising the current standard to provide increased public health protection and other commenters supported retaining the current standard, no one who provided comments supported a standard that would be less protective than the current standard.

a. Evidence-Based Considerations

In looking more specifically at the controlled human exposure and epidemiological evidence (which is summarized in chapter 3 and Appendix 3B of the Staff Paper), the Staff Paper first notes that controlled human exposure studies provide the clearest and most compelling evidence for an array of human health effects that are directly attributable to acute exposures to O_3 *per se.* Evidence from such human studies, together with animal toxicological studies, help to provide biological plausibility for health effects observed in epidemiological studies. In considering the available evidence, the Staff Paper focuses on studies that examined health effects that have been demonstrated to be caused by exposure to O_3, or for which the Criteria Document judges associations with O_3 to be causal or likely causal, or for which the evidence is highly suggestive that O_3 contributes to the reported effects. In considering the epidemiological evidence as a basis for reaching conclusions about the adequacy of the current standard, the Staff Paper focuses on studies reporting effects in the warm season, for which the effect estimates are more consistently positive and statistically significant than those from all-year studies. The Staff Paper (section 6.3.1.1) considers the extent to which such studies provide evidence of associations that extend down to ambient O_3 concentrations below the level of the current standard, which would thereby call into question the adequacy of the current standard. In so doing, the Staff Paper notes, as discussed above, that if a population threshold level does exist for an effect observed in such studies, it would likely be at a level well below the level of the current standard. The Staff Paper (section 6.3.1.1) also attempts to characterize whether the area in which a study was conducted likely would or would not have met the current standard during the time of the study, although it recognizes that the confidence that would appropriately be placed on the associations observed in any given study, or on the extent to which the association would likely extend down to relatively low O_3 concentrations, is not dependent on this distinction. Further, the Staff Paper considered studies that examined subsets of data that include only days with ambient O_3 concentrations below the level of the current O_3 standard, or below even lower O_3 concentrations, and continue to report statistically significant associations. The Staff Paper (section 6.3.1.1) judges that such studies are directly relevant to considering the adequacy of the current standard, particularly in light of reported responses to O_3 at levels below the current standard found in controlled human exposure studies.

i. Lung Function, Respiratory Symptoms, and Other Respiratory Effects

Health effects for which the Criteria Document continues to find clear evidence of causal associations with short-term O_3 exposures include lung function decrements, respiratory symptoms, pulmonary inflammation, and increased airway responsiveness. In the last review, these O_3-induced effects were demonstrated with statistical significance down to the lowest level tested in controlled human exposure studies at that time (*i.e.*, 0.080 ppm). As discussed in chapter 3 of the Staff Paper, and in section II.A.2.a.i.(a)(i) above, two new studies are notable in that they are the only controlled human exposure studies that examined respiratory effects, including lung function decrements and respiratory symptoms, in healthy adults at lower exposure levels than had previously been examined. EPA's reanalysis of the data from the most recent study shows small group mean decrements in lung function responses to be statistically significant at the 0.060 ppm exposure level, while the author's analysis did not yield statistically significant lung function responses but did yield some statistically significant respiratory symptom responses toward the end of the exposure period. Notably, these studies report a small percentage of subjects experiencing lung function decrements ($\geq$ 10 percent) at the 0.060 ppm exposure level. These studies provide very limited evidence of O_3-related lung function decrements and respiratory symptoms at this lower exposure level.

The Staff Paper (section 3.3.1.1.1) notes that evidence from controlled human exposures studies indicates that people with moderate-to-severe asthma have somewhat larger decreases in lung function in response to O_3 relative to healthy individuals and that lung function responses in people with asthma appear to be affected by baseline lung function (*i.e.*, magnitude of responses increases with increasing disease severity). As discussed in the Criteria Document (p.8–80), this newer information expands our understanding of the physiological basis for increased sensitivity in people with asthma and other airway diseases, recognizing that

people with asthma present a different response profile for cellular, molecular, and biochemical responses than people who do not have asthma. New evidence indicates that some people with asthma have increased occurrence and duration of nonspecific airway responsiveness, which is an increased bronchoconstrictive response to airway irritants. Controlled human exposure studies also indicate that some people with allergic asthma and rhinitis have increased airway responsiveness to allergens following O_3 exposure. Exposures to O_3 exacerbated lung function decrements in people with pre-existing allergic airway disease, with and without asthma. Ozone-induced exacerbation of airway responsiveness persists longer and attenuates more slowly than O_3-induced lung function decrements and respiratory symptom responses and can have important clinical implications for asthmatics.

The Staff Paper (p.6–10) also concludes that newly available human exposure studies suggest that some people with asthma also have increased inflammatory responses, relative to non-asthmatic subjects, and that this inflammation may take longer to resolve. The new data on airway responsiveness, inflammation, and various molecular markers of inflammation and bronchoconstriction indicate that people with asthma and allergic rhinitis (with or without asthma) comprise susceptible groups for O_3-induced adverse effects. This body of evidence qualitatively informs the Staff Paper's (pp.6–10 to 6–11) evaluation of the adequacy of the current O_3 standard in that it indicates that human clinical and epidemiological panel studies of lung function decrements and respiratory symptoms that evaluate only healthy, non-asthmatic subjects likely underestimate the effects of O_3 exposure on asthmatics and other susceptible populations.

The Staff Paper (p.6–11) notes that in addition to the experimental evidence of lung function decrements, respiratory symptoms, and other respiratory effects in healthy and asthmatic populations discussed above, epidemiological studies have reported associations of lung function decrements and respiratory symptoms in several locations (Appendix 3B; also Figure 3–4 for respiratory symptoms). As discussed in the Staff Paper (section 3.3.1.1.1) and above, two large U.S. panel studies which together followed over 1000 asthmatic children on a daily basis (Mortimer *et al.*, 2002, the National Cooperative Inner-City Asthma Study, or NCICAS; and Gent *et al.*, 2003), as well as several smaller U.S. and international studies, have reported robust associations between ambient O_3 concentrations and measures of lung function and daily symptoms (*e.g.*, chest tightness, wheeze, shortness of breath) in children with moderate to severe asthma and between O_3 and increased asthma medication use. Overall, the multi-city NCICAS (2002), Gent *et al.* (2003), and several other single-city studies indicate a robust positive association between ambient O_3 concentrations and increased respiratory symptoms and increased medication use in asthmatics.

In considering the large number of single-city epidemiological studies reporting lung function or respiratory symptoms in healthy or asthmatic populations (Staff Paper, Appendix 3B), the Staff Paper (p.6–11) notes that most such studies that reported positive and often statistically significant associations in the warm season were conducted in areas that likely would not have met the current standard. In considering the large multi-city NCICAS (Mortimer *et al.*, 2002), the Staff Paper notes that the 98th percentile 8-hour daily maximum O_3 concentrations at the monitor reporting the highest O_3 concentrations in each of the study areas ranged from 0.084 ppm to >0.10 ppm. However, the authors indicate that less than 5 percent of the days in the eight urban areas had 8-hour daily O_3 concentrations exceeding 0.080 ppm. Moreover, the authors observed that when days with 8-hour average O_3 levels greater than 0.080 ppm were excluded, similar effect estimates were seen compared to estimates which included all of the days. There are also a few other studies in which the relevant air quality statistics provide some indication that lung function and respiratory symptom effects may be occurring in areas that likely would have met the current standard (EPA, 2007, p.6–12).

ii. Respiratory Hospital Admissions and Emergency Department Visits

At the time of the last review, many time-series studies indicated positive associations between ambient O_3 and increased respiratory hospital admissions and emergency room visits, providing strong evidence for a relationship between O_3 exposure and increased exacerbations of preexisting lung disease at O_3 levels below the level of the then current 1-hour standard (EPA 2007, section 3.3.1.1.6). Analyses of data from studies conducted in the northeastern U.S. indicated that O_3 air pollution was consistently and strongly associated with summertime respiratory hospital admissions.

Since the last review, new epidemiological studies have evaluated the association between short-term exposures to O_3 and unscheduled hospital admissions for respiratory causes. Large multi-city studies, as well as many studies from individual cities, have reported positive and often statistically significant O_3 associations with total respiratory hospitalizations as well as asthma- and COPD-related hospitalizations, especially in studies analyzing the O_3 effect during the summer or warm season. Analyses using multipollutant regression models generally indicate that copollutants do not confound the association between O_3 and respiratory hospitalizations and that the O_3 effect estimates were robust to PM adjustment in all-year and warm-season only data. The Criteria Document (p.8–77) concludes that the evidence supports a causal relationship between acute O_3 exposures and increased respiratory-related hospitalizations during the warm season.

In looking specifically at U.S. and Canadian respiratory hospitalization studies that reported positive and often statistically significant associations (and that either did not use GAM or were reanalyzed to address GAM-related problems), the Staff Paper (p.6–12) notes that many such studies were conducted in areas that likely would not have met the current O_3 standard, with many providing only all-year effect estimates, and with some reporting a statistically significant association in the warm season. Of the studies that provide some indication that O_3-related respiratory hospitalizations may be occurring in areas that likely would have met the current standard, the Staff Paper notes that some are all-year studies, whereas others reported statistically significant warm-season associations.

Emergency department visits for respiratory causes have been the focus of a number of new studies that have examined visits related to asthma, COPD, bronchitis, pneumonia, and other upper and lower respiratory infections, such as influenza, with asthma visits typically dominating the daily incidence counts. Among studies with adequate controls for seasonal patterns, many reported at least one significant positive association involving O_3. However, inconsistencies were observed which were at least partially attributable to differences in model specifications and analysis approach among various studies. In general, O_3 effect estimates from summer-only analyses tended to be positive and larger compared to results from cool season or all-year analyses. Almost all of the studies that reported

statistically significant effect estimates were conducted in areas that likely would not have met the current standard. The Criteria Document (section 7.3.2) concluded that analyses stratified by season generally supported a positive association between O_3 concentrations and emergency department visits for asthma in the warm season. These studies provide evidence of effects in areas that likely would not have met the current standard and evidence of associations that likely extend down to relatively low ambient O_3 concentrations.

iii. Mortality

The 1996 Criteria Document concluded that an association between daily mortality and O_3 concentrations for areas with high O_3 levels (*e.g.*, Los Angeles) was suggested. However, due to a very limited number of studies available at that time, there was insufficient evidence to conclude that the observed association was likely causal, and thus the possibility that O_3 exposure may be associated with mortality was not relied upon in the 1997 decision on the O_3 primary standard.

Since the last review, as described above, the body of evidence with regard to O_3-related health effects has been expanded by animal, human clinical, and epidemiological studies and now includes biologically plausible mechanisms by which O_3 may affect the cardiovascular system. In addition, there is stronger information linking O_3 to serious morbidity outcomes, such as hospitalization, that are associated with increased mortality. Thus, there is now a coherent body of evidence that describes a range of health outcomes from lung function decrements to hospitalization and premature mortality.

Newly available large multi-city studies (Bell *et al.*, 2004; Huang *et al.*,2005; and Schwartz 2005) designed specifically to examine the effect of O_3 and other pollutants on mortality have provided much more robust and credible information. Together these studies have reported significant associations between O_3 and mortality that were robust to adjustment for PM and different adjustment methods for temperature and suggest that the effect of O_3 on mortality is immediate but also persists for several days. One recent multi-city study (Bell *et al.*, 2006) examined the shape of the concentration-response function for the O_3-mortality relationship in 98 U.S. urban communities for the period 1987 to 2000 specifically to evaluate whether a ''safe'' threshold level exists. Results from various analytic methods all indicated that any threshold, if it exists, would likely occur at very low concentrations, far below the level of the current O_3 NAAQS and nearing background levels.

New data are also available from several single-city studies conducted world-wide, as well as from several meta-analyses that have combined information from multiple studies. Three recent meta-analyses evaluated potential sources of heterogeneity in O_3-mortality associations. All three analyses reported common findings, including effect estimates that were statistically significant and larger in warm season analyses. Reanalysis of results using default GAM criteria did not change the effect estimates, and there was no strong evidence of confounding by PM. The Criteria Document (p.7–175) finds that the majority of these studies suggest that there is an elevated risk of total nonaccidental mortality associated with acute exposure to O_3, especially in the summer or warm season when O_3 levels are typically high, with somewhat larger effect estimate sizes for associations with cardiovascular mortality.

Overall, the Criteria Document (p.8–78) finds that the results from U.S. multi-city time-series studies, along with the meta-analyses, provide relatively strong evidence for associations between short-term O_3 exposure and all-cause mortality even after adjustment for the influence of season and PM. The results of these analyses indicate that copollutants generally do not appear to substantially confound the association between O_3 and mortality. In addition, several single-city studies observed positive associations of ambient O_3 concentrations with total nonaccidental and cardiopulmonary mortality.

Finally, from those studies that included assessment of associations with specific causes of death, it appears that effect estimates for associations with cardiovascular mortality are larger than those for total mortality; effect estimates for respiratory mortality are less consistent in size, possibly due to reduced statistical power in this subcategory of mortality. For cardiovascular mortality, the Criteria Document (p.7–106) suggests that effect estimates are consistently positive and more likely to be larger and statistically significant in warm season analyses. The Criteria Document (p.8–78) concludes that these findings are highly suggestive that short-term O_3 exposure directly or indirectly contributes to nonaccidental and cardiopulmonary-related mortality, but additional research is needed to more fully establish underlying mechanisms by which such effects occur.

b. Exposure- and Risk-Based Considerations

As discussed above in section II.B, the Staff Paper also estimated quantitative exposures and health risks associated with recent air quality levels and with air quality that meets the current standard to help inform judgments about whether or not the current standard provides adequate protection of public health. In so doing, it presented the important uncertainties and limitations associated with the exposure and risk assessments (discussed above in section II.B and more fully in chapters 4 and 5 of the Staff Paper).

The Staff Paper (and the CASAC) also recognized that the exposure and risk analyses could not provide a full picture of the O_3 exposures and O_3-related health risks posed nationally. The Staff Paper did not have sufficient information to evaluate all relevant at-risk groups (*e.g.*, outdoor workers) or all O_3-related health outcomes (*e.g.*, increased medication use, school absences, and emergency department visits that are part of the broader pyramid of effects discussed above in section II.A.4.d), and the scope of the Staff Paper analyses was generally limited to estimating exposures and risks in 12 urban areas across the U.S., and to only five or just one area for some health effects included in the risk assessment. Thus, national-scale public health impacts of ambient O_3 exposures are clearly much larger than the quantitative estimates of O_3-related incidences of adverse health effects and the numbers of children likely to experience exposures of concern associated with recent air quality or air quality that just meets the current or alternative standards. On the other hand, inter-individual variability in responsiveness means that only a subset of individuals in each group estimated to experience exposures exceeding a given benchmark exposure of concern level would actually be expected to experience such adverse health effects.

As described above in section II.B, the Staff Paper estimated exposures and risks for the three most recent years (2002–2004) for which data were available at the time of the analyses. Within this 3-year period, 2002 was a year with relatively higher O_3 levels in most, but not all, areas and simulation of just meeting the current standard based on 2002 air quality data provides a generally more upper-end estimate of exposures and risks, while 2004 was a year with relatively lower O_3 levels in

most, but not all, areas and simulation of just meeting the current standard using 2004 air quality data provides a generally more lower-end estimate of exposures and risks.

i. Exposure Assessment Results

As discussed above in section II.B.1, the Staff Paper estimates personal exposures to ambient O_3 levels at and above specific benchmark levels to provide some perspective on the public health impacts of health effects that cannot currently be evaluated in quantitative risk assessments but that may occur at current air quality levels, and the extent to which such impacts might be reduced by meeting the current and alternative standards. As described in greater detail in section II.B.1.c above, the Staff Paper refers to exposures at and above these benchmark levels as ''exposures of concern.'' The Staff Paper notes that exposures of concern, and the health outcomes they represent, likely occur across a range of O_3 exposure levels, such that there is no one exposure level that addresses all relevant public health concerns. Therefore, with the concurrence of the CASAC, the Staff Paper estimated exposures of concern not only at 0.080 ppm O_3, a level at which there are demonstrated effects, but also at 0.070 and 0.060 ppm O_3. The Staff Paper recognized that there will be varying degrees of concern about exposures at each of these levels, based in part on the population subgroups experiencing them. Given that there is clear evidence of inflammation, increased airway responsiveness, and changes in host defenses in healthy people exposed to 0.080 ppm O_3 and reason to infer that such effects will continue at lower exposure levels, but with increasing uncertainty about the extent to which such effects occur at lower O_3 concentrations, the Staff Paper, and the discussion below, focuses on exposures of concern at or above benchmark levels of 0.070 and 0.060 ppm O_3 for purposes of evaluating the adequacy of the current standard.

The exposure estimates presented in the Staff Paper are for the number and percent of all school age children and asthmatic school age children exposed, and the number of person-days (occurrences) of exposures, with daily 8-hour maximum exposures at or above several benchmark levels while at intermittent moderate or greater exertion. As shown in the Table 1 in this notice, the percent of population exposed at any given level is very similar for all and asthmatic school age children. Substantial year-to-year variability in exposure estimates is observed, ranging to over an order of magnitude at the current standard level, in estimates of the number of children and, as shown in Table 6–1a and b of the Staff Paper, the number of occurrences of exposures of concern at both of these benchmark levels. The Staff Paper states that it is appropriate to consider not just the average estimates across all years, but also to consider public health impacts in year with relatively higher O_3 levels. The Staff Paper also notes that there is substantial city-to-city variability in these estimates, and notes that it is appropriate to consider not just the aggregate estimates across all cities, but also to consider the public health impacts in cities that receive relatively less protection upon meeting the current standard.

As discussed in the Staff Paper (EPA, 2007b, see section 6.3.1.2), about 50 percent of asthmatic or all school age children, representing nearly 1.3 million asthmatic children and about 8.5 million school age children in the 12 urban areas examined, are estimated to experience exposures of concern at or above the 0.070 ppm benchmark level (*i.e.*, these individuals are estimated to experience 8-hour O_3 exposures at or above 0.070 ppm while engaged in moderate or greater exertion 1 or more times during the O_3 season) associated with 2002 O_3 air quality levels. In contrast, about 17 percent of asthmatic and all school age children are estimated to experience exposures of concern at or above the 0.070 ppm benchmark level associated with 2004 O_3 air quality levels. Just meeting the current standard results in an aggregate estimate of about 20 percent of asthmatic or 18 percent or all school age children likely to experience exposures of concern at or above the 0.070 ppm benchmark level using the 2002 simulation. The exposure estimates for this benchmark level range up to about 40 percent of asthmatic or all school age children in the single city with the least degree of protection from this standard. Just meeting the current standard based on the 2004 simulation, results in an aggregate estimate of about 1 percent of asthmatic or all school age children experiencing exposures at the 0.07 ppm benchmark level.

At the benchmark level of 0.060 ppm, about 70 percent of all or asthmatic school age children are estimated to experience exposures of concern at this benchmark level for the aggregate of the 12 urban areas associated with 2002 O_3 levels. Just meeting the current standard would result in an aggregate estimate of about 45 percent of asthmatic or all school age children likely to experience exposures of concern at or above the 0.060 ppm benchmark level using the 2002 simulation. The exposure estimates for this benchmark level range up to nearly 70 percent of all or asthmatic school age children in the single city with the least degree of protection associated with just meeting the current standard using the 2002 simulation. The Staff Paper indicates an aggregate estimate of about 10 percent of asthmatic or all school age children would experience exposures at or above the 0.06 ppm benchmark level associated with just meeting the current standard using the 2004 simulation.

ii. Risk Assessment Results

As described in more detail in section II.B.2 above and in chapters 5 and 6 of the Staff Paper, risk estimates have been developed for several important health endpoints, including: (1) Lung function decrements (*i.e.*, ≥15 percent and ≥20 percent reductions in FEV_1) in all school age children for 12 urban areas; (2) lung function decrements (*i.e.*, ≥10 percent and ≥20 percent reductions in FEV_1) in asthmatic school age children for 5 urban areas (a subset of the 12 urban areas); (3) respiratory symptoms (*i.e.*, chest tightness, shortness of breath, wheeze) in moderate to severe asthmatic children for the Boston area; (4) respiratory-related hospital admissions for 3 urban areas; and (5) nonaccidental and cardiorespiratory mortality for 12 urban areas for three recent years (2002 to 2004) and for just meeting the current standard using a 2002 simulation and a 2004 simulation.

With regard to estimates of moderate lung function decrements, as shown in Tables 6–2 of the Staff Paper, meeting the current standard substantially reduces the estimated number of school age children experiencing one or more occurrences of FEV_1 decrements ≥15 percent for the 12 urban areas, going from about 1.3 million children (7 percent of children) under 2002 air quality to about 610,000 (3 percent of children) based on the 2002 simulation, and from about 620,000 children (3 percent of children) to about 230,000 (1 percent of children) using the 2004 simulation. In asthmatic children, the estimated number of children experiencing one or more occurrences of FEV_1 decrements ≥10 percent for the 5 urban areas goes from about 250,000 children (16 percent of asthmatic children) under 2002 air quality to about 130,000 (8 percent of asthmatic children) using the 2002 simulation, and from about 160,000 (10 percent of asthmatic children) to about 70,000 (4 percent of asthmatic children) using the 2004 simulation. Thus, even when the

current standard is met, about 4 to 8 percent of asthmatic school age children are estimated to experience one or more occurrences of moderate lung function decrements, resulting in about 1 million occurrences (using the 2002 simulation) and nearly 700,000 occurrence (using the 2004 simulation) in just 5 urban areas. Moreover, the estimated number of occurrences of moderate or greater lung function decrements per child is on average approximately 6 to 7 in all children and 8 to 10 in asthmatic children in an O_3 season, even when the current standard is met, depending on the year used to simulate meeting the current standard. In the 1997 review of the O_3 standard a general consensus view of the adversity of such moderate responses emerged as the frequency of occurrences increases, with the judgment that repeated occurrences of moderate responses, even in otherwise healthy individuals, may be considered adverse since they may well set the stage for more serious illness.

With regard to estimates of large lung function decrements, the Staff Paper notes that FEV_1 decrements *>20 percent* would likely interfere with normal activities in many healthy individuals, therefore single occurrences would be considered to be adverse. In people with asthma, large lung function responses would likely interfere with normal activities for most individuals and would also increase the likelihood that these individuals would use additional medication or seek medical treatment. Not only would single occurrences be considered to be adverse to asthmatic individuals under the ATS definition, but they also would be cause for medical concern. While the current standard reduces the occurrences of large lung function decrements in all children and asthmatic children from about 60 to 70%, in a year with relatively higher O_3 levels (2002), there are estimated to be about 500,000 occurrences in all school children across the entire 12 urban areas, and about 40,000 occurrences in asthmatic children across just 5 urban areas. As noted above, it is clear that even when the current standard is met over a three-year period, O_3 levels in each year can vary considerably, as evidenced by relatively large differences between risk estimates based on 2002 to 2004 air quality. The Staff Paper expressed the view that it was appropriate to consider this yearly variation in O_3 levels allowed by the current standard in judging the extent to which impacts on members of at-risk groups in a year with relatively higher O_3 levels remains of concern from a public health perspective.

With regard to other O_3-related health effects, as shown in Tables 6–4 through 6–6 of the Staff Paper, the estimated risks of respiratory symptom days in moderate to severe asthmatic children, respiratory-related hospital admissions, and non-accidental and cardiorespiratory mortality, respectively, are not reduced to as great an extent by meeting the current standard as are lung function decrements. For example, just meeting the current standard reduces the estimated average incidence of chest tightness in moderate to severe asthmatic children living in the Boston urban area by 11 to 15%, based on 2002 and 2004 simulations, respectively, resulting in an estimated incidence of about 23,000 to 31,000 per 100,000 children attributable to O_3 exposure (Table 6–4). Just meeting the current standard is estimated to reduce the incidence of respiratory-related hospital admissions in the New York City urban area by about 16 to 18%, based on 2002 and 2004 simulations, respectively, resulting in an estimated incidence per 100,000 population of 4.6 to 6.4, respectively (Table 6–5). Across the 12 urban areas, the estimates of non-accidental mortality incidence per 100,000 relevant population range from 0.4 to 2.6 (for 2002) and 0.5 to 1.5 (for 2004) (Table 6–6). Meeting the current standard results in a reduction of the estimated incidence per 100,000 population to a range of 0.3 to 2.4 based on the 2002 simulation and a range of 0.3 to 1.2 based on the 2004 simulation. Estimates for cardiorespiratory mortality show similar patterns.

In considering the estimates of the proportion of population affected and the number of occurrences of the health effects that are included in the risk assessment, the Staff Paper notes that these limited estimates are indicative of a much broader array of O_3-related health endpoints that are part of a ''pyramid of effects'' that include various indicators of morbidity that could not be included in the risk assessment (*e.g.*, school absences, increased medication use, emergency department visits) and which primarily affect members of at-risk groups. While the Staff Paper had sufficient information to estimate and consider the number of symptom days in children with moderate to severe asthma, it recognized that there are many other effects that may be associated with symptom days, such as increased medication use, school and work absences, or visits to doctors' offices, for which there was not sufficient information to estimate risks but which are important to consider in assessing the adequacy of the current standard. The same is true for more serious, but less frequent effects. The Staff Paper estimated hospital admissions, but there was not sufficient information to estimate emergency department visits in a quantitative risk assessment. Consideration of such unquantified risks in the Staff Paper reinforces the Staff Paper conclusion that consideration should be given to revising the standard so as to provide increased public health protection, especially for at-risk groups such as people with asthma or other lung diseases, as well as children and older adults, particularly those active outdoors, and outdoor workers.

c. Summary

Based on the available information and taking into account the views of CASAC and public comments, the Staff Paper initially notes that all parties commenting on the NAAQS review agree that the standard should be at least as protective as the current standard, as no party suggested it should be revised to provide less protection. The Staff Paper concludes that the overall body of evidence clearly calls into question the adequacy of the current standard in protecting at-risk groups, notably including asthmatic children and other people with lung disease, as well as all children and older adults, especially those active outdoors, and outdoor workers,[48] against an array of adverse health effects that range from decreased lung function to serious indicators of respiratory morbidity including emergency department visits and hospital admissions for respiratory causes, nonaccidental mortality, and possibly cardiovascular effects. The available information provides strong support for consideration of an O_3 standard that would provide increased health protection for these at-risk groups. The Staff Paper also concludes that risks projected to remain upon meeting the current standard, based on the exposure and risk estimates discussed above and in more detail in the Staff Paper, are indicative of risks to at-risk groups that can be judged to be important from a public health perspective, which reinforces the Staff Paper conclusion that consideration should be given to revising the level of the standard so as to provide increased

[48] In defining at-risk groups this way we are including both groups with greater inherent sensitivity and those more likely to be exposed.

public health protection (EPA, 2007, section 6.3.6).

3. CASAC Views

In its letter to the Administrator, the CASAC O_3 Panel, with full endorsement of the chartered CASAC, unanimously concluded that there is ''no scientific justification for retaining'' the current primary O_3 standard, and the current standard ''needs to be substantially reduced to protect human health, particularly in sensitive subpopulations'' (Henderson, 2006c, pp. 1–2). In its rationale for this conclusion, the CASAC Panel concluded that ''new evidence supports and build-upon key, health-related conclusions drawn in the 1997 Ozone NAAQS review'' (id., p. 3). The Panel points to studies discussed in chapter 3 and Appendix 3B of the Staff Paper in noting that several new single-city studies and large multi-city studies have provided more evidence for adverse health effects at concentrations lower than the current standard, and that these epidemiological studies are backed-up by evidence from controlled human exposure studies. The Panel specifically noted evidence from the recent Adams (2006) study that reported statistically significant decrements in the lung function of healthy, moderately exercising adults at a 0.080 ppm exposure level, and importantly, also reported adverse lung function effects in some healthy individuals at 0.060 ppm. The Panel concluded that these results indicate that the current standard ''is not sufficiently health-protective with an adequate margin of safety,'' noting that that while similar studies in sensitive groups such as asthmatics have yet to be conducted, ''people with asthma, and particularly children, have been found to be more sensitive and to experience larger decrements in lung function in response to O_3 exposures than would healthy volunteers (Mortimer *et al.*, 2002)'' (Henderson, 2006c, p. 4).

The CASAC Panel also highlighted a number of O_3-related adverse health effects, that are associated with exposure to ambient O_3, below the level of the current standard, based on a broad range of epidemiological studies (Henderson, 2006c). These adverse health effects include increases in school absenteeism, respiratory hospital emergency department visits among asthmatics and patients with other respiratory diseases, hospitalizations for respiratory illnesses, symptoms associated with adverse health effects (including chest tightness and medication usage), and premature mortality (nonaccidental, cardiorespiratory deaths) reported at exposure levels well below the current standard. ''The CASAC considers each of these findings to be an important indicator of adverse health effects'' (Henderson, 2006c).

The CASAC Panel expressed the view that more emphasis should be placed on the subjects in controlled human exposure studies with FEV_1 decrements greater than 10 percent, which can be clinically significant, rather than on the relatively small average decrements. The Panel also emphasized significant O_3-related inflammatory responses and markers of injury to the epithelial lining of the lung that are independent of spirometric responses. Further, the Panel expressed the view that the Staff Paper did not place enough emphasis on serious morbidity (*e.g.*, hospital admissions) and mortality observed in epidemiology studies. On the basis of the large amount of recent data evaluating adverse health effects at levels at and below the current O_3 standard, it was the unanimous opinion of the CASAC Panel that the current primary O_3 standard is not adequate to protect human health, that the relevant scientific data do not support consideration of retaining the current standard, and that the current standard needs to be substantially reduced to be protective of human health, particularly in sensitive subpopulations (Henderson, 2006c, pp. 4–5).

Further, the CASAC letter noted that ''there is no longer significant scientific uncertainty regarding the CASAC's conclusion that the current 8-hour primary NAAQS must be lowered'' (Henderson, 2006c, p. 5). The Panel noted that a ''large body of data clearly demonstrates adverse human health effects at the current level'' of the standard, such that ''[R]etaining this standard would continue to put large numbers of individuals at risk for respiratory effects and/or significant impact on quality of life including asthma exacerbations, emergency room visits, hospital admissions and mortality'' (Henderson, 2006c). The Panel also noted that ''scientific uncertainty does exist with regard to the lower level of O_3 exposure that would be fully protective of human health,'' concluding that ''it is possible that there is no threshold for an O_3-induced impact on human health and that some adverse events may occur at policy-relevant background'' (Henderson, 2006c, p.5).

4. Administrator's Proposed Conclusions Concerning Adequacy of Current Standard

Based on the large body of evidence concerning the public health impacts of O_3 pollution, including significant new evidence concerning effects at O_3 concentrations below the level of the current standard, the Administrator proposes that the current standard does not protect public health with an adequate margin of safety and should be revised to provide additional public health protection. In considering whether the primary standard should be revised, the Administrator has carefully considered the conclusions contained in the Criteria Document, the rationale and recommendations contained in the Staff Paper, the advice and recommendations from the CASAC, and public comments to date. The Administrator notes that evidence of a range of respiratory-related morbidity effects seen in the last review has been considerably strengthened, both through toxicological and controlled human exposure studies as well as through many new panel and epidemiological studies.

In addition, new evidence from controlled human exposure and epidemiological studies identifies people with asthma as an important susceptible population for which estimates of respiratory effects in the general population likely underestimate the magnitude or importance of these effects. New evidence about mechanisms of toxicity more completely explains the biological plausibility of O_3-induced respiratory effects and is beginning to suggest mechanisms that may link O_3 exposure to cardiovascular effects. Further, there is now relatively strong evidence for associations between O_3 and total nonaccidental and cardiopulmonary mortality, even after adjustment for the influence of season and PM. Relative to the information that was available to inform the Agency's 1997 decision to set the current standard, the newly available evidence increases the Administrator's confidence that respiratory morbidity effects such as lung function decrements and respiratory symptoms are causally related to O_3 exposures, that indicators of respiratory morbidity such as emergency department visits and hospital admissions are causally related to O_3 exposures, and that the evidence is highly suggestive that O_3 exposures during the O_3 season contribute to premature mortality.

The Administrator judges that there is important new evidence demonstrating that exposures to O_3 at levels below the level of the current standard are associated with a broad array of adverse health effects, especially in at-risk populations. These at-risk populations include people with asthma or other lung diseases who are likely to experience more serious effects from

exposure to O_3. As discussed in section II.A.4 above, these groups also include children and older adults with increased susceptibility, as well as those who are likely to be vulnerable as a result of spending a lot of time outdoors engaged in physical activity, especially active children and outdoor workers.

Examples of this important new evidence include demonstration of O_3-induced lung function effects and respiratory symptoms in some healthy individuals down to the previously observed exposure level of 0.080 ppm, as well as very limited new evidence at exposure levels well below the level of the current standard. In addition, there is now epidemiological evidence of statistically significant O_3-related associations with lung function and respiratory symptom effects, respiratory-related emergency department visits and hospital admissions, and increased mortality, in areas that likely would have met the current standard. There are also many epidemiological studies done in areas that likely would not have met the current standard but which nonetheless report statistically significant associations that generally extend down to ambient O_3 concentrations that are below the level of the current standard. Further, there are a few studies that have examined subsets of data that include only days with ambient O_3 concentrations below the level of the current standard, or below even much lower O_3 concentrations, and continue to report statistically significant associations with respiratory morbidity outcomes and mortality. The Administrator recognizes that the evidence from controlled human exposure studies, together with animal toxicological studies, provides considerable support for the biological plausibility of the respiratory morbidity associations observed in the epidemiological studies and for concluding that the associations extend below the level of the current standard.

Based on the strength of the currently available evidence of adverse health effects, and on the extent to which the evidence indicates that such effects result from exposures to ambient O_3 concentrations below the level of the current standard, the Administrator judges that the current standard does not protect public health with an adequate margin of safety and that the standard should be revised to provide such protection, especially for at-risk groups, against a broad array of adverse health effects.

In reaching this judgment, the Administrator has also considered the results of both the exposure and risk assessments conducted for this review, to provide some perspective on the extent to which at-risk groups would likely experience ''exposures of concern'' [49] and on the potential magnitude of the risk of experiencing various adverse health effects when recent air quality data (from 2002 to 2004) are used to simulate meeting the current standard and alternative standards in a number of urban areas in the U.S.[50] In considering the exposure assessment results, the Administrator is relying on analyses that define exposures of concern by three benchmark exposure levels: 0.080, 0.070, and 0.060 ppm. Estimates of exposures of concern in at-risk groups at and above these benchmark levels, using O_3 air quality data in 2002 and 2004, provide some indication of the potential magnitude of the incidence of health outcomes that cannot currently be evaluated in a quantitative risk assessment, such as increased airway responsiveness, increased pulmonary inflammation, including increased cellular permeability, and decreased pulmonary defense mechanisms. These physiological effects have been demonstrated to occur in healthy people at O_3 exposures as low as 0.080 ppm, the lowest level tested. They are associated with aggravation of asthma, increased medication use, increased school and work absences, increased susceptibility to respiratory infection, increased visits to doctors' offices and emergency departments, increased admissions to hospitals, and possibly to cardiovascular system effects and chronic effects such as chronic bronchitis or long-term damage to the lungs that can lead to reduced quality of life.

In considering these various benchmark levels for exposures of concern, the Administrator has focused primarily on estimated exposures at and above the 0.070 ppm benchmark level as an important surrogate measure for potentially more serious health effects in at-risk groups such as people with asthma. This judgment is based on the strong evidence of effects in healthy people at the 0.080 ppm exposure level and the new evidence that people with asthma are likely to experience larger and more serious effects than healthy people at the same level of exposure. In the Administrator's view, this evidence does not support a focus on exposures at and above the benchmark level of 0.080 ppm O_3, as it would not adequately account for the increased risk of harm from exposure for members of at-risk groups, especially people with asthma. The Administrator also judges that the evidence of demonstrated effects is too limited to support a primary focus on exposures down to the lowest benchmark level considered of 0.060 ppm. The Administrator particularly notes that although the analysis of ''exposures of concern'' was conducted to estimate exposures at and above three discrete benchmark levels (0.080, 0.070, and 0.060 ppm), the concept is appropriately viewed as a continuum. As discussed at the outset in section II.A above, the Administrator strives to balance concern about the potential for health effects and their severity with the increasing uncertainty associated with our understanding of the likelihood of such effects at lower O_3 exposure levels.

The Administrator observes that based on the aggregate exposure estimates for the 2002 simulation summarized above in Table 1 (section II.B.1) and in the Staff Paper (EPA, 2007b, Table 6–7) for the 12 U.S. urban areas included in the exposure analysis, upon just meeting the current standard up to about 20 percent of asthmatic or all school age children are likely to experience one or more exposures of concern at and above the 0.070 ppm benchmark level; the 2004 simulation yielded an estimate of about 1 percent of such children. The Administrator notes from this comparison that there is substantial year-to-year variability, ranging up to an order of magnitude or more in estimates of the number of people and the number of occurrences of exposures of concern at and above this benchmark level. Moreover, within any given year, the exposure assessment indicates that there is substantial city-to-city variability in the estimates of the children exposed or the number of occurrences of exposure at and above this benchmark level. For example, city-specific estimates of the percent of asthmatic or all school age children likely to experience exposures at and above the benchmark level of 0.070 ppm

[49] As discussed in section II.B.1.c above, ''exposures of concern'' are estimates of personal exposures while at moderate or greater exertion to 8-hour average ambient O_3 levels at and above specific benchmark levels which represent exposure levels at which O_3-related health effects are known or can with varying degrees of certainty be inferred to occur in some individuals. Estimates of exposures of concern provide some perspective on the public health impacts of health effects that may occur in some individuals at recent air quality levels but cannot be evaluated in quantitative risk assessments, and the extent to which such impacts might be reduced by meeting the current and alternative standards.

[50] As described in the Staff Paper (section 4.5.8) and discussed above, recent O_3 air quality distributions have been statistically adjusted to simulate just meeting the current and selected alternative standards. These simulations do not represent predictions of when, whether, or how areas might meet the specified standards.

ranges from about 1 percent up to about 40 percent across the 12 urban areas upon just meeting the current standard based on the 2002 simulation; the 2004 simulation yielded estimates that range from about 0 up to about 7 percent. The Administrator judges it is important to recognize the substantial year-to-year and city-to-city variability in considering these estimates.

With regard to the results of the risk assessment, as discussed above, the Administrator recognizes that a simulation of just meeting the current standard in the cities included in the assessment indicate that the estimated risk is lower for all of the health endpoints evaluated. In considering the adequacy of the current standard, the Administrator has focused on the risks estimated to remain upon just meeting the current standard. Based on the aggregate risk estimates summarized above in Table 2 (section II.B.2 of this notice), the Administrator observes that upon just meeting the current standard based on the 2002 simulation, approximately 8 percent of asthmatic school age children across 5 urban areas (ranging up to about 11 percent in the city that receives relatively less protection) and approximately 3 percent of all school age children across 12 urban areas (ranging up to over 5 percent in the city that receives relatively less protection) would still be estimated to experience moderate or greater lung function decrements one or more times within an O_3 season. The Administrator recognizes that, as with the estimates of exposures of concern, there is substantial year-to-year and city-to-city variability in these risk estimates.

In addition to the percentage of asthmatic or all children estimated to experience 1 or more occurrences of an effect, the Administrator recognizes that some individuals are estimated to have multiple occurrences. For example, across all the cities in the assessment, approximately 6 to 7 occurrences of moderate or greater lung function decrements per child are estimated to occur in all children and approximately 8 to 10 occurrences are estimated to occur in asthmatic children in an O_3 season, even upon just meeting the current standard. In the last review, a general consensus view of the adversity of such responses emerged as the frequency of occurrences increases, with the judgment that repeated occurrences of moderate responses, even in otherwise healthy individuals, may be considered adverse since they may well set the stage for more serious illness. The Administrator continues to support this view.

Large lung function decrements (*i.e.*, ≥20 percent FEV_1 decrement) would likely interfere with normal activities in many healthy individuals, therefore single occurrences would be considered to be adverse. In people with asthma, large lung function responses (*i.e.*, ≥ 20 percent FEV_1 decrement), would likely interfere with normal activities for most individuals and would also increase the likelihood that these individuals would use additional medication or seek medical treatment. Not only would single occurrences be considered to be adverse to asthmatic individuals under the ATS definition, but they also would be cause for medical concern for some individuals. Upon just meeting the current standard based on the 2002 simulation, close to 1 percent of asthmatic and all school age children are estimated to experience one or more occurrences of large lung function decrements in the aggregate across 5 and 12 urban areas, respectively, with close to 2 percent of both asthmatic and all school age children estimated to experience such effects in the city that receives relatively less protection from this standard. These estimates translate into approximately 500,000 occurrences of large lung function decrements in all children across 12 urban areas, and about 40,000 occurrences in asthmatic children across just 5 urban areas upon just meeting the current standard based on the 2002 simulation; the 2004 simulation yielded estimates that translate into approximately 160,000 and 10,000 such occurrences in all children and asthmatic children, respectively.

Upon just meeting the current standard based on the 2002 simulation, the estimate of the O_3-related risk of respiratory symptom days in moderate to severe asthmatic children in the Boston area is about 8,000 symptom days; the 2004 simulation yielded an estimate of about 6,000 such symptoms days. These estimates translate into as many as one symptom day in 6, and one symptom day in 8, respectively, that are attributable to O_3 exposure during the O_3 season of the total number of symptom days associated with all causes of respiratory symptoms in asthmatic children during those years.

The estimated O_3-related risk of respiratory-related hospital admissions upon just meeting the current standard based on the 2002 simulation is greater than 500 hospital admissions in the New York City area alone, or about 1.5 percent of the total incidence of respiratory-related admissions associated with all causes; the 2004 simulation yielded an estimate of approximately 400 such hospital admissions. For nonaccidental mortality, just meeting the current standard based on the 2002 simulation results in an estimated incidence of from 0.3 to 2.4 per 100,000 population; the 2004 simulation resulted in an estimated incidence of from 0.3 to 1.2 per 100,000 population. Estimates for cardiorespiratory mortality show similar patterns. (Abt Associates, 2007, Table 4–26).

The Administrator recognizes that in considering the estimates of the proportion of population affected and the number of occurrences of those specific health effects that are included in the risk assessment, these limited estimates based on 2002 and 2004 simulations are indicative of a much broader array of O_3-related health endpoints that are part of a ''pyramid of effects'' (discussed above in section II.A.4.d) that include various indicators of morbidity that could not be included in the risk assessment (*e.g.*, school absences, increased medication use, emergency department visits) and which primarily affect members of at-risk groups. Moreover, the Administrator notes that the CASAC Panel supported a qualitative consideration of the much broader array of O_3-related health endpoints, and specifically referred to respiratory emergency department visits in asthmatics and people with other lung diseases, increased medication use, and increased respiratory symptoms reported at exposure levels well below the current standard.

The Administrator believes the exposure and risk estimates discussed in the Staff Paper and summarized above are important from a public health perspective and are indicative of potential exposures and risks to at-risk groups. In reaching this proposed judgment, the Administrator considered the following factors: (1) The estimates of numbers of persons exposed at and above the 0.070 ppm benchmark level; (2) the risk estimates of the proportion of the population and number of occurrences of various health effects in areas upon just meeting the current standard; (3) the year-to-year and city-to-city variability in both the exposure and risk estimates; (4) the uncertainties in these estimates; and (5) recognition that there is a broader array of O_3-related adverse health outcomes for which risk estimates could not be quantified (that are part of a broader ''pyramid of effects'') and that the scope of the assessment was limited to just a sample of urban areas and to some but not all at-risk populations, leading to an incomplete estimation of public health impacts associated with O_3 exposures

across the country. The Administrator also notes that it was the unanimous conclusion of the CASAC Panel that there is no scientific justification for retaining the current primary O_3 standard, that the current standard is not sufficiently health-protective with an adequate margin of safety, and that the standard needs to be substantially reduced to protect human health, particularly in at-risk subpopulations.

Based on all of these considerations, the Administrator proposes that the current O_3 standard is not requisite to protect public health with an adequate margin of safety because it does not provide sufficient protection and that revision would result in increased public health protection, especially for members of at-risk groups.

D. Conclusions on the Elements of the Primary Standard

1. Indicator

In the last review EPA focused on a standard for O_3 as the most appropriate surrogate for ambient photochemical oxidants. In this review, while the complex atmospheric chemistry in which O_3 plays a key role has been highlighted, no alternative to O_3 has been advanced as being a more appropriate surrogate for ambient photochemical oxidants.

The Staff Paper (section 2.2.2) notes that it is generally recognized that control of ambient O_3 levels provides the best means of controlling photochemical oxidants. Among the photochemical oxidants, the acute exposure chamber, panel, and field epidemiological human health database provides specific evidence for O_3 at levels commonly reported in the ambient air, in part because few other photochemical oxidants are routinely measured. However, recent investigations on copollutant interactions have used simulated urban photochemical oxidant mixes. These investigations suggest the need for similar studies to help in understanding the biological basis for effects observed in epidemiological studies that are associated with air pollutant mixtures, where O_3 is used as the surrogate for the mix of photochemical oxidants. Meeting the O_3 standard can be expected to provide some degree of protection against potential health effects that may be independently associated with other photochemical oxidants but which are not discernable from currently available studies indexed by O_3 alone. Since the precursor emissions that lead to the formation of O_3 generally also lead to the formation of other photochemical oxidants, measures leading to reductions in population exposures to O_3 can generally be expected to lead to reductions in population exposures to other photochemical oxidants.

The Staff Paper notes that while the new body of time-series epidemiological evidence cannot resolve questions about the relative contribution of other photochemical oxidant species to the range of morbidity and mortality effects associated with O_3 in these types of studies, control of ambient O_3 levels is generally understood to provide the best means of controlling photochemical oxidants in general, and thus of protecting against effects that may be associated with individual species and/or the broader mix of photochemical oxidants, independent of effects specifically related to O_3.

In its letter to the Administrator, the CASAC O_3 Panel noted that O_3 is ''the key indicator of the extent of oxidative chemistry and serves to integrate multiple pollutants.'' CASAC also stated that ''although O_3 itself has direct effects on human health and ecosystems, it can also be considered as an indicator of the mixture of photochemical oxidants and of the oxidizing potency of the atmosphere'' (Henderson, 2006c, p. 9).

Based on the available information, and consistent with the views of EPA staff and the CASAC, the Administrator proposes to continue to use O_3 as the indicator for a standard that is intended to address effects associated with exposure to O_3, alone or in combination with related photochemical oxidants. In so doing, the Administrator recognizes that measures leading to reductions in population exposures to O_3 will also reduce exposures to other photochemical oxidants.

2. Averaging Time

a. Short-Term and Prolonged (1 to 8 Hours)

The current 8-hour averaging time for the primary O_3 NAAQS was set in 1997. At that time, the decision to revise the averaging time of the primary standard from 1 to 8 hours was supported by the following key observations and conclusions:

(1) The 1-hour averaging time of the previous NAAQS was originally selected primarily on the basis of health effects associated with short-term (*i.e.*, 1- to 3-hour) exposures.

(2) Substantial health effects information was available for the 1997 review that demonstrated associations between a wide range of health effects (*e.g.*, moderate to large lung function decrements, moderate to severe symptoms and pulmonary inflammation) and prolonged (*i.e.*, 6- to 8-hour) exposures below the level of the then current 1-hour NAAQS.

(3) Results of the quantitative risk analyses showed that reductions in risks from both short-term and prolonged exposures could be achieved through a primary standard with an averaging period of either 1 or 8 hours. Thus establishing both a 1-hour and an 8-hour standard would not be necessary to reduce risks associated with the full range of observed health effects.

(4) The 8-hour averaging time is more directly associated with health effects of concern at lower O_3 concentrations than the 1-hour averaging time. It was thus the consensus of CASAC ''that an 8-hour standard was more appropriate for a human health-based standard than a 1-hour standard.'' (Wolff, 1995)

(5) An 8-hour averaging results in a significantly more uniformly protective national standard than the then current 1-hour standard.

(6) An 8-hour averaging time effectively limits both 1- and 8-hour exposures of concern.

In looking at the new information that is discussed in section 7.6.2 of the current Criteria Document, the Staff Paper noted that epidemiological studies have used various averaging periods for O_3 concentrations, most commonly 1-hour, 8-hour and 24-hour averages. As described more specifically in sections 3.3 and 3.4 of the Staff Paper, in general the results presented from U.S. and Canadian studies show no consistent difference for various averaging times in different studies. Because the 8-hour averaging time continues to be more directly associated with health effects of concern from controlled human exposure studies at lower concentrations than do shorter averaging periods, the Staff Paper did not evaluate alternative averaging times in this review and did not conduct exposure or risk assessments for standards with averaging times other than 8 hours.

The Staff Paper discusses an analysis of a recent three-year period of air quality data (2002 to 2004) which was conducted to determine whether the comparative 1- and 8-hour air quality patterns that were observed in the last review continue to be observed based on more recent air quality data. This updated air quality analysis (McCluney, 2007) is very consistent with the analysis done in the last review in that it indicates that only two urban areas of the U.S. have such ''peaky'' air quality patterns such that the ratio of 1-hour to 8-hour design values is greater than 1.5. This suggests that, based on recent air quality data, it is reasonable to again conclude that an 8-hour average

standard at or below the current level would generally be expected to provide protection equal to or greater than the previous 1-hour standard of 0.12 ppm in almost all urban areas. Thus, the Staff Paper again concluded that setting a standard with an 8-hour averaging time can effectively limit both 1- and 8-hour exposures of concern and is appropriate to provide adequate and more uniform protection of public health from both short-term and prolonged exposures to O_3 in the ambient air.

In its letter to the Administrator, the CASAC O_3 Panel supported the continued use of an 8-hour averaging time for the primary O_3 standard (Henderson, 2006c, p. 2), as did many commenters. Some other commenters expressed the view that consideration should be given to setting or reinstating a 1-hour standard, in addition to maintaining the use of an 8-hour averaging time, to protect people in those parts of the country with relatively more ''peaky'' exposure profiles. These commenters point out that when controlled exposure studies using triangular exposure patterns (with relatively higher 1-hour peaks) have been compared to constant exposure patterns with the same aggregate O_3 dose (in terms of concentration x time), ''peaky'' exposure patterns are seen to lead to higher risks. The California Air Resources Board made particular note of this point, expressing the view that a 1-hour standard would more closely represent actual exposures, in that many people spend only 1 to 2 hours a day outdoors, and that it would be better matched to O_3 concentration profiles along the coasts where O_3 levels are typically high for shorter averaging periods than 8 hours.

b. Long-term

During the last review, there was a large animal toxicological database for consideration that provided clear evidence of associations between long-term (*e.g.*, from several months to years) exposures and lung tissue damage, with additional evidence of reduced lung elasticity and accelerated loss of lung function. However, there was no corresponding evidence for humans, and the state of the science had not progressed sufficiently to allow quantitative extrapolation of the animal study findings to humans. For these reasons, consideration of a separate long-term primary O_3 standard was not judged to be appropriate at that time, recognizing that the 8-hour standard would act to limit long-term exposures as well as short-term and prolonged exposures.

Taking into consideration the currently available evidence on long-term O_3 exposures, discussed above in section II.A.2.a.ii, the Staff Paper concludes that a health-based standard with a longer-term averaging time than 8 hours is not warranted at this time. The Staff Paper notes that, while potentially more serious health effects have been identified as being associated with longer-term exposure studies of laboratory animals and in epidemiology studies, there remains substantial uncertainty regarding how these data could be used quantitatively to develop a basis for setting a long-term health standard. Because long-term air quality patterns would be improved in areas coming into attainment with an 8-hour standard, the potential risk of health effects associated with long-term exposures would be reduced in any area meeting an 8-hour standard. Thus, the Staff Paper did not recommend consideration of a long-term, health-based standard at this time.

In its final letter to the Administrator, the CASAC O_3 Panel offered no views on the long-term exposure evidence, nor did it suggest that consideration of a primary O_3 standard with a long-term averaging time was appropriate. In fact, the CASAC O_3 Panel agreed with the choice of an 8-hour averaging time for the primary O_3 NAAQS suggested by Agency staff (Henderson, 2007). Similarly, no commenters expressed support for considering such a long-term standard.

c. Administrator's Conclusions on Averaging Time

In considering the information discussed above, CASAC views and public comments, the Administrator concludes that a standard with an 8-hour averaging time can effectively limit both 1- and 8-hour exposures of concern and that an 8-hour averaging time is appropriate to provide adequate and more uniform protection of public health from both short-term (1- to 3-hour) and prolonged (6- to 8-hour) exposures to O_3 in the ambient air. This conclusion is based on the observations summarized above, particularly: (1) The fact that the 8-hour averaging time is more directly associated with health effects of concern at lower O_3 concentrations than are averaging times of shorter duration and (2) results from quantitative risk analyses showing that attaining an 8-hour standard reduces the risk of experiencing health effects associated with both 8-hour and shorter duration exposures. Furthermore, the Administrator observes that the CASAC O_3 Panel agreed with the choice of averaging time (Henderson, 2007). Therefore, the Administrator proposes to retain the 8-hour averaging time and is not proposing a separate 1-hour standard. The Administrator also concludes that a standard with a long-term averaging time is not warranted at this time.

3. Form

In 1997, the primary O_3 NAAQS was changed from a ''1-expected-exceedance'' form per year over three years [51] to a concentration-based statistic, specifically the 3-year average of the annual fourth-highest daily maximum 8-hour concentrations. The principal advantage of the concentration-based form is that it is more directly related to the ambient O_3 concentrations that are associated with the health effects. With a concentration-based form, days on which higher O_3 concentrations occur would weigh proportionally more than days with lower concentrations, since the actual concentrations are used in determining whether the standard is attained. That is, given that there is a continuum of effects associated with exposures to varying levels of O_3, the extent to which public health is affected by exposure to ambient O_3 is related to the actual magnitude of the O_3 concentration, not just whether the concentration is above a specified level.

During the 1997 review, consideration was given to a range of alternative forms, including the second-, third-, fourth- and fifth-highest daily maximum 8-hour concentrations in an O_3 season, recognizing that the public health risks associated with exposure to a pollutant without a clear, discernable threshold can be appropriately addressed through a standard that allows for multiple exceedances to provide increased stability, but that also significantly limits the number of days on which the level may be exceeded and the magnitude of such exceedances. Consideration was given to setting a standard with a form that would provide a margin of safety against possible, but uncertain chronic effects, and would also provide greater stability to ongoing control programs. The fourth-highest daily maximum was selected because it was decided that the differences in the degree of protection against potential chronic effects afforded by the alternatives within the range were not well enough understood to use any such differences as a basis for

[51] The 1-expected-exceedance form essentially requires that the fourth-highest air quality value in 3 years, based on adjustments for missing data, be less than or equal to the level of the standard for the standard to be met at an air quality monitoring site.

choosing the most restrictive forms. On the other hand, the relatively large percentage of sites that would experience O_3 peaks well above 0.080 ppm and the number of days on which the level of the standard may be exceeded, even when attaining a fifth-highest 0.080 ppm concentration-based standard, argued against choosing that form.

As an initial matter, the Staff Paper considered whether it is appropriate to continue to specify the level of the O_3 standard to the nearest hundredth (two decimal places) ppm, or whether the precision with which ambient O_3 concentrations are measured supports specifying the standard level to the thousandth ppm (*i.e.*, to the part per billion (ppb)). The Staff Paper discusses an analysis conducted by EPA staff to determine the impact of ambient O_3 measurement error on calculated 8-hour average O_3 design value concentrations, which are compared to the level of the standard to determine whether the standard is attained (Cox and Camalier, 2006). The results of this analysis suggest that instrument measurement error, or possible instrument bias, contribute very little to the uncertainty in design values. More specifically, measurement imprecision was determined to contribute less than 1 ppb to design value uncertainty, and a simulation study indicated that randomly occurring instrument bias could contribute approximately 1 ppb. EPA staff interpreted this analysis as being supportive of specifying the level of the standard to the nearest thousandth ppm. If the current standard were to be specified to this degree of precision, the current standard would effectively be at a level of 0.084 ppm, reflecting the data rounding conventions that are part of the definition of the current 0.080 ppm 8-hour standard. This information was provided to the CASAC O_3 Panel and made available to the public.

In evaluating alternative forms for the primary standard in conjunction with specific standard levels, the Staff Paper considered the adequacy of the public health protection provided by the combination of the level and form to be the foremost consideration. In addition, the Staff Paper recognized that it is important to have a form of the standard that is stable and insulated from the impacts of extreme meteorological events that are conducive to O_3 formation. Such instability can have the effect of reducing public health protection, because frequent shifting in and out of attainment due to meteorological conditions can disrupt an area's ongoing implementation plans and associated control programs. Providing more stability is one of the reasons that EPA moved to a concentration-based form in 1997.

The Staff Paper considered two concentration-based forms of the standard: the nth-highest maximum concentration and a percentile-based form. A percentile-based statistic is useful for comparing datasets of varying length because it samples approximately the same place in the distribution of air quality values, whether the dataset is several months or several years long. However, a percentile-based form would allow more days with higher air quality values in locations with longer O_3 seasons relative to places with shorter O_3 seasons. An nth-highest maximum concentration form would more effectively ensure that people who live in areas with different length O_3 seasons receive the same degree of public health protection. For this reason, the exposure and risk analyses were based on a form specified in terms of an nth-highest concentration, with n ranging from 3 to 5.

The results of some of these analyses are shown in the Staff Paper (Figures 6–1 through 6–4) and specifically discussed in chapter 6. These figures illustrate the estimated percent change in risk estimates for the incidence of moderate or greater decrements in lung function (≥15 percent FEV_1) in all school age children and moderate or greater lung function decrements (≥10 percent FEV_1) in asthmatic school age children, associated with going from meeting the current standard to meeting alternative standards with alternative forms based on the 2002 and 2004 simulations. Figures 6–5 and 6–6 illustrate the estimated percent of change in the estimated incidence of non-accidental mortality, associated with going from meeting the current standard to meeting alternative standards, based on the 2002 and 2004 simulations. These results are generally representative of the patterns found in all of the analyses. The estimated reductions in risk associated with different forms of the standard, ranging from third- to fourth-highest daily maximum concentrations at 0.084 ppm, and from third- to fifth-highest daily maximum concentrations at 0.074 ppm, are generally less than the estimated reductions associated with the different levels that were analyzed. As seen in these figures, there is much city-to-city variability, particularly in the percent changes associated with going from a fourth-highest to third-highest form at the current level of 0.084 ppm, and with estimated reductions associated with the fifth-highest form at a 0.074 ppm level. In most cities, there are generally only small differences in the estimated reductions in risks associated with the third- to fifth-highest forms at a level of 0.074 ppm simulated using 2002 and 2004 O_3 monitoring data.

The Staff Paper noted that there is not a clear health-based threshold for selecting a particular nth-highest daily maximum form of the standard from among the ones analyzed. It also noted that the changes in the form considered in the analyses result in only small differences in the estimated reductions in risks in most cities, although in some cities larger differences are estimated. The Staff Paper concluded that a range of concentration-based forms from the third- to the fifth-highest daily maximum 8-hour average concentration is appropriate for consideration in setting the standard. Given that there is a continuum of effects associated with exposures to varying levels of O_3, the extent to which public health is affected by exposure to ambient O_3 is related to the actual magnitude of the O_3 concentration, not just whether the concentration is above a specified level. The principal advantage of a concentration-based form is that it is more directly related to the ambient O_3 concentrations that are associated with health effects. Robust, concentration-based forms, in the range of the third- to fifth-highest daily maximum 8-hour average concentration, including the current 4th-highest daily maximum form, minimize the inherent lack of year-to-year stability of exceedance-based forms and provide insulation from the impacts of extreme meteorological events. Such instability can have the effect of reducing public health protection by disrupting ongoing implementation plans and associated control programs.

With regard to the precision of the standard, in their letter to the Administrator, the CASAC concluded that current monitoring technology ''allows accurate measurement of O_3 concentrations with a precision of parts per *billion*'' (Henderson, 2006c). The CASAC recommended that the specification of the level of the O_3 standard should reflect this degree of precision (Henderson, 2006c). Some public comments supported specifying the standard in terms of parts per billion, or to three decimal places if specified in terms of parts per million.[52] Other public commenters stated that the

[52] The Staff Paper notes that the 8-hour O_3 standard adopted by the State of California in 2006 is specified to the nearest thousandth part per million (at a level of 0.070 ppm) (*http://www.arb.ca.gov/research/aaqs/ozone-rs/ozone-rs.htm*).

basis for changing the current rounding procedures is not supported by a complete analysis of the O_3 compliance monitoring procedures, including consideration of uncertainty related to humidity effects and interferences from aromatic compounds in the monitoring of O_3 levels.

With regard to the form of the standard, in their letter to the Administrator, CASAC recommended that ''*a range of concentration-based forms from the third-to the fifth-highest daily maximum 8-hour average concentration*'' be considered (Henderson, 2006c, p. 5). Some public commenters that expressed the view that the current primary O_3 standard is not adequate also submitted comments that supported a more health-protective form of the standard than the current form (*e.g.*, a second-or third-highest daily maximum form). Commenters who expressed the view that the current standard is adequate did not provide any views on alternative forms that would be appropriate for consideration should the Administrator consider revisions to the standard.

The Administrator proposes that the level of the standard be specified to the nearest thousandth ppm, based on the staff's analysis and conclusions discussed in the Staff Paper that current monitoring technology allows accurate measurement of O_3 to support specifying the 8-hour standard to this degree of precision, and on CASAC's recommendation with respect to this aspect of the standard. The Administrator invites comment on this proposal to specify the standard to the thousandth ppm.

The Administrator recognizes that there is not a clear health-based threshold for selecting a particular nth-highest daily maximum form of the standard from among the ones analyzed in the Staff Paper, and that the current form of the standard provides a stable target for implementing programs to improve air quality. The Administrator also agrees that the adequacy of the public health protection provided by the combination of the level and form is a foremost consideration. Based on this, the Administrator proposes to retain the form of the current standard, 4th-highest daily maximum 8-hour average concentration, recognizing that the public health protection that would be provided by the standard is based on combining this form with the level discussed below. Mindful of the recommendation of the O_3 CASAC Panel and the view expressed by commenters, the Administrator also invites comment on two alternative forms of the standard, the third- and the fifth-highest daily maximum 8-hour average concentrations.

4. Level

a. Evidence and Exposure/Risk Based Considerations in the Staff Paper

The approach used in the Staff Paper as a basis for staff recommendations on standard levels builds upon and broadens the general approach used by EPA in the last review. This approach reflects the more extensive and stronger body of evidence now available on a broader range of health effects associated with exposure to O_3, including: (1) Additional respiratory-related endpoints; (2) new information about the mechanisms underlying respiratory morbidity effects supporting a judgment that the link between O_3 exposure and these effects is causal; (3) newly identified cardiovascular-related health endpoints from animal toxicology, and controlled human exposures studies that are highly suggestive that O_3 can directly or indirectly contribute to cardiovascular morbidity, and (4) new U.S. multi-city time series studies, single city studies, and several meta-analyses of these studies that provide relatively strong evidence for associations between short-term O_3 exposures and all-cause (nonaccidental) mortality, at levels below the current primary standard: as well as (5) evidence of increased susceptibility in people with asthma and other lung diseases. In evaluating evidence-based and exposure/risk-based considerations, the Staff Paper considered: (1) The ranges of levels of alternative standards that are supported by the evidence, and the uncertainties and limitations in that evidence and (2) the extent to which specific levels of alternative standards reduce the estimated exposures of concern and risks attributable to O_3 and other photochemical oxidants, and the uncertainties associated with the estimated exposure and risk reductions.

In taking into account evidence-based considerations, the Staff Paper evaluated available evidence from controlled human exposure studies and epidemiological studies, as well as the uncertainties and limitations in that evidence. In particular, it focused on the extent to which controlled human exposure studies provide evidence of lowest-observed-effects levels and the extent to which epidemiological studies provide evidence of associations that extend down to the lower levels of O_3 concentrations observed in the studies or some indication of potential effect thresholds in terms of 8-hour average O_3 concentrations.

In considering the available controlled human exposure studies, as discussed above in section II.A.2.a.i(a)(i), two new studies are notable in that they are the only controlled human exposure studies that examined respiratory effects, including lung function decrements and respiratory symptoms, in healthy adults at lower exposure levels than had previously been examined. EPA's reanalysis of the data from the most recent study shows small group mean decrements in lung function responses to be statistically significant at the 0.060 ppm exposure level, while the author's analysis did not yield statistically significant lung function responses (but did yield some statistically significant respiratory symptom responses toward the end of the exposure period). Notably, these studies report a small percentage of subjects experiencing lung function decrements (> 10 percent) at the 0.060 ppm exposure level. These studies provide very limited evidence of O_3-related lung function decrements and respiratory symptoms at this lower exposure level.

In considering controlled human exposure studies of pulmonary inflammation, airway responsiveness, and impaired host defense capabilities, the Staff Paper notes that these studies provide evidence of a lowest-observed-effects level for such effects in healthy adults at prolonged moderate exertion of 0.080 ppm. As discussed above, these physiological effects have been linked to aggravation of asthma and increased susceptibility to respiratory infection, potentially leading to increased medication use, increased school and work absences, increased visits to doctors' offices and emergency departments, and increased hospital admissions. Further, pulmonary inflammation is related to increased cellular permeability in the lung, which may be a mechanism by which O_3 exposure can lead to cardiovascular system effects, and to potential chronic effects such as chronic bronchitis or long-term damage to the lungs that can lead to reduced quality of life. These are all indicators of adverse O_3-related morbidity effects, which are consistent with and lend plausibility to the adverse morbidity effects and mortality effects observed in epidemiological studies.

In considering epidemiological studies, the Staff Paper first recognizes that the available evidence neither supports nor refutes the existence of effect thresholds at the population level for morbidity and mortality effects and that if a population threshold level does exist, it would likely be well below the level of the current O_3 standard and

possibly within the range of background levels. As discussed above (and more fully in the Staff Paper in chapter 3 and the Criteria Document in chapter 7), a number of studies reported some suggestive evidence of possible thresholds for morbidity and mortality outcomes in terms of 24-hour, 8-hour, and 1-hour averaging times. These results, taken together, provide some indication of possible 8-hour average threshold levels from below about 0.025 to 0.035 ppm up to approximately 0.050 ppm. Other studies, however, observe linear concentration-response functions suggesting no effect threshold. The Staff Paper concludes that the statistically significant associations between ambient O_3 concentrations and lung function decrements, respiratory symptoms, indicators of respiratory morbidity including increased emergency department visits and hospitals admissions, and possibly mortality reported in a large number of studies likely extend down to ambient O_3 concentrations that are well below the level of the current standard (EPA, 2007, p. 6–60). Toward the lower end of the range of O_3 concentrations observed in such studies, ranging down to background levels, however, the Staff paper states that there is increasing uncertainty as to whether the observed associations remain plausibly related to exposures to ambient O_3, rather than to the broader mix of air pollutants present in the ambient atmosphere.

The Staff Paper also considered studies that did subset analyses that include only days with ambient O_3 concentrations below the level of the current standard, or below even lower O_3 concentrations, and continue to report statistically significant associations. Notably, as discussed above, Bell *et al.* (2006) conducted a subset analysis that continued to show statistically significant associations even when only days with a maximum 8-hour average O_3 concentration below a value of approximately 0.061 ppm were included.[53] Also of note is the large multi-city NCICAS (Mortimer *et al.*, 2002) that reported statistically significant associations between ambient O_3 concentrations and lung function decrements even when days with 8-hour average O_3 levels greater than 0.080 ppm were excluded (which consisted of less than 5 percent of the days in the eight urban areas in the study).

Being mindful of the uncertainties and limitations inherent in interpreting the available evidence, the Staff Paper states the view that the range of alternative O_3 standards for consideration should take into account information on lowest-observed-effects levels in controlled human exposure studies as well as indications of possible effects thresholds reported in some epidemiological studies and questions of biological plausibility in attributing associations observed down to background levels to O_3 exposures alone. Based on the evidence and these considerations, it concluded that the upper end of the range of consideration should be somewhat below 0.080 ppm, the lowest-observed-effects level for effects such as pulmonary inflammation, increased airway responsiveness and impaired host-defense capabilities in healthy adults while at prolonged moderate exertion. The Staff Paper also concludes that the lower end to the range of alternative O_3 standards appropriate for consideration should be the lowest-observed-effects level for potentially adverse lung function decrements and respiratory symptoms in some healthy adults, 0.060 ppm.

In addition to the evidence-based considerations informing staff recommendations on alternative levels, the Staff Paper also evaluated quantitative exposures and health risks estimated to occur upon meeting the current and alternative standards.[54] In so doing, it presented the important uncertainties and limitations associated with these exposure and risk assessments. For example, the Staff Paper noted important uncertainties affecting the exposure estimates are related to modeling human activity patterns over an O_3 season (especially repetitive exposures), modeling ambient concentrations near roadways and modeling building air exchange rates which impact estimates of indoor O_3 concentrations. With regard to the risk assessment, important uncertainties include, for example, those related to exposure estimates for children engaged in moderate or greater exertion, as well as those related to estimation of concentration-response functions, specification of concentration-response models, the possible role of copollutants in interpreting reported associations with O_3, and inferences of a likely causal relationship between O_3 exposure and nonaccidental mortality (for risk estimates based on epidemiological studies).

Beyond these uncertainties, the Staff Paper also recognized important limitations to the exposure and risk analyses. For example, the Staff Paper did not have sufficient information to evaluate all relevant at-risk groups (*e.g.*, outdoor workers) or all O_3-related health outcomes (*e.g.*, increased medication use, school absences, emergency department visits), and the scope of the Staff Paper analyses was generally limited to estimating exposures and risks in 12 urban areas across the U.S., and to only five or just one area for some risk analyses. The Staff Paper notes that it is clear that national-scale public health impacts of ambient O_3 exposures are much larger than the quantitative estimates of O_3-related incidences of adverse health effects and the numbers of children likely to experience exposures of concern associated with meeting the current or alternative standards. On the other hand, due to individual variability in responsiveness, only a subset of individuals who are estimated to experience exposures of concern at and above a specific benchmark level can be expected to experience certain adverse health effects, although susceptible subpopulations such as those with asthma are expected to be affected more by such exposures than healthy individuals. In taking these limitations into account, the Staff Paper reflected CASAC's advice not to rely solely on the results of the exposure and risk assessments in considering alternative standards, but also to place significant weight on the body of evidence of O_3-related health effects in drawing conclusions about an appropriate range of levels for consideration.

The Staff Paper focused on alternative standards with the same form as the current O_3 standard (*i.e.* the 0.074/4, 0.070/4 and 0.064/4 scenarios).[55] Having concluded in the Staff Paper that it was appropriate to consider a range of standard levels from somewhat below 0.080 ppm down to as low as 0.060 ppm, the Staff Paper looked to results of the analyses of exposure and risk for the 0.074/4 scenario to represent the public health impacts of selecting a standard in

[53] Bell *et al.* (2006) referred to this level as being approximately equivalent to 120 $\mu g/m^3$, daily 8-hour maximum, the World Health Organization guideline and European Commission target value for O_3.

[54] As described in the Staff Paper (section 4.5.8) and discussed above, recent O_3 air quality distributions have been statistically adjusted to simulate just meeting the current and selected alternative standards. These simulations do not represent predictions of when, whether, or how areas might meet the specified standards. Modeling that projects whether and how areas might attain alternative standards in a future year is presented in the Regulatory Impact Analysis being prepared in connection with this rulemaking.

[55] The abbreviated notation used to identify the current and alternative standards in this section and in the risk assessment section of the Staff Paper is in terms of ppm and the nth highest daily maximum 8-hour average. For example, the current standard is identified as ''0.084/4.''

the upper part of the range, the results of analyses of the 0.070/4 scenario to represent the impacts in the middle part of the range, and the results of the analyses of the 0.064/4 scenario to represent the lower part of the range.

As discussed in section II.B.1 of this notice, the exposure estimates presented in the Staff Paper are for the number and percent of all children and asthmatic children exposed, and the number of person-days (occurrences) of exposures, with daily 8-hour maximum exposures at or above several benchmark levels while at intermittent moderate or greater exertion. For reasons discussed above in section II.C.2, the Staff Paper focused on exposures of concern at the 0.070 and 0.060 ppm benchmark levels for the purpose of evaluating alternative standard levels. As shown in the Table 1 in this notice, the percent of population exposed at any given level is very similar for all and asthmatic school age children. Substantial year-to-year variability in exposure estimates is observed, ranging to over an order of magnitude at the higher alternative standard levels, in estimates of the number of children and the number of occurrences of exposures of concern at both of these benchmark levels. The Staff Paper also notes that there is substantial city-to-city variability in these estimates, and notes that it is appropriate to consider not just the aggregate estimates across all cities, but also to consider the public health impacts in cities that receive relatively less protection from the alternative standards.

As discussed in the Staff Paper, a standard set at the upper part of the range recommended by EPA staff (*e.g.*, the 0.074/4 scenario) would result in an aggregate estimate of about 4 percent of all or asthmatic school age children likely to experience exposures of concern at the ≥0.070 ppm benchmark level based on the 2002 simulation, a year with relatively high O_3 levels, while the estimates range up to 12 percent of all or asthmatic school age children in the single city with the least degree of protection from this standard. Using the 2004 simulation, a year with relatively low O_3 levels, exposures of concern at this level are essentially eliminated. At the benchmark level of ≥0.060 ppm, in aggregate using the 2002 simulation about 22 percent of all or asthmatic school age children are estimated to experience exposures of concern; this estimate ranges up to about 46 percent of all or asthmatic school age children in the single city with the least degree of protection from this standard. Using the 2004 simulation, exposures of concern at this level are estimated to be substantially lower. A standard set at this level is estimated to reduce the number of all and asthmatic school age children estimated to experience one or more moderate lung function decrements by about 30 to 50 percent relative to the current standard, with city-to-city differences accounting for most of the variability in estimates. A standard set at this level is estimated to reduce non-accidental mortality by about 10 to 40 percent, with most of the variability occurring across the 12 city estimates.

Using the 2002 simulation, a standard set at this level (the 0.074/4 scenario) is estimated to reduce the incidence of symptom days in children with moderate to severe asthma in the Boston area by about 1,000 days, a 15 percent reduction relative to the current standard. With this reduction, it is estimated that about 1 respiratory symptom day in 8 during the O_3 season would be attributable to O_3 exposure. Estimated incidence of respiratory-related hospital admissions was reduced by 14 to 17 percent by a standard set at this level relative to the current standard, in the year with relatively high and relatively low O_3 air quality levels respectively.

The Staff Paper notes that a standard set at the middle part of the staff-recommended range, as indicated by the estimates for the 0.070/4 scenario, would reduce the exposures of concern at the 0.070 ppm level substantially over the current standard, resulting in an aggregate estimate of about 1.5 to nearly 2 percent of all or asthmatic school age children likely to experience exposures of concern even using the 2002 simulation, and leaving approximately 5 percent or less of children likely to experience exposures of concern in the city with the least degree of protection. Using the 2004 simulation, it essentially eliminates exposures of concern at this level. It reduces exposures of concern at the 0.060 ppm benchmark level less so, leaving larger percentages of all school age children unprotected using the 2002 simulation (about 15 percent in aggregate) or in the city with the least protection from this standard (about 33 percent). However, using the 2004 simulation, it is estimated to reduce exposures of concern at this benchmark level to approximately 5 percent or less of children even in the city with the least degree of protection. It provides considerable additional protection for members of at-risk groups, over the current O_3 standard, against respiratory morbidity effects such as lung function decrements, respiratory symptom days and hospital admissions, as well as non-accidental mortality.

A standard set at lower part of the staff-recommended range (*e.g.*, the 0.064/4 scenario), would result in an aggregate estimate of less than 0.5 percent of all and asthmatic school age children likely to experience exposures of concern at the 0.070 ppm benchmark level using the 2002 simulation and only about 1 percent of all and asthmatic school age children in the city with the least degree of protection from this standard. At the benchmark level of 0.060 ppm, in aggregate using the 2002 simulation about 5 percent of all and asthmatic school age children are estimated to experience exposures of concern; this number ranges up to 15 percent of all and asthmatic school age children in the city with the least degree of protection from this standard. A standard set at this level is estimated to reduce the number of all and asthmatic school age children estimated to experience one or more moderate lung function decrements by about 40 to 75 percent over the current standard, and non-accidental mortality by about 25 to 75 percent, with most of the variability occurring across the 12 city estimates.

A standard set at the 0.064/4 scenario is estimated, based on the 2002 simulation, to reduce the incidence of symptom days in children with moderate to severe asthma in the Boston area by about 1,900 days, about a 25 to 30 percent reduction over the current standard. But even with this reduction, it is estimated that 1 respiratory symptom day in 10 during the O_3 season is attributable to O_3 exposure. Estimated incidence of respiratory-related hospital admissions would be reduced by 30 to 35 percent over the current standard, a reduction of 125 to 150 hospital admissions in the New York City area alone, using the 2002 and 2004 simulations, respectively.

b. CASAC Views

As stated in its letter to the Administrator, ''the CASAC unanimously recommends that the current primary ozone NAAQS be revised and that the level that should be considered for the revised standard be from 0.060 to 0.070 ppm'' (Henderson, 2006c, p. 5). This recommendation follows from its more general recommendation, discussed above, that the current standard of 0.084 ppm needs to be substantially reduced to be protective of human health, particularly in at-risk subpopulations. The CASAC Panel noted that beneficial reductions in some adverse health effects were estimated to occur upon meeting the lowest standard level (0.064 ppm)

considered in the risk assessment (Henderson, 2006c, p. 4). The lower end of this range reflects CASAC's views that ''[W]hile data exist that adverse health effects may occur at levels lower than 0.060 ppm, these data are less certain and achievable gains in protecting human health can be accomplished through lowering the ozone NAAQS to a level between 0.060 and 0.070 ppm.'' (id.). In a subsequent letter to the Administrator, the CASAC reiterated that the Panel members ''were unanimous in recommending that the level of the current primary ozone standard should be lowered from 0.08 ppm to no greater than 0.070 ppm'' (Henderson, 2007, p. 2). Further, the CASAC Panel expressed the view that the Criteria Document and Staff Paper, together with the information in its earlier letter, provide ''overwhelming scientific evidence for this recommendation,'' and emphasized the Clean Air Act requirement that the primary standard must be set to protect the public health with an adequate margin of safety (id.).

c. Administrator's Proposed Conclusions on Level

For the reasons discussed below, and taking into account information and assessments presented in the Criteria Document and Staff Paper, the advice and recommendations of CASAC, and the public comments to date, the Administrator proposes to revise the existing 8-hour primary O_3 standard. Specifically, the Administrator proposes to revise (1) The level of the primary O_3 standard to within a range from 0.070 to 0.075 ppm and (2) the degree of precision to which the level of the standard is specified to the thousandth ppm.

However, in recognition of alternative views of the science, the exposure and risk assessments and the uncertainties inherent in these assessments, and the appropriate policy responses based on the currently available information, the Administrator also solicits comments on whether to proceed instead with: (1) Alternative levels of the 8-hour primary O_3 standard, within ranges of below 0.070 ppm down to 0.060 ppm and above 0.075 ppm up to and including retaining the current standard; (2) alternative forms of the standard, including the 3-year average of the annual third- and fifth-highest daily maximum 8-hour average O_3 concentrations; and (3) retaining the degree of precision of the current standard (to the nearest hundredth ppm). Based on the comments received and the accompanying rationales, the Administrator may adopt other standards within the range of the alternative levels and forms identified above in lieu of the standards he is proposing today.

The Administrator's consideration of alternative levels of the primary O_3 standard builds on his proposal, discussed above, that the overall body of evidence indicates that the current 8-hour O_3 standard is not requisite to protect public health with an adequate margin of safety because it does not provide sufficient protection and that revision would result in increased public health protection, especially for members of at-risk groups, notably including asthmatic children and other people with lung disease, as well as all children and older adults, especially those active outdoors, and outdoor workers, against an array of adverse health effects. These effects range from health outcomes that could be quantified in the risk assessment, including decreased lung function, respiratory symptoms, serious indicators of respiratory morbidity such as hospital admissions for respiratory causes, and nonaccidental mortality, to health outcomes that could not be directly estimated, including pulmonary inflammation, increased medication use, emergency department visits, and possibly cardiovascular-related morbidity effects. In reaching a proposed decision about the level of the O_3 primary standard, the Administrator has considered: the evidence-based considerations from the Criteria Document and the Staff Paper; the results of the exposure and risk assessments discussed above and in the Staff Paper, giving weight to the exposure and risk assessments as judged appropriate; CASAC advice and recommendations, as reflected in discussions of drafts of the Criteria Document and Staff Paper at public meetings, in separate written comments, and in CASAC's letters to the Administrator; EPA staff recommendations; and public comments received during the development of these documents, either in connection with CASAC meetings or separately. In considering what 8-hour standard is requisite to protect public health with an adequate margin of safety, the Administrator is mindful that this choice requires judgment based on an interpretation of the evidence and other information that neither overstates nor understates the strength and limitations of the evidence and information nor the appropriate inferences to be drawn.

The Administrator notes that the most certain evidence of adverse health effects from exposure to O_3 comes from the clinical studies, and that the large bulk of this evidence derives from studies of exposures at levels of 0.080 and above. At those levels, there is consistent evidence of lung function decrements and respiratory symptoms in healthy young adults, as well as evidence of inflammation and other medically significant airway responses. Moreover there is no evidence that the 0.080 ppm level is a threshold for these effects. Although the Administrator takes note of the very limited new evidence of lung function decrements and respiratory symptoms in some healthy individuals at the 0.060 ppm exposure level, he judges this evidence too limited to support a primary focus at this level. The Administrator also notes that clinical studies, supported by epidemiological studies, provide important new evidence that people with asthma are likely to experience larger and more serious effects than healthy people from exposure to O_3. There are also epidemiological studies that provide evidence of statistically significant associations between short-term O_3 exposures and more serious health effects such as emergency department visits and hospital admissions, and premature mortality, in areas that likely would have met the current standard. There are also many epidemiological studies done in areas that likely would not have met the current standard but which nonetheless report statistically significant associations that generally extend down to ambient O_3 concentrations that are below the level of the current standard. Further, there are a few studies that have examined subsets of data that include only days with ambient O_3 concentrations below the level of the current standard, or below even much lower O_3 concentrations, and continue to report statistically significant associations with respiratory morbidity outcomes and mortality. In considering this evidence, the Administrator notes that the extent to which these studies provide evidence of causal relationships with exposures to O_3 alone down to the lowest levels observed remains uncertain. To further inform the interpretation of this evidence, EPA seeks comment on the degree to which associations observed in epidemiological studies reflect causal relationships between important health endpoints and exposure to O_3 alone at ambient O_3 levels below the current standard.

Therefore, the Administrator judges that revising the current standard to protect public health with an adequate margin of safety is warranted, and

would reduce risk to public health, based on: (1) The strong body of clinical evidence in healthy people at exposure levels of 0.080 and above of lung function decrements, respiratory symptoms, pulmonary inflammation, and other medically significant airway responses, as well as some indication of lung function decrements and respiratory symptoms at lower levels; (2) the substantial body of clinical and epidemiological evidence indicating that people with asthma are likely to experience larger and more serious effects than healthy people; and (3) the body of epidemiological evidence indicating associations are observed for a wide range of serious health effects, including respiratory emergency department visits and hospital admissions, and premature mortality, at and below 0.080 ppm. The Administrator also judges that the estimates of exposures of concern and risks remaining upon just meeting the current standard or a standard at the 0.080 ppm level provide additional support for this view. For the same reasons, and the reasons discussed above in section II.C on the adequacy of the current standard, the Administrator judges that the standard should be set below 0.080 ppm, a level at which the evidence provides a high degree of certainty about the adverse effects of O_3 exposure even in healthy people.

The Administrator next considered what standard level below 0.080 ppm would be requisite to protect public health with an adequate margin of safety, that is sufficient but not more than necessary to achieve that result, recognizing that such a standard would result in increased public health protection. The assessment of a standard level calls for consideration of both the degree of additional protection that alternative levels of the standard might be expected to provide as well as the certainty that any specific level will in fact provide such protection. In the circumstances present in this review, there is no evidence-based bright line that indicates a single appropriate level; instead there is a combination of scientific evidence and other information that needs to be considered holistically in making this public health policy judgment, and selecting a standard level from a range of reasonable values.

The Administrator notes that at exposure levels below 0.080 ppm there is only a very limited amount of evidence from clinical studies indicating effects in some healthy individuals at levels as low as 0.060 ppm. The great majority of the evidence concerning effects below 0.080 ppm is from epidemiological studies. The epidemiological studies do not identify any bright-line threshold level for effects. At the same time, the epidemiological studies are not themselves direct evidence of a causal link between exposure to O_3 and the occurrence of the effects. The Administrator considers these studies in the context of all the other available evidence in evaluating the degree of certainty that O_3-related adverse health effects would occur at various ambient levels below 0.080 ppm, including the strong human clinical studies and the toxicological studies that demonstrate the biological plausibility and mechanisms for the effects of O_3 on airway inflammation and increased airway responsiveness at exposure levels of 0.080 ppm and above.

Based on consideration of the entire body of evidence and information available at this time, as well as the recommendations of CASAC, the Administrator proposes that a standard within the range of 0.070 to 0.075 ppm would be requisite to protect public health with an adequate margin of safety. A standard level within this range would reduce the risk of a variety of health effects associated with exposure to O_3, including the respiratory symptoms and lung function effects demonstrated in the clinical studies, and the emergency department visits, hospital admissions and mortality effects indicated in the epidemiological studies. All of these effects are indicative of a much broader array of O_3-related health endpoints, such as school absences and increased medication use, that are plausibly linked to these observed effects.

The Administrator considered the degree of improvements in public health that potentially could be achieved by a standard of 0.070 to 0.075 ppm, giving weight to the exposure and risk assessments as he judged appropriate, as discussed below. In considering the results of the exposure assessment, as discussed above (section II.C.4), the Administrator has primarily focused on exposures at and above the 0.070 ppm benchmark level as an important surrogate measure for potentially more serious health effects for at-risk groups, including people with asthma. In so doing, the Administrator particularly notes that although the analysis of ''exposures of concern'' was conducted to estimate exposures at and above three discrete benchmark levels, the concept is appropriately viewed as a continuum. As discussed above, the Administrator strives to balance concern about the potential for health effects and their severity with the increasing uncertainty associated with our understanding of the likelihood of such effects at lower O_3 exposure levels. In focusing on this benchmark, the Administrator notes that upon just meeting a standard within the range of 0.070 to 0.075 ppm based on the 2002 simulation, the number of school age children likely to experience exposures at and above this benchmark level in aggregate (for the 12 cities in the assessment), is estimated to be approximately 2 to 4 percent of all and asthmatic children, and generally less than 10 percent of children even in cities that receive the least degree of protection from such a standard in a recent year with relatively high O_3 levels. A standard within the 0.070 to 0.075 ppm range would thus substantially reduce exposures of concern by about 90 to 80 percent, respectively, from those estimated to occur upon just meeting the current standard. While placing less weight on the results of the risk assessment, in light of the important uncertainties inherent in the assessment, the Administrator notes that the results indicate that a standard set within this range would likely reduce risks to at-risk groups from the O_3-related health effects considered in the risk assessment, and by inference across the much broader array of O_3-related health effects that can only be considered qualitatively, relative to the level of protection afforded by the current standard. This lends support to the proposed range.

The Administrator judges that a standard set within the range of 0.070 to 0.075 ppm would provide a degree of reduction in risk that is important from a public health perspective, and that a standard within this range would be requisite to protect public health, including the health of at-risk groups, with an adequate margin of safety. EPA's evaluation of the body of scientific evidence and quantitative estimates of exposures and risks indicates that substantial reductions in public health risks would occur throughout this range. Because there is no bright line clearly directing the choice of level within this reasonable range, the choice of what is appropriate, considering the strengths and limitations of the evidence, and the appropriate inferences to be drawn from the evidence and the exposure and risk assessments, is a public health policy judgment. To further inform this judgment, EPA seeks comment on the extent to which the epidemiological and clinical evidence provides guidance as to the level of a standard that would be requisite to protect public health with

an adequate margin of safety, especially for at-risk groups.

In considering the available information, the Administrator also judges that a standard level below 0.070 ppm would not be appropriate. In reaching this judgment, the Administrator notes that there is only quite limited evidence from clinical studies at exposure levels below 0.080 ppm O_3. Moreover, the Administrator recognizes that in the body of epidemiological evidence, many studies report positive and statistically significant associations, while others report positive results that are not statistically significant, and a few do not report any positive O_3-related associations. In addition, the Administrator judges that evidence of a causal relationship between adverse health outcomes and O_3 exposures becomes increasingly uncertain at lower levels of exposure.

The Administrator also has considered the results of the exposure assessments in reaching his judgment that a standard level below 0.070 ppm would not be appropriate. The Administrator notes that in considering the results from the exposure assessment, a standard set at the 0.070 ppm level, with the same form as the current standard, is estimated to provide substantial reductions in exposures of concern (*i.e.*, approximately 90 to 92 percent reductions in the numbers of school age children and 94 percent reduction in the total number of occurrences) for both all and asthmatic school age children relative to just meeting the current standard based on a simulation of a recent year with relatively high O_3 levels (2002). Thus, a 0.070 ppm standard would be expected to provide protection from the exposures of concern that the Administrator has primarily focused on for over 98 percent of all and asthmatic school age children even in a year with relatively high O_3 levels, increasing to over 99.9 percent of children in a year with relatively low O_3 levels (2004).

In considering the results of the health risk assessment, as discussed in section II.B above, the Administrator notes that there are important uncertainties and assumptions inherent in the risk assessment and that this assessment is most appropriately used to simulate trends and patterns that can be expected as well as providing informed but still imprecise estimates of the potential magnitude of risks. The Administrator particularly notes that as lower standard levels are modeled, including a standard set at a level below 0.070 ppm, the risk assessment continues to assume a causal link between O_3 exposures and the occurrence of the health effects examined, such that the assessment continues to indicate reductions in O_3-related risks upon meeting a lower standard level. As discussed above, however, the Administrator recognizes that evidence of a causal relationship between adverse health effects and O_3 exposures becomes increasingly uncertain at lower levels of exposure. Given all of the information available to him at this time, the Administrator judges that the increasing uncertainty of the existence and magnitude of additional public health protection that standards below 0.070 ppm might provide suggests that such lower standard levels would likely be below what is necessary to protect public health with an adequate margin of safety.

In addition, the Administrator judges that a standard level higher than 0.075 ppm would also not be appropriate. This judgment takes into consideration the information discussed above in section II.B, and is based on the strong body of clinical evidence in healthy people at exposure levels of 0.080 ppm and above, the substantial body of clinical and epidemiological evidence indicating that people with asthma are likely to experience larger and more serious effects than healthy people, the body of epidemiological evidence indicating that associations are observed for a wide range of more serious health effects at levels below 0.080 ppm, and the estimates of exposure and risk remaining upon just meeting a standard set at 0.080 ppm. The much greater certainty of the existence and magnitude of additional public health protection that such levels would forego provides the basis for judging that levels above 0.075 ppm would be higher than what is requisite to protect public health, including the health of at-risk groups, with an adequate margin of safety.

For the reasons discussed above, the Administrator proposes to revise the level of the primary O_3 standard to within the range of 0.070 to 0.075 ppm.

Having reached this decision based on the approach to interpreting the evidence described above, the Administrator recognizes that other approaches to selecting a standard level have been presented to the Agency. As described above, the CASAC has stated in two letters to the Administrator (Henderson, 2006c; Henderson, 2007) its unanimous recommendation that the current primary O_3 NAAQS be revised to within the range from 0.060 to 0.070 ppm. The CASAC Panel noted that while data exist that adverse health effects may occur at levels lower than 0.060 ppm, these data are less certain and that achievable gains in protecting human health can be accomplished through lowering the O_3 NAAQS to a level between 0.060 and 0.070 ppm. In addition to the views of CASAC described above, the Agency received the public comments described below.

One group of commenters submitted comments that supported revising the level of the primary O_3 standard from 0.070 ppm down to or even below 0.060 ppm, consistent with or below the range recommended by CASAC. In considering the available evidence as a basis for their views, these commenters generally noted that the controlled human exposure studies, showing statistically significant declines in lung function, and increases in respiratory symptoms, airway inflammation and airway responsiveness at a 0.080 ppm exposure level, were conducted with healthy adults, not members of at-risk groups including people with asthma and active children generally. Further, recognizing the substantial variability in response between subjects, some of these commenters felt that the number of subjects included in these studies was too small to ascertain the full range of responses, especially for at-risk groups. Such considerations in part were the basis for these commenters' view that an O_3 standard set at 0.080 ppm is not protective of public health and has no margin of safety for at-risk groups. In addition, some of these commenters also noted that the World Health Organization's guidelines for O_3 air quality are in the range of 0.061 to 0.051 ppm.

In considering the results of the human exposure and health risk assessment, this group of commenters generally expressed the view that these assessments substantially underestimate the public health impacts of exposure to O_3. For example, several commenters noted that the assessments are done for a limited number of cities, they do not address risks to important at-risk subpopulations (*e.g.*, outdoor workers, active people who spend their summers outdoors, children up to 5 years of age), and they do not include many health effects that are important from a public health perspective (*e.g.*, school absences, restricted activity days). Further, some of these commenters expressed the view that the primary O_3 standard should be set to protect the most exposed and most vulnerable groups, and the fact that some children are frequently indoors, and thus at lower risk, should not weigh against setting a standard to protect those children who are active outdoors. To the extent the exposure and risk estimates

are considered, some of these commenters felt that primary consideration should be given to the estimates based on 2002 air quality, for which most areas had relatively higher O_3 levels than in 2004, so as to ensure public health protection even in years with relatively worse O_3 air quality levels. Some commenters also felt that the exposure analysis should focus on a benchmark concentration for exposures of concern at the 0.060 ppm level, the lower end of the range of alternative standards advocated by the CASAC Panel.

In sharp contrast to the views discussed above, other public commenters supported retaining the current standard. In considering the available evidence as a basis for their views, these commenters challenged a number of aspects of the interpretation of the evidence presented in the Criteria Document. For example, some of these commenters asserted that EPA generally overestimates the magnitude and consistency of the results of short-term exposure epidemiological studies (*e.g.*, for respiratory symptoms, school absences, hospital admissions, mortality), mistakenly links statistical significance and consistency with strength of associations, and underestimates the uncertainties in interpreting the results of such studies. Further, these commenters generally express the view that there is significant uncertainty related to the reliability of estimates from time-series studies, in that ambient monitors do not provide reliable estimates of personal exposures, such that the small reported morbidity and mortality risks are unlikely to be attributable to people's exposures to O_3. Rather, these commenters variously attribute the reported risks to the inability of time series studies to account for key model specification factors such as smoothing for time-varying parameters, meteorological factors, and removal of O_3 by building ventilation systems, and confounding by co-pollutants. In particular, these commenters generally asserted that reported associations between short-term O_3 exposure and mortality are not causal, in that the reported relative risks are too small to provide a basis for inferring causality and the associations are most likely due to confounding, inappropriately specified statistical models, or publication bias.

In considering the results of the human exposure and health risk assessment, this group of commenters generally expressed the view that these assessments are based on a number of studies that should not be used in quantitative risk assessment. For example, some commenters asserted that the results of time-series studies should not be used at all in quantitative risk assessments, that risk estimates from single city time-series studies should not be used since they are highly heterogeneous and influenced by publication bias, and that risk estimates from multi-city studies should not be used in estimating risk for individual cities. This group of commenters also generally expressed the view that the assessments generally overestimate the public health impacts of exposure to O_3. Noting that the risk assessment used a nonlinear exposure-response function to estimate decreased lung function risks, some commenters expressed the view that a nonlinear approach should also be used to assess other acute morbidity effects and mortality. This view was in part based on judgments that it is not possible to determine if thresholds exist using time-series analyses and that the lack of association of O_3 to mortality in the winter season is highly supportive of the likelihood of the existence of an effect threshold. With regard to the risk assessment based on controlled human exposure studies of lung function decrements, some commenters expressed the view that the assessment should not rely on what they characterized as ''outlier'' information to define exposure-response relationships, with reference to the data in the Adams (2006) study at the 0.060 and 0.040 ppm exposure levels, but rather should focus on group central tendency response levels. Further, some commenters expressed the view that the air quality rollback algorithm used introduces significant uncertainty, especially when applied to areas requiring very large reductions in air quality to meet the alternative standards examined, and may result in overestimates in benefits from emission reductions. Some commenters noted that potential beneficial effects of O_3 in shielding from UV–B radiation are not quantified in the assessment, and that the assessment should discuss the evidence for both adverse and beneficial effects with the same objectivity. Finally, some of these commenters asserted that since estimates of exposures of concern (which they defined as the benchmark concentration of 0.080 ppm) and lung function decrements are substantially below the estimates available when the current O_3 standard was set in 1997, retaining the current standard is the most appropriate policy alternative.

Some commenters also have raised concerns about potential uncertainties with regard to estimating policy-relevant background O_3 levels including: (1) Stratospheric O_3 contributions to the mid- and upper troposphere, which are relatively long-lived (1 to 2 months), and are transported downward to the surface over time; (2) potential trends in stratospheric O_3 levels due to changes in stratospheric circulation or to reduction of O_3 depleting chemicals; (3) O_3 levels due to lightning strikes in estimating policy-relevant background concentrations; and (4) potential uncertainty with regard to policy-relevant background O_3 levels having to do with increases in O_3 precursors elsewhere in the world. EPA asks for comments on these issues and on how they may relate to the estimation and consideration of policy-relevant background levels in setting the O_3 standards.

Several Governors, State Legislators, and other local officials have expressed concerns related to a more stringent standard. These officials recognize that State and local governments have important roles in developing and implementing policy that improve air quality while at the same time achieving economic and quality of life objectives. In addition, these officials note that States are just beginning to implement current air quality standards and raise concern with moving forward on revised standards without first realizing the results from the last revision.

As a related concern, a number of areas—including some of the cities involved in the risk assessment—will have difficulty in complying with the current 8-hour standard within the next decade. As a result, the full public health gains in these areas from a more stringent 8-hour standard are unlikely to be realized for a number of years. In light of the fact that these public health gains may not fully materialize within the attainment date structure set forth in the Clean Air Act, some commenters question whether the Agency can or should consider these projected gains as a health based criterion for its decisionmaking. EPA requests comment on this view.

The Administrator is mindful that the country has important goals related to the increased production and use of renewable energy, and that these new energy sources can have important public health, environmental and other benefits, such as national security benefits. In some contexts and situations, however, the use of renewable fuels may impact compliance with a lowered ozone NAAQS standard. For example, the Agency recently promulgated final regulations pursuant to section 211(o) of the Clean Air Act,

which was enacted as part of the Energy Policy Act of 2005. This provision requires the use of 7.5 billion gallons of renewable fuel by 2012, a level which will be greatly exceeded in practice. In the Regulatory Impact Analysis which accompanied the renewable fuel regulations, the Agency recognized the impact of this program on emissions related to ozone, toxics and greenhouse gases and otherwise reviewed the impacts on energy security. The Administrator requests comment on such factors and any relationship to this rulemaking, including the extent of EPA's discretion under the Clean Air Act to take such factors into account (see section I.A).

In general, these commenters' concerns are consistent with the view that adopting a more stringent 8-hour standard now, without a better understanding of the health effects associated with O_3 exposure at lower levels, would have an uncertain public health benefit. The Administrator recognizes that commenters have raised numerous concerns regarding various types of uncertainties in the available information, including for example uncertainties in (1) The assessment of exposures, (2) the estimation of concentration-response associations in the epidemiological studies, (3) the potential role of co-pollutants in interpreting the reported associations in epidemiological studies, and (4) the estimation of background concentrations. The Administrator has heard these concerns from Governors and other commenters and invites comment on whether it would be appropriate to retain the existing standard and delay considering modification of the 8-hour standard until the next NAAQS review, when a more complete body of information is expected to be available.

Consistent with the goal of soliciting comment on a wide array of views, the Administrator also solicits comments on these alternative approaches and views, and on related standard levels, including levels down to 0.060 ppm and up to retaining the level of the current 8-hour standard (*i.e.*, effectively 0.084 ppm with the current rounding convention). The Administrator recognizes that these sharply divergent views on the appropriate level of the standard are based on very different interpretations of the science itself, including its relative strengths and limitations, very different judgments as to how such scientific evidence should be used in making policy decisions on proposed standards, and very different public health policy judgments.

E. Proposed Decision on the Primary Standard

For the reasons discussed above, and taking into account information and assessments presented in the Criteria Document and Staff Paper, the advice and recommendations of CASAC, and the public comments to date, the Administrator proposes to revise the existing 8-hour primary O_3 standard. Specifically, the Administrator proposes to revise: (1) The level of the primary O_3 standard to within a range from 0.070 to 0.075 ppm and (2) the degree of precision to which the level of the standard is specified to the thousandth ppm. The proposed 8-hour primary standard, with a level in the range of 0.070 to 0.075 ppm, would be met at an ambient air monitoring site when the 3-year average of the annual forth-highest daily maximum 8-hour average O_3 concentration is less than or equal to the level of the standard that is promulgated. Data handling conventions are specified in the proposed creation of Appendix P, as discussed in section V below.

However, in recognition of alternative views of the science, the exposure and risk assessments and the uncertainties inherent in these assessments, and the appropriate policy responses based on the currently available information, the Administrator also solicits comments on whether to proceed instead with: (1) Alternative levels of the 8-hour primary O_3 standard, within ranges of below 0.070 ppm down to 0.060 ppm and above 0.075 ppm up to and including retaining the current standard; (2) alternative forms of the standard, including the 3-year average of the annual third- and fifth-highest daily maximum 8-hour average O_3 concentrations; and (3) retaining the degree of precision of the current standard (to the nearest hundredth ppm). Based on the comments received and the accompanying rationales, the Administrator may adopt other standards within the range of the alternative levels and forms identified above in lieu of the standards he is proposing today.

III. Communication of Public Health Information

Information on the public health implications of ambient concentrations of criteria pollutants is currently made available primarily through EPA's Air Quality Index (AQI) program. The current Air Quality Index has been in use since its inception in 1999 (64 FR 42530). It provides accurate, timely, and easily understandable information about daily levels of pollution (40 CFR 58.50). The AQI establishes a nationally uniform system of indexing pollution levels for O_3, carbon monoxide, nitrogen dioxide, particulate matter and sulfur dioxide. The AQI converts pollutant concentrations in a community's air to a number on a scale from 0 to 500. Reported AQI values enable the public to know whether air pollution levels in a particular location are characterized as good (0–50), moderate (51–100), unhealthy for sensitive groups (101–150), unhealthy (151–200), very unhealthy (201–300), or hazardous (300–500). The AQI index value of 100 typically corresponds to the level of the short-term NAAQS for each pollutant. For the current O_3 NAAQS, an 8-hour average concentration of 0.084 ppm corresponds to an AQI value of 100. An AQI value greater than 100 means that a pollutant is in one of the unhealthy categories (*i.e.*, unhealthy for sensitive groups, unhealthy, very unhealthy, or hazardous) on a given day; an AQI value at or below 100 means that a pollutant concentration is in one of the satisfactory categories (*i.e.*, moderate or good). Decisions about the pollutant concentrations at which to set the various AQI breakpoints, that delineate the various AQI categories, draw directly from the underlying health information that supports the NAAQS review.

The Agency recognizes the importance of revising the AQI in a timely manner to be consistent with any revisions to the NAAQS. Therefore EPA proposes to finalize conforming changes to the AQI, in connection with the Agency's final decision on the O_3 NAAQS if revisions to the primary standard are promulgated. These conforming changes would include setting the 100 level of the AQI at the same level as the revised primary O_3 NAAQS, and also making proportional adjustments to AQI breakpoints at the lower end of the range (*i.e.*, AQI values of 50, 150 and 200). EPA does not propose to change breakpoints at the higher end of the range (from 300 to 500), which would apply to state contingency plans or the Significant Harm Level (40 CFR 51.16), because the information from this review does not inform decisions about breakpoints at those higher levels.

IV. Rationale for Proposed Decision on the Secondary Standard

This section presents the rationale for the Administrator's proposed decision to revise the existing 0.08 ppm, 8-hour O_3 secondary NAAQS. The Administrator proposes to revise the current secondary standard by replacing it with one of two standard options. One

option is to adopt a new cumulative, seasonal concentration-weighted form, set at an annual level in the range of 7 to 21 ppm-hours. This standard would be expressed as a sum of weighted hourly concentrations, cumulated over the 12-hour daylight period (8 a.m. to 8 p.m.) during the consecutive 3-month period within the O_3 monitoring season with the maximum index value. This concentration-weighted form is commonly called W126, and is defined as the sum of sigmoidally weighted hourly O_3 concentrations over a specified period, where the daily sigmoidal weighting function is defined as:

$$W126 = \sum_{i=8AM}^{i<7PM} w_{C_i} C_i, \text{ where } C_i = \text{hourly } O_3 \text{ at hour i, and } w_{C_i} = \frac{1}{1+4403e^{-126C_i}}.$$

The other option is to revise the current secondary standard by making it identical to the proposed 8-hour primary standard, within the proposed range of 0.070 to 0.075 ppm. For this option, EPA also solicits comment on a wider range of 8-hour secondary standard levels, including down to 0.060 ppm and up to and including retaining the current 8-hour secondary standard of 0.08 ppm. The Administrator has also considered and solicits comment on an alternative approach to setting a cumulative, seasonal standard(s).

As discussed more fully below, the rationale for these proposed options is based on a thorough review of the latest scientific information on vegetation effects associated with exposure to ambient levels of O_3, as assessed in the Criteria Document. This rationale also takes into account: (1) Staff assessments of the most policy-relevant information in the Criteria Document regarding the evidence of adverse effects of O_3 to vegetation and ecosystems, information on biologically-relevant exposure metrics, and staff analyses of air quality, vegetation exposure and risks, presented in the Staff Paper and described in greater detail in the associated Technical Report on Ozone Exposure, Risk, and Impact Assessments for Vegetation (Abt, 2007), upon which staff recommendations for revisions to the secondary O_3 standard are based; (2) CASAC advice and recommendations as reflected in discussion of drafts of the Criteria Document and Staff Paper at public meetings, in separate written comments, and in CASAC's letters to the Administrator (Henderson, 2006a, b, c; 2007); (3) public comments received during development of these documents either in conjunction with CASAC meetings or separately; and (4) consideration of the degree of protection to vegetation potentially afforded by the proposed 8-hour primary standard.

In developing this rationale, EPA has again focused on direct O_3 effects on vegetation, specifically drawing upon an integrative synthesis of the entire body of evidence, published through early 2006, on the broad array of vegetation effects associated with exposure to ambient levels of O_3 (EPA, 2006a, chapter 9). In addition, because O_3 can also indirectly affect other ecosystem components such as soils, water, and wildlife, and their associated ecosystem goods and services, through its effects on vegetation, a qualitative discussion of these other indirect impacts is also included, though these effects are not quantifiable at this time. As was concluded in the 1997 review, and based on the body of scientific literature assessed in the current Criteria Document, the Administrator believes that it is reasonable to conclude that a secondary standard protecting the public welfare from known or anticipated adverse effects to trees, native vegetation and crops would also afford increased protection from adverse effects to other environmental components relevant to the public welfare, including ecosystem services and function. The peer-reviewed literature includes studies conducted in the U.S., Canada, Europe, and many other countries around the world. In its assessment of the evidence judged to be most relevant to making decisions on the level of the O_3 secondary standard, however, EPA has placed greater weight on U.S. studies, due to the often species-, site- and climate-specific nature of O_3-related vegetation response.

As with virtually any policy-relevant vegetation effects research, there is uncertainty in the characterization of vegetation effects attributable to exposure to ambient O_3. As discussed below, however, research conducted since the last review provides important information coming from field-based exposure studies, including free air, gradient and biomonitoring surveys, in addition to the more traditional controlled open top chamber (OTC) studies. Moreover, the newly available studies evaluated in the Criteria Document have undergone intensive scrutiny through multiple layers of peer review and many opportunities for public review and comment. While important uncertainties remain, the review of the vegetation effects information has been extensive and deliberate. In the judgment of the Administrator, the intensive evaluation of the scientific evidence that has occurred in this review has provided an adequate basis for regulatory decision-making at this time. This review also provides important input to EPA's research plan for improving our future understanding of the effects of ambient O_3 at lower levels.

A. Vegetation Effects Information

This section outlines key information contained in the Criteria Document (chapter 9) and in the Staff Paper (chapter 7) on known or potential effects on public welfare which may be expected from the presence of O_3 in ambient air. The information highlighted here summarizes: (1) New information available on potential mechanisms for vegetation effects associated with exposure to O_3; (2) the nature of effects on vegetation that have been associated with exposure to O_3 and consequent potential impacts on ecosystems; and (3) considerations in characterizing what constitutes an adverse welfare impact of O_3.

Exposures to O_3 have been associated quantitatively and qualitatively with a wide range of vegetation effects. The decision in the last review to set a more protective secondary standard primarily reflected consideration of the quantitative information on vegetation effects available at that time, particularly growth impairment (*e.g.*, biomass loss) in sensitive forest tree species during the seedling growth stage and yield loss in important commercial crops. This information, derived mainly using the OTC exposure method, found cumulative, seasonal O_3 exposures were most strongly associated with observed vegetation response. The Criteria Document prepared for this review discusses a number of additional studies that support and strengthen key conclusions regarding O_3 effects on vegetation and ecosystems found in the previous Criteria Document (EPA, 1996a, 2006a), including further clarification of the underlying mechanistic and physiological processes at the subcellular, cellular, and whole

system levels within the plant. More importantly, however, in the context of this review, new quantitative information is now available across a broader array of vegetation effects (*e.g.*, growth impairment during seedlings, saplings and mature tree growth stages, visible foliar injury, and yield loss in annual crops) and across a more diverse set of exposure methods, including chamber, free air, gradient, model, and field-based observation. These non-chambered, field-based study results begin to address one of the key data gaps cited by the Administrator in the last review.

The following discussion of the policy-relevant science regarding vegetation effects associated with cumulative, seasonal exposures to ambient levels of O_3 integrates information from the Criteria Document (chapter 9) and the Staff Paper (chapter 7).

1. Mechanisms Governing Plant Response to Ozone

The interpretation of predictions of risk associated with vegetation response at ambient O_3 exposure levels can be informed by scientific understanding regarding O_3 impacts at the genetic, physiological, and mechanistic levels. In most cases, the mechanisms of response are similar regardless of the degree of sensitivity of the species. The evidence assessed in the 2006 Criteria Document (EPA, 2006a) regarding the O_3-induced changes in physiology continues to support the information discussed in the last review (EPA, 1996a, 2006a). In addition, during the last decade understanding of the cellular processes within plants has been further clarified and enhanced. Therefore, this section reviews the key scientific conclusions identified in 1996 Criteria Document (EPA, 1996a), and incorporates new information from the current Criteria Document (EPA, 2006a). This section describes: (1) Plant uptake of O_3, (2) O_3-induced cellular to systemic response, (3) plant compensation and detoxification mechanisms, (4) O_3-induced changes to plant metabolism, and (5) plant response to chronic O_3 exposures.

a. Plant Uptake of Ozone

To cause injury, O_3 must first enter the plant through openings in the leaves called stomata. Leaves exist in a three dimensional environment called the plant canopy, where each leaf has a unique orientation and receives a different exposure to ambient air, microclimatological conditions, and sunlight. In addition, a plant may be located within a stand of other plants which further modifies ambient air exchange with individual leaves. Not all O_3 entering a plant canopy is absorbed into the leaf stomata, but may be adsorbed to other surfaces *e.g.*, leaf cuticles, stems, and soil (termed non-stomatal deposition) or scavenged by reactions with intra-canopy biogenic VOCs and naturally occurring NO_X emissions from soils. Because O_3 does not penetrate the leaf's cuticle, it must reach the stomatal openings in the leaf for absorption to occur. The movement of O_3 and other gases such as CO_2 into and out of leaves is controlled by stomatal guard cells that regulate the size of the stomatal apertures. These guard cells respond to a variety of internal species-specific factors as well as external site specific environmental factors such as light, temperature, humidity, CO_2 concentration, soil fertility and water status, and in some cases the presence of air pollutants, including O_3. These modifying factors produce stomatal conductance that vary between leaves of the same plant, individuals and genotypes within a species and diurnally and seasonally.

b. Cellular to Systemic Response

Once inside the leaf, O_3 can react with a variety of biochemical compounds that are exposed to the air spaces within the leaf or it can be dissolved into the water lining the cell wall of the air spaces. Having entered the aqueous phase, O_3 can be rapidly altered to form oxidative products that can diffuse more readily into and through the cell and react with many biochemical compounds. An early step in a series of O_3-induced events that leads to leaf injury seems to involve alteration in cell membrane function, including membrane transport properties (EPA, 2006a). One such signaling molecule is hydrogen peroxide (H_2O_2). The presence of higher-than-normal levels of H_2O_2 within the leaf is a potential trigger for a set of metabolic reactions that include those typical of the well documented ''wounding'' response or pathogen defense pathway generated by cutting of the leaf or by pathogen/insect attack. Ethylene is another compound produced when plants are subjected to biotic or abiotic stressors. Increased ethylene production by plants exposed to O_3 stress was identified as a consistent marker for O_3 exposure in studies conducted decades ago (Tingey *et al.*, 1976).

c. Compensation and Detoxification

Ozone injury will not occur if (1) the rate and amount of O_3 uptake is small enough for the plant to detoxify or metabolize O_3 or its metabolites or (2) the plant is able to repair or compensate for the O_3 impacts (Tingey and Taylor, 1982; U.S. EPA, 1996a). A few studies have documented direct stomatal closure or restriction in the presence of O_3 in some species. This response may be initiated ranging from within minutes to hours or days of exposure (Moldau *et al.*, 1990; Dann and Pell, 1989; Weber *et al.*, 1993). However, exclusion of O_3 simultaneously restricts the uptake of CO_2, which also limits photosynthesis and growth. In addition, antioxidants present in plants can effectively protect tissue against damage from low levels of oxidants by dissipating excess oxidizing power. Since 1996, the role of detoxification in providing a level of resistance to O_3 has been further investigated. A number of antioxidants have been found in plants. However, the pattern of changes in the amounts of these antioxidants varies greatly among different species and conditions. Most recent reports indicate that ascorbate within the cell wall provides the first significant opportunity for detoxification to occur. In spite of the new research, however, it is still not clear as to what extent detoxification protects against O_3 injury. Specifically, data are needed on potential rates of antioxidant production, subcellular location(s) of antioxidants, and whether generation of these antioxidants in response to O_3-induced stress potentially diverts resources and energy away from other vital uses. Thus, the Criteria Document concludes that scientific understanding of the detoxification mechanisms is not yet complete and requires further investigation (EPA, 2006a).

Once O_3 injury has occurred in leaf tissue, some plants are able to repair or compensate for the impacts. In general, plants have a variety of compensatory mechanisms for low levels of stress including reallocation of resources, changes in root/shoot ratio, production of new tissue, and/or biochemical shifts, such as increased photosynthetic capacity in new foliage and changes in respiration rates, indicating possible repair or replacement of damaged membranes or enzymes. Since these mechanisms are genetically determined, not all plants have the same complement or degree of tolerance, nor are all stages of a plant's development equally sensitive to O_3. At higher levels or over longer periods of O_3 stress, some of these compensatory mechanisms, such as a reallocation of resources away from storage in the roots in favor of leaves or shoots, could occur at a cost to the overall health of the plant. However, it is not yet clear to what

degree or how the use of plant resources for repair or compensatory processes affects the overall carbohydrate budget or subsequent plant response to O_3 or other stresses (EPA, 1996a, EPA, 2006a).

d. Changes to Plant Metabolism

Ozone inhibits photosynthesis, the process by which plants produce energy rich compounds (*e.g.*, carbohydrates) in the leaves. This impairment can result from direct impact to chloroplast function and/or O_3-induced stomatal closure resulting in reduced uptake of CO_2. A large body of literature published since 1996 has further elucidated the mechanism of the effect of O_3 within the chloroplast. Pell *et al.* (1997) showed that O_3 exposure results in a loss of the central carboxylating enzyme that plays an important role in the production of carbohydrates. Due to its central importance, any decrease in this enzyme may have severe consequences for the plant's productivity. Several recent studies have found that O_3 has a greater effect as leaves age, with the greatest impact of O_3 occurring on the oldest leaves (Fiscus *et al.*, 1997; Reid and Fiscus, 1998; Noormets *et al.*, 2001; Morgan *et al.*, 2004). The loss of this key enzyme as a function of increasing O_3 exposure is also linked to an early senescence or a speeding up of normal development leading to senescence. If total plant photosynthesis is sufficiently reduced, the plant will respond by reallocating the remaining carbohydrate at the level of the whole organism (EPA, 1996a, 2006a). This reallocation of carbohydrate away from the roots into above ground vegetative components can have serious implications for perennial species.

e. Plant Response to Chronic Ozone Exposures

Though many changes that occur with O_3 exposure can be observed within hours, or perhaps days, of the exposure, including those connected with wounding, other effects take longer to occur and tend to become most obvious after chronic exposures to low O_3 concentrations. These chronic exposures have been linked to senescence or some other physiological response very closely linked to senescence. In perennial plant species, a reduction in carbohydrate storage in one year may result in the limitation of growth the following year (Andersen *et al.*, 1997). Such ''carry-over'' effects have been documented in the growth of tree seedlings (Hogsett *et al.*, 1989; Sasek *et al.*, 1991; Temple *et al.*, 1993; EPA, 1996a) and in roots (Andersen *et al.*, 1991; EPA, 1996a). Though it is not fully understood how chronic O_3 affects long-term growth and resistance to other biotic and abiotic insults in long-lived trees, accumulation of these carry-over effects over time could affect survival and reproduction.

2. Nature of Effects

Ozone injury at the cellular level, when it has accumulated sufficiently, will be propagated to the level of the whole leaf or plant. These larger scale effects can include: Reduced carbohydrate production and/or reallocation; reduced growth and/or reproduction; visible foliar injury and/or premature senescence; and reduced plant vigor. Much of what is now known about these O_3-related effects, as summarized below, is based on research that was available in the last review. Recent studies continue to support and expand this knowledge (EPA, 2006a).

a. Carbohydrate Production and Allocation

When total plant photosynthesis is sufficiently reduced, the plant will respond by reallocating the remaining carbohydrate at the level of the whole organism. Many studies have demonstrated that root growth is more sensitive to O_3 exposure than stem or leaf growth (EPA, 2006a). When fewer carbohydrates are present in the roots, less energy will be available for root-related functions such as acquisition of water and nutrients. In addition, by inhibiting photosynthesis and the amount of carbohydrates available for transfer to the roots O_3 can disrupt the association between soil fungi and host plants. Fungi in the soil form a symbiotic relationship with many terrestrial plants. For host plants, these fungi improve the uptake of nutrients, protect the roots against pathogens, produce plant growth hormones, and may transport carbohydrates from one plant to another (EPA, 1996a). These below-ground effects have recently been documented in the field (Grulke *et al.*, 1998; Grulke and Balduman, 1999). Data from a long-studied pollution gradient in the San Bernardino Mountains of southern California suggest that O_3 substantially reduces root growth in natural stands of Ponderosa pine (*Pinus ponderosa*). Root growth in mature trees was decreased at least 87 percent in a high-pollution site as compared to a low-pollution site (Grulke *et al.*, 1998), and a similar pattern was found in a separate study with whole-tree harvest along this gradient (Grulke and Balduman, 1999). Though effects on other ecosystem components were not examined, a reduction of root growth of this magnitude could have significant implications for the below-ground communities at those sites. Because effects on leaf and needle carbohydrate content under O_3 stress can range from a reduction (Barnes *et al.*, 1990; Miller *et al.*, 1989), to no effect (Alscher *et al.*, 1989), to an increase (Luethy-Krause and Landolt, 1990), studies that examine only above-ground vegetative components may miss important O_3-induced changes below ground. These below-ground changes could signal a shift in nutrient cycling with significance at the ecosystem level (Young and Sanzone, 2002).

b. Growth Effects on Trees

Studies comparing the O_3-related growth response of different vegetation types (coniferous and deciduous) and growth stages (*e.g.*, seedling and mature) have established that on average, individual coniferous trees are less sensitive than deciduous trees, and deciduous trees are generally less sensitive to O_3 than most annual plants, with the exception of a few fast growing deciduous tree species (*e.g.*, quaking aspen, black cherry, and cottonwood), which are highly sensitive and, in some cases, as much or more sensitive to O_3 than sensitive annual plants. In addition, studies have shown that the relationship between O_3 sensitivity in seedling and mature growth stages of trees can vary widely, with seedling growth being more sensitive to O_3 exposures in some species, while in others, the mature growth stage is the more O_3 sensitive. In general, mature deciduous trees are likely to be more sensitive to O_3 than deciduous seedlings, and mature evergreen trees are likely to be less sensitive to O_3 than their seedling counterparts. Based on these results, stomatal conductance, O_3 uptake, and O_3 effects cannot be assumed to be equivalent in seedlings and mature trees.

In the last review (EPA, 1996b), analyses of the effects of O_3 on trees were limited to 11 tree species for which concentration-response (C–R) functions for the seedling growth stage had been developed from OTC studies conducted by the National Health and Environmental Effects Research Lab, Western Ecology Division (NHEERL–WED). A number of replicate studies were conducted on these species, leading to a total of 49 experimental cases. The Staff Paper presented a graph of the composite regression equation that combines the results of the C–R functions developed for each of the 49 cases. The NHEERL–WED study predicted relative yield loss at various exposure levels in terms of a 12-hour W126. For example, 50 percent of the

tree seedling cases would be protected from greater than 10 percent biomass loss at a 3-month, 12-hour W126 of approximately 24 ppm-hrs, while 75 percent of cases would be protected from 10 percent biomass loss at a 3-month, 12-hour W126 level of approximately 16 ppm-hrs.

Since the 1996 review, only a few studies have developed C–R functions for additional tree seedling species (EPA, 2006a). One such study is of particular importance in that it documented growth effects from O_3 exposure in the field without the use of chambers or other fumigation methods that were as great as those seen in OTC studies (Gregg *et al.*, 2003). This study placed Eastern cottonwood (*Populus deltoides*) saplings at sites along a continuum of ambient O_3 exposures that gradually increased from urban to rural areas in the New York City area (Gregg *et al.*, 2003). Eastern cottonwood was selected because it is fast growing, O_3 sensitive and important ecologically, along stream banks, and commercially for pulpwood, furniture manufacturing, and as a possible new source for energy biomass (Burns and Hankola, 1990). Gregg *et al.* (2003) found that the cottonwood saplings grown in New York City grew faster than saplings grown in downwind rural areas. Because these saplings were grown in pots with carefully controlled soil nutrient and moisture levels, the authors were able to control for most of the differences between sites. After carefully considering these and other factors, the authors concluded the primary explanation for the difference in growth was the gradient of cumulative O_3 exposures that increased as one moved downwind from urban to less urban and more rural sites. It was determined that the lower O_3 exposure within the city center was due to NO_X titration reactions which removed O_3 from the ambient air. The authors were able to reproduce the growth responses observed in the field in a companion OTC experiment, confirming O_3 as the stressor inducing the growth loss response (Gregg *et al.*, 2003).

Another recent set of studies employed a modified Free Air CO_2 Enrichment (FACE) methodology to expose vegetation to elevated O_3 without the use of chambers. This exposure method was originally developed to expose vegetation to elevated levels of CO_2, but has been modified to include O_3 exposure in Illinois (SoyFACE) and Wisconsin (AspenFACE) for soybean and deciduous trees, respectively (Dickson *et al.*, 2000; Morgan *et al.*, 2004). The FACE method releases gas (*e.g.*, CO_2, O_3) from a series of orifices placed along the length of the vertical pipes surrounding a circular field plot and uses the prevailing wind to distribute it. This exposure method has many characteristics that differ from those associated with the OTC.

Most significantly, this exposure method more closely replicates conditions in the field than did OTCs. This is because, except for O_3 levels which are varied across co-located plots, plants are exposed to the same ambient growing conditions that occur naturally in the field (*e.g.*, location-specific pollutant mixtures; climate conditions such as light, temperature and precipitation; insect pests, pathogens). By using one of several co-located plots as a control (*e.g.*, receives no additional O_3), and by exposing the other rings to differing levels of elevated O_3, the growth response signal that is due solely to the change in O_3 exposure can be clearly determined. Furthermore, the FACE system can expand vertically with the growth of trees, allowing for exposure experiments to span numerous years, an especially useful capability in forest research.

On the other hand, the FACE methodology also has the undesirable characteristic of potentially creating hotspots near O_3 gas release orifices or gradients of exposure in the outer ring of trees within the plots, such that averaging results across the entire ring potentially overestimates the response. In recognition of this possibility, researchers at the AspenFACE experimental site only measured trees in the center core of each ring, (*e.g.*, at least 5–6 meters away from the emission sites of O_3) (Dickson *et al.,* 2000; Karnosky *et al.* 2005). By taking this precaution, it is unlikely that their measurements were influenced by any potential hotspots or gradients of exposure within the FACE rings. Taking all of the above into account, results from the Wisconsin FACE site on quaking aspen appear to demonstrate that the detrimental effects of O_3 exposure seen on tree growth and symptom expression in OTCs can be observed in the field using this exposure method (Karnosky *et al.*, 1999; 2005).

The Staff Paper thus concluded that the combined evidence from the AspenFACE [56] and Gregg *et al.* (2003) field studies provide compelling and important support for the appropriateness of continued use of the C–R functions derived using OTC from the NHEERL–WED studies to estimate risk to these tree seedlings under ambient field exposure conditions. These studies make a significant contribution to the coherence in the weight of evidence available in this review and provide additional evidence that O_3-induced effects observed in chambers also occur in the field.

Trees and other perennials, in addition to cumulating the effects of O_3 exposures over the annual growing season, can also cumulate effects across multiple years. It has been reported that effects can ''carry over'' from one year to another (EPA, 2006a). Growth affected by a reduction in carbohydrate storage in one year may result in the limitation of growth in the following year (Andersen, *et al.*, 1997). Carry-over effects have been documented in the growth of some tree seedlings (Hogsett *et al.* 1989; Simini *et al.*, 1992; Temple *et al.*, 1993) and in roots (Andersen *et al.*, 1991; EPA, 1996a). On the basis of past and recent OTC and field study data, ambient O_3 exposures that occur during the growing season in the United States are sufficient to potentially affect the annual growth of a number of sensitive seedling tree species. However, because most studies do not take into account the possibility of carry over effects on growth in subsequent years, the true implication of these annual biomass losses may be missed. It is likely that under ambient exposure conditions, some sensitive trees and perennial plants could experience compounded impacts that result from multiple year exposures.

c. Visible Foliar Injury

Cellular injury can and often does become visible. Acute injury usually appears within 24 hours after exposure to O_3 and, depending on species, can occur under a range of exposures and durations from 0.040 ppm for a period of 4 hours to 0.410 ppm for 0.5 hours for crops and 0.060 ppm for 4 hours to 0.510 ppm for 1 hour for trees and shrubs (Jacobson, 1977). Chronic injury may be mild to severe. In some cases, cell death or premature leaf senescence may occur. The significance of O_3 injury at the leaf and whole plant levels depends on how much of the total leaf area of the plant has been affected, as well as the plant's age, size, developmental stage, and degree of functional redundancy among the existing leaf area. As a result, it is not presently possible to determine, with consistency across species and environments, what degree of injury at

[56] Only a few northern forest types in the U.S. have been well studied with respect to O_3 exposures using the FACE method, though these systems are being used to expose numerous other ecosystem types to elevated levels of CO_2. Additional FACE studies with O_3 on other U.S. forest types would provide a better understanding of whether these results can be extrapolated to other forest types and mature forest stands.

the leaf level has significance to the vigor of the whole plant.

The presence of visible symptoms due to O_3 exposures can, however, by itself, represent an adverse impact to the public welfare. Specifically, it can reduce the market value of certain leafy crops (such as spinach, lettuce), impact the aesthetic value of ornamentals (such as petunia, geranium, and poinsettia) in urban landscapes, and affect the aesthetic value of scenic vistas in protected natural areas such as national parks and wilderness areas. Many businesses rely on healthy looking vegetation for their livelihoods (*e.g.*, horticulturalists, landscapers, Christmas tree growers, farmers of leafy crops) and a variety of ornamental species have been listed as sensitive to O_3 (Abt, 1993). Though not quantified, there is likely some level of economic impact to businesses and homeowners from O_3-related injury on sensitive ornamental species due to the cost associated with more frequent replacement and/or increased maintenance (fertilizer or pesticide application). In addition, because O_3 not only results in discoloration of leaves but can lead to more rapid senescence (early shedding of leaves) there potentially could be some lost tourist dollars at sites where fall foliage is less available or attractive.

The use of sensitive plants as biological indicators to detect phytotoxic levels of O_3 is a longstanding and effective methodology (Chappelka and Samuelson, 1998; Manning and Krupa, 1992). Each bioindicator exhibits typical O_3 injury symptoms when exposed under appropriate conditions. These symptoms are considered diagnostic as they have been verified in exposure-response studies under experimental conditions. In recent years, field surveys of visible foliar injury symptoms have become more common, with greater attention to the standardization of methods and the use of reliable indicator species (Campbell *et al.*, 2000; Smith *et al.*, 2003). Specifically, the United States Forest Service (USFS) through the Forest Health Monitoring Program (FHM) (1990–2001) and currently the Forest Inventory and Analysis (FIA) Program collects data regarding the incidence and severity of visible foliar injury on a variety of O_3 sensitive plant species throughout the U.S. (Coulston *et al.* 2003, 2004; Smith *et al.* 2003).

Since the conclusion of the 1996 NAAQS review, the FIA monitoring program network and database has continued to expand. This network continues to document foliar injury symptoms in the field under ambient exposure conditions. Recent survey results show that O_3-induced foliar injury incidence is widespread across the country. The visible foliar injury indicator has been identified as a means to track O_3 exposure stress trends in the nation's natural plant communities as highlighted in EPA's most recent Report on the Environment (EPA, 2003a; *http://www.epa.gov/indicators/roe*).

Previous Criteria Documents have noted the difficulty in relating visible foliar injury symptoms to other vegetation effects such as individual tree growth, stand growth, or ecosystem characteristics (EPA, 1996a) and this difficulty remains to the present day (EPA, 2006a). It is important to note that direct links between O_3 induced visible foliar injury symptoms and other adverse effects are not always found. Therefore, visible foliar injury cannot serve as a reliable surrogate measure for other O_3-related vegetation effects because other effects (*e.g.*, biomass loss) have been reported with and without visible injury. In a few cases, visible foliar symptoms have been correlated with decreased vegetative growth (Karnosky *et al.*, 1996; Peterson *et al.*, 1987; Somers *et al.*, 1998) and with impaired reproductive function (Black *et al.*, 2000; Chappelka, 2002). Therefore, the lack of visible injury should not be construed to indicate a lack of phytotoxic concentrations of O_3 nor absence of other non-visible O_3 effects.

d. Reduced Plant Vigor

Though O_3 levels over most of the U.S. are not high enough to kill vegetation directly, current levels have been shown to reduce the ability of many sensitive species and genotypes within species to adapt to or withstand other environmental stresses. These may include increased susceptibility to freezing temperatures, pest infestations and/or root disease, and compromised ability to compete for available resources. For example, when species with differing O_3-sensitivities occur together, the resulting decrease in growth in O_3-sensitive species may lead to an increase in growth of more O_3-tolerant species, which are now able to better compete for available resources. The result of such above effects can produce a loss in plant vigor in O_3-sensitive species that over time may lead to premature plant death.

e. Ecosystems

Ecosystems are comprised of complex assemblages of organisms and the physical environment with which they interact. Each level of organization within an ecosystem has functional and structural characteristics. At the ecosystem level, functional characteristics include, but are not limited to, energy flow; nutrient, hydrologic, and biogeochemical cycling; and maintenance of food chains. The sum of the functions carried out by ecosystem components provides many benefits to humankind, as in the case of forest ecosystems (Smith, 1992). Some of these benefits, also termed ''ecosystem goods and services'', include food, fiber production, aesthetics, genetic diversity, maintenance of water quality, air quality, and climate, and energy exchange. A conceptual framework for discussing the effects of O_3 on ecosystems was developed by the EPA Science Advisory Board (Young and Sanzone, 2002). In this report, the authors identify six essential ecological attributes (EEAs) include landscape condition, biotic condition, chemical/physical condition, ecological processes, hydrology/geomorphology, and natural disturbance regime. Each EEA is depicted as one of six triangles that together build a hexagon. On the outside of each triangle is a list of stressors that can act on the EEA. Tropospheric O_3 is listed as a stressor of both biotic condition and the chemical/physical condition of ecosystems. As each EEA is linked to all the others, it is clearly envisioned in this framework that O_3 could either directly or indirectly impact all of the EEAs associated with an ecosystem that is being stressed by O_3.

Vegetation often plays an influential role in defining the structure and function of an ecosystem, as evidenced by the use of dominant vegetation forms to classify many types of natural ecosystems, *e.g.*, tundra, wetland, deciduous forest, and conifer forest. Plants simultaneously inhabit both above- and below-ground environments, integrating and influencing key ecosystem cycles of energy, water, and nutrients. When a sufficient number of individual plants within a community have been affected, O_3-related effects can be propagated up to ecosystem-level effects. Thus, through its impact on vegetation, O_3 can be an important ecosystem stressor.

i. Potential Ozone Alteration of Ecosystem Structure and Function

The Criteria Document (EPA, 2006a) outlines seven case studies where O_3 effects on ecosystems have either been documented or are suspected. The oldest and clearest example involves the San Bernardino Mountain forest ecosystem in California. This system experienced chronic high O_3 exposures over a period of 50 or more years. The

O_3-sensitive and co-dominant species of ponderosa and Jeffrey pine demonstrated severe levels of foliar injury, premature senescence, and needle fall that decreased the photosynthetic capacity of stressed pines and reduced the production of carbohydrates resulting in a decrease in radial growth and in the height of stressed trees. It was also observed that ponderosa and Jeffrey pines with slight to severe crown injury lost basal area in relation to competing species that are more tolerant to O_3. Due to a loss of vigor, these trees eventually succumbed to the bark beetle, leading to elevated levels of tree death. Increased mortality of susceptible trees shifted the community composition towards white fir and incense cedar, effectively reversing the development of the normal fire climax mixture dominated by ponderosa and Jeffrey pines, and leading to increased fire susceptibility. At the same time, numerous other organisms and processes were also affected either directly or indirectly, including successional patterns of fungal microflora and their relationship to the decomposer community. Nutrient availability was influenced by the heavy litter and thick needle layer under stands with the most severe needle injury and defoliation. The composition of lichens was significantly reduced. In this example, O_3 appeared to be a predisposing factor that led to increased drought stress, windthrow, root diseases, and insect infestation (Takemoto *et al.*, 2001). Thus, through its effects on tree water balance, cold hardiness, tolerance to wind, and susceptibility to insect and disease pests, O_3 potentially impacted the ecosystem-related EEA of natural disturbance regime (*e.g.*, fire, erosion). Although the role of O_3 was extremely difficult to separate from other confounding factors, such as high nitrogen deposition, there is evidence that this shift in species composition has altered the structure and dynamics of associated food webs (Pronos *et al.*, 1999) and carbon (C) and nitrogen (N) cycling (Arbaugh *et al.*, 2003). Ongoing and new research in this important ecosystem is needed to reveal the extent to which ecosystem services have been affected and to what extent strong causal linkages between historic and/or current ambient O_3 exposures and observed ecosystem-level effects can be made.

Ozone has also been reported to be a selective pressure among sensitive tree species (*e.g.*, eastern white pine) in the east. The nature of community dynamics in eastern forests is different, however, than in the west, consisting of a wider diversity of species and uneven aged stands, and the O_3 levels are less severe. Therefore, lower level chronic O_3 stress in the east is more likely to produce subtle long-term forest responses such as shifts in species composition, rather than wide-spread community degradation.

One of the best-documented studies of population and community response to O_3 effects are the long-term studies of common plantain (*Plantago major*) in native plant communities in the United Kingdom (Davison and Reiling, 1995; Lyons *et al.*, 1997; Reiling and Davison, 1992c). Elevated O_3 significantly decreased the growth of sensitive populations of common plantain (Pearson *et al.*, 1996; Reiling and Davison, 1992a, b; Whitfield *et al.*, 1997) and reduced its fitness as determined by decreased reproductive success (Pearson *et al.*, 1996; Reiling and Davison, 1992a). While spatial comparisons of population responses to O_3 are complicated by other environmental factors, rapid changes in O_3 resistance were imposed by ambient levels and variations in O_3 exposure (Davison and Reiling, 1995). Specifically, in this case study, it appeared that O_3-sensitive individuals are being removed by O_3 stress and the genetic variation represented in the population could be declining. If genetic diversity and variation is lost in ecosystems, there may be increased vulnerability of the system to other biotic and abiotic stressors, and ultimately a change in the EEAs and associated services provided by those ecosystems.

Recent free-air exposure experiments have also provided new insight into how O_3 may be altering ecosystem structure and function (Karnosky *et al.*, 2005). For example, a field O_3 exposure experiment at the AspenFACE site in Wisconsin (described in section IV.A.2.b. above) was designed to examine the effects of both elevated CO_2 and O_3 on mixed stands of aspen (*Populus tremuloides*), birch (*Betula papyrifera*), and sugar maple (*Acer saccharum*) that are characteristic of Great Lakes aspen-dominated forests (Karnosky *et al.*, 2003; Karnosky *et al.*, 1999). They found evidence that the effects on above- and below-ground growth and physiological processes have cascaded through the ecosystem, even affecting microbial communities (Larson *et al.*, 2002; Phillips *et al.*, 2002). This study also confirmed earlier observations of O_3-induced changes in trophic interactions involving keystone tree species, as well as important insect pests and their natural enemies (Awmack *et al.*, 2004; Holton *et al.*, 2003; Percy *et al.*, 2002).

Collectively these examples suggest that O_3 is an important stressor in natural ecosystems, but it is difficult to quantify the contribution of O_3 due to the combination of other stresses present in ecosystems. In most cases, because only a few components in each of these ecosystems have been examined and characterized for O_3 effects, the full extent of ecosystem changes in these example ecosystems is not fully understood. Clearly, there is a need for highly integrated ecosystem studies that specifically investigate the effect of O_3 on ecosystem structure and function in order to fully determine the extent to which O_3 is altering ecosystem services. Continued research, employing new approaches, will be necessary to fully understand the extent to which O_3 is affecting ecosystem services.

ii. Effects on Ecosystem Services and Carbon Sequestration

Since it has been established that O_3 affects photosynthesis and growth of plants, O_3 is most likely affecting the productivity of forest ecosystems. Therefore, it is desirable to link effects on growth and productivity to essential ecosystem services. However, it is very difficult to quantify ecosystem-level productivity losses because of the amount of complexity in scaling from the leaf-level or individual plant to the ecosystem level, and because not all organisms in an ecosystem are equally affected by O_3.

Terrestrial ecosystems are important in the Earth's carbon (C) balance and could help offset emissions of CO_2 by humans if anthropogenic C is sequestered in vegetation and soils. The annual increase in atmospheric CO_2 is less than the total inputs from fossil fuel burning and land use changes (Prentice *et al.*, 2001) and much of this discrepancy is thought to be attributable to CO_2 uptake by plant photosynthesis (Tans & White, 1998). Temperate forests of the northern hemisphere have been estimated to be a net sink of C per year (Goodale *et al.* 2002). Ozone interferes with photosynthesis, causes some plants to senesce leaves prematurely and in some cases, reduces allocation to stem and root tissue. Thus, O_3 decreases the potential for C sequestration. For the purposes of this discussion, C sequestration is defined as the net exchange of carbon by the terrestrial biosphere. However, long-term storage in the soil organic matter is considered to be the most stable form of C storage in ecosystems.

In a study including all ecosystem types, Felzer *et al.* (2004), estimated that

U.S. net primary production (net flux of C into an ecosystem) was decreased by 2.6–6.8 percent due to O_3 pollution in the late 1980's to early 1990's. Ozone not only reduces C sequestration in existing forests, it can also affect reforestation projects (Beedlow *et al.* 2004). This effect, in turn, has been found to ultimately inhibit C sequestration in forest soils which act as long-term C storage (Loya *et al.*, 2003; Beedlow *et al.* 2004). The interaction of rising O_3 pollution and rising CO_2 concentrations in the coming decades complicates predictions of future sequestration potential. Models generally predict that, in the future, C sequestration will increase with increasing CO_2, but often do not account for the decrease in productivity due to the local effects of tropospheric O_3. In the presence of high O_3 levels, the stimulatory effect of rising CO_2 concentrations on forest productivity has been estimated to be reduced by more that 20 percent (Tingey *et al.*, 2001; Ollinger *et al.* 2002; Karnosky *et al.*, 2003).

In summary, it would be anticipated that meeting lower O_3 standards would increase the amount of CO_2 uptake by many ecosystems in the U.S. However, the amount of this improvement would be heavily dependent on the species composition of those ecosystems. Many ecosystems in the U.S. do have O_3 sensitive plants. For, example forest ecosystems with dominant species such as aspen or ponderosa pine would be expected to increase CO_2 uptake more with lower O_3 than forests with more O_3 tolerant species.

A recent critique of the secondary NAAQS review process published in the report by the National Academy of Sciences on Air Quality Management in the United States (NRC, 2004) stated that ''EPA's current practice for setting secondary standards for most criteria pollutants does not appear to be sufficiently protective of sensitive crops and ecosystems * * *.'' This report made several specific recommendations for improving the secondary NAAQS process and concluded that ''There is growing evidence that tighter standards to protect sensitive ecosystems in the United States are needed * * *.'' An effort has been recently initiated within the Agency to identify indicators of ecological condition whose responses can be clearly linked to changes in air quality that are attributable to Agency environmental programs. Using a single indicator to represent the complex linkages and dynamic cycles that define ecosystem condition will always have limitations. With respect to O_3-related impacts on ecosystem condition, only two candidate indicators, foliar injury (as described above) and radial growth in trees, have been suggested. Thus, while at the present time, most O_3-related effects on ecosystems must be inferred from observed or predicted O_3-related effects on individual plants, additional research at the ecosystem level could identify new indicators and/or establish stronger causal linkages between O_3-induced plant effects and ecosystem condition.

f. Yield Reductions in Crops

Ozone can interfere with carbon gain (photosynthesis) and allocation of carbon with or without the presence of visible foliar injury. As a result of decreased carbohydrate availability, fewer carbohydrates are available for plant growth, reproduction, and/or yield. Recent studies have further confirmed and demonstrated O_3 effects on different stages of plant reproduction, including pollen germination, pollen tube growth, fertilization, and abortion of reproductive structures, as reviewed by Black *et al.* (2000). For seed-bearing plants, these reproductive effects will culminate in reduced seed production or yield.

As described in the last review and again in the current Criteria Document and Staff Paper, the National Crop Loss Assessment Network (NCLAN) studies undertaken in the early to mid-1980's provide the largest, most uniform database on the effects of O_3 on agricultural crop yields. The NCLAN protocol was designed to produce crop exposure-response data representative of the areas in the U.S. where the crops were typically grown. In total, 15 species (*e.g.*, corn, soybean, winter wheat, tobacco, sorghum, cotton, barley, peanuts, dry beans, potato, lettuce, turnip, and hay [alfalfa, clover, and fescue]), accounting for greater than 85 percent of U.S. agricultural acreage planted at that time, were studied. Of these 15 species, 13 species including 38 different cultivars were combined in 54 cases representing unique combinations of cultivars, sites, water regimes, and exposure conditions. Crops were grown under typical farm conditions and exposed in open-top chambers to ambient O_3 and increased O_3 above ambient (*i.e.*, modified ambient). Robust C–R functions were developed for each of these crop species. These results showed that 50 percent of the studied cases would be protected from greater than 10 percent yield loss at a W126 level of 21 ppm-hour, while a W126 of 13 ppm-hour would provide protection for 75 percent of the cases studied from greater than 10 percent yield loss.

Recent studies continue to find yield loss levels in crop species studied previously under NCLAN that reflect the earlier findings[57]. In other words, there has been no evidence that crops are becoming more tolerant of O_3 (EPA, 2006a). For cotton, some newer varieties have been found to have higher yield loss due to O_3 compared to older varieties (Olszyk *et al.*, 1993, Grantz and McCool, 1992). In a meta-analysis of 53 studies, Morgan *et al.* (2003) found consistent deleterious effects of O_3 exposures on soybean from studies published between 1973 and 2001. Further, early results from the field-based exposure experiment SoyFACE in Illinois indicate a lack of any apparent difference in the O_3 tolerance of old and recent cultivars of soybean in a study of 22 soybean varieties (Long *et al.*, 2002). Thus, the Staff Paper concluded that the recent scientific literature continues to support the conclusions of the 1996 Criteria Document that ambient O_3 concentrations are reducing the yield of major crops in the U.S.

In addition to the effects described on annual crop species, several studies published since the last review have focused on perennial forage crops (EPA, 2006a). These recent results confirm that O_3 is also impacting yields and quality of multiple-year forage crops at sufficient magnitude to have nutritional and possibly economic implications to their use as ruminant animal feed at O_3 exposures that occur in some years over large areas of the U.S.

3. Adversity of Effects

The Staff Paper recognized that the statute requires that a secondary standard be protective against ''adverse'' O_3 effects, not all identifiable effects. In considering what constitutes a vegetation effect that is adverse to the public welfare, the Staff Paper recognizes that O_3 can cause a variety of vegetation effects, beginning at the level of the individual cell and accumulating up to the level of whole leaves, plants, plant populations, communities and whole ecosystems, not all of which have been classified in past reviews as ''adverse'' to public welfare.

Previous reviews have classified O_3 vegetation effects as either ''injury'' or ''damage'' to help in determining adversity. Specifically, ''injury'' is

[57] Given the usefulness of generating robust C–R functions such as have been developed under NCLAN, it would be beneficial to employ a similar protocol to update and expand this research to include more recent and additional crop species and varieties, such as fruit and vegetable species, as well as recent O_3 air quality.

defined as encompassing all plant reactions, including reversible changes or changes in plant metabolism (*e.g.*, altered photosynthetic rate), altered plant quality, or reduced growth, that does not impair the intended use or value of the plant (Guderian, 1977). In contrast, ''damage'' has been defined to include those injury effects that reach sufficient magnitude as to also reduce or impair the intended use or value of the plant. Examples of effects that are classified as damage include reductions in aesthetic values (*e.g.*, foliar injury in ornamental species) as well as losses in terms of weight, number, or size of the plant part that is harvested (reduced yield or biomass production). Yield loss also may include changes in crop quality, *i.e.*, physical appearance, chemical composition, or the ability to withstand storage, while biomass loss includes slower growth in species harvested for timber or other fiber uses. While this construct has proved useful in the past, it appears to be most useful in the context of evaluating effects on single plants or species grown in monocultures such as agricultural crops or managed forests. It is less clear how it might apply to potential effects on natural forests or entire ecosystems when O_3-induced species level impacts lead to shifts in species composition and/or associated ecosystem services such as nutrient cycling or hydrologic cycles, where the intended use or value of the system has not been specifically identified.

A more recent construct for assessing risks to forests described in Hogsett *et al.* (1997) suggests that ''adverse effects could be classified into one or more of the following categories: (1) Economic production, (2) ecological structure, (3) genetic resources, and (4) cultural values.'' This approach expands the context for evaluating the adversity of O_3-related effects beyond the species level. Another recent publication, *A Framework for Assessing and Reporting on Ecological Condition: an SAB report* (Young and Sanzone, 2002), provides additional support for expanding the consideration of adversity beyond the species level by making explicit the linkages between stress-related effects (*e.g.*, O_3 exposure) at the species level and at higher levels within an ecosystem hierarchy. Taking this recent literature into account, the Staff Paper concludes that a determination of what constitutes an ''adverse'' welfare effect in the context of the secondary NAAQS review can appropriately occur within this broader paradigm.

B. Biologically Relevant Exposure Indices

The Criteria Document concluded that O_3 exposure indices that cumulate differentially weighted hourly concentrations are the best candidates for relating exposure to plant growth responses (EPA, 2006a). This conclusion follows from the extensive evaluation of the relevant studies in the 1996 Criteria Document (EPA, 1996a) and the recent evaluation of studies that have been published since that time (EPA, 2006a). The following selections, taken from section 5.5 the 1996 Criteria Document (EPA, 1996a), further elucidate the depth and strength of these conclusions. Specifically, with respect to the importance of taking into account exposure duration, the 1996 Criteria Document stated, ''when O_3 effects are the primary cause of variation in plant response, plants from replicate studies of varying duration showed greater reductions in yield or growth when exposed for the longer duration'' and ''the mean exposure index of unspecified duration could not account for the year-to-year variation in response'' (EPA, 1996a, pg. 5–96). Further, ''because the mean exposure index treats all concentrations equally and does not specifically include an exposure duration component, the use of a mean exposure index for characterizing plant exposures appears inappropriate for relating exposure with vegetation effects'' (EPA, 1996a, pg. 5–88). Regarding the relative importance of higher concentrations than lower in determining plant response, the 1996 Criteria Document concluded that ''the ultimate impact of long-term exposures to O_3 on crops and seedling biomass response depends on the integration of repeated peak concentrations during the growth of the plant'' (EPA, 1996a, pg. 5–104). Further, ''at this time, exposure indices that weight the hourly O_3 concentrations differentially appear to be the best candidates for relating exposure with predicted plant response'' (EPA, 1996a, pgs. 5–136).

At the conclusion of the last review, the biological basis for a cumulative, seasonal form was not in dispute. There was general agreement between the EPA staff, CASAC, and the Administrator, based on their review of the air quality criteria, that a cumulative, seasonal form was more biologically based than the then current 1-hour and newly proposed 8-hour average form. However, in selecting a specific form appropriate for a secondary standard, there was less agreement. An evaluation of the performance of several seasonal cumulative forms in predicting plant response data taken from OTC experiments had found that all performed about equally well and was unable to distinguish between them (EPA, 1996a). In selecting between two of these cumulative forms, the SUM06 [58] and W126, in the absence of biological evidence to distinguish between them, the Administrator based her decision on both science and policy considerations. Specifically, these were: (1) All cumulative, peak-weighted exposure indices considered, including W126 and SUM06, were about equally good as exposure measures to predict exposure-response relationships reported in the NCLAN crop studies; and (2) the SUM06 form would not be influenced by PRB O_3 concentrations (defined at the time as 0.03 to 0.05 ppm) under many typical air quality distributions. On the basis of these considerations, the Administrator chose the SUM06 as the most appropriate cumulative, seasonal form to consider when proposing an alternative secondary standard form (61 FR 65716).

Though the scientific justification for a cumulative, seasonal form was generally accepted in the last review, an analysis undertaken by EPA at that time had shown that there was considerable overlap between areas that would be expected not to meet the range of alternative 8-hour standards being considered for the primary NAAQS and those expected not to meet the range of values (expressed in terms of the seasonal SUM06 index) of concern for vegetation. This result suggested that improvements in national air quality expected to result from attaining an 8-hour primary standard within the recommended range of levels would also be expected to significantly reduce levels of concern for vegetation in those same areas. Thus, in the notice of proposed rulemaking, the Administrator proposed two alternatives for consideration: one alternative was to make the secondary standard equal in every way to the proposed 8-hour, 0.08 ppm primary standard; and the second was to establish a cumulative, seasonal secondary standard in terms of a SUM06 form as also appropriate to protect public welfare from known or anticipated adverse effects given the available scientific knowledge and that such a seasonal standard ''* * * is more biologically relevant * * *'' (61 FR 65716).

In the 1997 final rule, the Administrator decided to make the secondary standard identical to the primary standard. She acknowledged,

[58] SUM06: Sum of all hourly O_3 concentrations greater or equal to 0.06 ppm over a specified time.

however, that ''it remained uncertain as to the extent to which air quality improvements designed to reduce 8-hr average O_3 concentrations averaged over a 3-year period would reduce O_3 exposures measured by a seasonal SUM06 index.'' (62 FR 38876) In other words, it was uncertain as to whether the 8-hour average form would, in practice, provide sufficient protection for vegetation from the cumulative, seasonal and concentration-weighted exposures described in the scientific literature as of concern.

On the basis of that history, chapter 7 of the current Staff Paper revisited the issue of whether the SUM06 was still the most appropriate choice of cumulative, seasonal form for a secondary standard to protect the public welfare from known and anticipated adverse vegetation effects in light of the new information available in this review. Specifically, the Staff Paper considered: (1) The continued lack of evidence within the vegetation effects literature of a biological threshold for vegetation exposures of concern; and (2) new estimates of PRB that are lower than in the last review. The W126 form, also evaluated in the last review, was again selected for comparison with the SUM06 form. Regarding the first consideration, the Staff Paper noted that W126 form, by its incorporation of a continuous sigmoidal weighting scheme, does not create an artificially imposed concentration threshold, yet also gives proportionally more weight to the higher and typically more biologically potent concentrations, as supported by the scientific evidence. Second, the index value is not significantly influenced by O_3 concentrations within the range of estimated PRB, as the weights assigned to concentrations in this range are very small. Thus, it would also provide a more appropriate target for air quality management programs designed to reduce emissions from anthropogenic sources contributing to O_3 formation. On the basis of these considerations, the Staff Paper concludes that the W126 form is the most biologically-relevant cumulative, seasonal form appropriate to consider in the context of the secondary standard review.

C. Vegetation Exposure and Impact Assessment

The vegetation exposure and impact assessment conducted for the current review and described in the Staff paper, consisted of exposure, risk and benefits analyses and improves and builds upon similar analyses performed in the last review (EPA 1996b). The vegetation exposure assessment was performed using interpolation and included information from ambient monitoring networks and results from air quality modeling. The vegetation risk assessment included both tree and crop analyses. The tree risk analysis includes three distinct lines of evidence: (1) Observations of visible foliar injury in the field linked to recent monitored O_3 air quality for the years 2001–2004; (2) estimates of seedling growth loss under current and alternative O_3 exposure conditions; and (3) simulated mature tree growth reductions using the TREGRO model to simulate the effect of meeting alternative air quality standards on the predicted annual growth of a single western species (ponderosa pine) and two eastern species (red maple and tulip poplar). The crop analysis includes estimates of the risks to crop yields from current and alternative O_3 exposure conditions and the associated change in economic benefits expected to accrue in the agriculture sector upon meeting the levels of various alternative standards. Each element of the assessment is described below, including discussions of known sources and ranges of uncertainties associated with the elements of this assessment.

1. Exposure Characterization

Though numerous effects of O_3 on vegetation have been documented as discussed above, it is important in considering risk to examine O_3 air quality patterns in the U.S. relative to the location of O_3 sensitive species that have a known concentration-response in order to predict whether adverse effects are occurring at current levels of air quality, and whether they are likely to occur under alternative standard forms and levels.

The most important information about exposure to vegetation comes from the O_3 monitoring data that are available from two national networks: (1) Air Quality System (AQS; *http://www.epa.gov/ttn/airs/airsaqs*) and (2) Clean Air Status and Trends Network (CASTNET; *http://www.epa.gov/castnet/*). The AQS monitoring network currently has over 1100 active O_3 monitors which are generally sited near population centers. However, this network also includes approximately 36 monitors located in national parks. CASTNET is the nation's primary source for data on dry acidic deposition and rural, ground-level O_3. It consists of over 80 sites across the eastern and western U.S. and is cooperatively operated and funded with the National Park Service. In the 1997 final O_3 rule, it was acknowledged that because the national air quality surveillance network for O_3 was designed principally to monitor O_3 exposure in populated areas, there was limited measured data available to characterize O_3 air quality in rural and remote sites. Since the last review, there has been a small increase in the number of CASTNET sites (from approximately 52 sites in 1992 to 84 sites in 2004), however these monitors are not used for attainment designations.

National parks represent areas of nationally recognized ecological and public welfare significance, which are afforded a higher level of protection. Two recent reports presented some discussion of O_3 trends in a subset of national parks: The Ozone Report: Measuring Progress Through 2003 (EPA, 2004), and 2005 Annual Performance and Progress Report: Air Quality in National Parks (NPS, 2005). Unfortunately, much of this information is presented only in terms of the current 8-hr average form. The Staff Paper analyzed available air quality data in terms of the cumulative 12-hour W126 form from 2001 to 2005 for a subset of national parks and other significant natural areas representing 4 general regions of the U.S. Many of these national parks and natural areas have monitored O_3 levels above concentrations that have been shown to decrease plant growth and above the 12-hour W126 levels analyzed in this review. For example, the Great Smokey Mountain, Rocky Mountain, Grand Canyon, Yosemite and Sequoia National Parks all had more than one year within the 2001–2005 period with a 12-hour W126 above 21 ppm-hour. This level of exposure has been associated with approximately no more than 10 percent biomass loss in 50 percent of the 49 tree seedling cases studied in the NHEERL–WED experiments (Lee and Hogsett, 1996). Black cherry (*Prunus serotina*), an important O_3-sensitive tree species in the eastern U.S., occurs in the Great Smoky Mountain National Park and is estimated to have O_3-related seedling biomass loss of approximately 40 percent when exposed to a 3-month, 12-hour W126 O_3 level greater than 21 ppm-hour. Ponderosa pine (*Pinus ponderosa*) which occurs in the Grand Canyon, Yosemite and Sequoia National Parks has been reported to have approximately 10 percent biomass losses at 3-month, 12-hour W126 O_3 levels as low as 17 ppm-hour (Lee and Hogsett, 1996). Impacts on seedlings may potentially affect long-term tree growth and survival, ultimately affecting the competitiveness of O_3-sensitive tree species and genotypes within forest stands.

In order to characterize exposures to vegetation at the national scale,

however, the Staff Paper concluded that it could not rely solely on limited site-specific monitoring data, and that it was necessary to select an interpolation method that could be used to characterize O_3 air quality over broad geographic areas. The Staff Paper therefore investigated the appropriateness of using the O_3 outputs from the EPA/NOAA Community Multi-scale Air Quality (CMAQ) [59] model system (*http://www.epa.gov/asmdnerl/CMAQ,* Byun and Ching, 1999; Arnold *et al.* 2003, Eder and Yu, 2005) to improve spatial interpolations based solely on existing monitoring networks. Due to the significant resources required to run CMAQ, model outputs were only available for a limited number of years. For this review, 2001 outputs from CMAQ version 4.5 were the most recent available.

Based on the significant difference in monitor network density between the eastern and western U.S., the Staff Paper concluded that it was appropriate to use separate interpolation techniques in these two regions. AQS and CASTNET monitoring data were solely used for the eastern interpolation since it was determined that enhancing the interpolation with CMAQ data did not add much information to the eastern U.S. interpolation. In the western U.S., where rural monitoring is more sparse, O_3 values generated by the CMAQ model were used to develop scaling factors to augment the interpolation.

In order to characterize uncertainty in the interpolation method, monitored O_3 concentrations were systematically compared to interpolated O_3 concentrations in areas where monitors were located. In general, the interpolation method used in the current review performed well in many areas in the U.S., although it under-predicted higher 12-hour W126 exposures in rural areas. Due to the important influence of higher exposures in determining risks to plants, this feature of the interpolated surface could result in an under-estimation of risks to vegetation in some areas. Taking these uncertainties into account, and given the absence of more complete rural monitoring data, this approach was used in developing national vegetation exposure and risk assessments that estimate relative changes in risk for the various alternative standards analyzed.

To evaluate changing vegetation exposures and risks under selected air quality scenarios, the Staff Paper utilized adjusted 2001 base year O_3 air quality distributions with a rollback method (Horst and Duff, 1995; Rizzo, 2005 & 2006) to reflect meeting the current and alternative secondary standard options. This technique combines both linear and quadratic elements to reduce higher O_3 concentrations more than lower ones. In this regard, the rollback method attempts to account for reductions in emissions without greatly affecting lower concentrations. The following O_3 air quality scenarios were analyzed: (1) 4th-highest daily maximum 8-hour average: 0.084 ppm (the effective level of the current standard) and 0.070 ppm levels; (2) 3-month, 12-hour. SUM06: 25 ppm-hour (proposed in the 1996 review) and 15 ppm-hour levels; and (3) 3-month, 12-hour. W126: 21 ppm-hour and 13 ppm-hour levels.

The two 8-hour average levels were chosen as possible alternatives of the current form for comparison with the cumulative, seasonal alternative forms. The SUM06 scenarios were very similar to the W126 scenarios. Since the W126 was judged to be the more biologically-relevant cumulative, seasonal form, only the results for the W126 scenarios are summarized below. For the W126 form, the two levels were selected on the basis of the associated levels of tree seedling biomass loss and crop yield loss protection identified in the NHEERL–WED and NCLAN studies, respectively. Specifically, the upper level of W126 (21 ppm-hour) was associated with a level of tree and crop protection of approximately no more than 10 percent growth or yield loss in 50 percent of cases studied. Alternatively, the lower level of W126 (13 ppm-hour) was associated with a level of tree seedling and crop protection of approximately no more than 10 percent growth or yield loss in 75 percent of studied cases.

The following discussion highlights key observations drawn from comparing predicted changes in interpolated air quality under each alternative standard form and level scenario for the base year, 2001:

(1) Under the base year (2001) ''as is'' air quality, a large portion of California had 12-hr W126 O_3 levels above 31 ppm-hour, which has been associated with approximately no more than 14 percent biomass loss in 50 percent of tree seedling cases studies. Broader multi-state regions in the east (NC, TN, KY, IN, OH, PA, NJ, NY, DE, MD, VA) and west (CA, NV, AZ, OK, TX) are predicted to have levels of air quality above the W126 level of 21 ppm-hour, which is approximately equal to the secondary standard proposed in 1996 and is associated with approximately no more than 10 percent biomass loss in 50 percent of tree seedling cases studied. Much of the east and Arizona and California have 12-hour W126 O_3 levels above 13 ppm-hour which has been associated with approximately no more than 10 percent biomass loss in 75 percent of tree seedling cases studied. The results of the exposure assessment indicate that current air quality levels could result in significant impacts to vegetation in some areas.

(2) When 2001 air quality is rolled back to meet the current 8-hour secondary standard, the overall 3-month 12-hour W126 O_3 levels were somewhat improved, but not substantially. Under this scenario, there were still many areas in California with 12-hour W126 O_3 levels above 31 ppm-hour. A broad multi-state region in the east (NC, TN, KY, IN, OH, PA, MD) and west (CA, NV, AZ, OK, TX) were still predicted to have O_3 levels above the W126 level of 21 ppm-hour.

(3) Exposures generated for just meeting a 0.070 ppm, 4th-highest maximum 8-hour average alternative standard showed substantially improved O_3 air quality when compared to just meeting the current 0.08 ppm, 8-hour standard. Most areas were predicted to have O_3 levels below the W126 level of 21 ppm-hr, although some areas in the east (KY, TN, MI, AR, MO, IL) and west (CA, NV, AZ, UT, NM, CO, OK, TX) were still predicted to have O_3 levels above the W126 level of 13 ppm-hour.

These results suggest that meeting a proposed 0.070 ppm, 8-hour secondary standard would provide substantially improved protection in some areas for vegetation from seasonal O_3 exposures of concern. The Staff Paper recognizes, however, that some areas meeting a 0.070 ppm 8-hour standard could continue to have elevated seasonal exposures, including forested park lands and other natural areas, and Class I areas which are federally mandated to preserve certain air quality related values. This is especially important in the high elevation forests in the Western U.S. where there are few O_3 monitors. This is because the air quality patterns in remote areas can result in relatively low 8-hour averages while still experiencing relatively high cumulative exposures.

[59] The CMAQ model is a multi-pollutant, multiscale air quality model that contains state-of-the-science techniques for simulating all atmospheric and land processes that affect the transport, transformation, and deposition of atmospheric pollutants and/or their precursors on both regional and urban scales. It is designed as a science-based modeling tool for handling many major pollutants (including photochemical oxidants/O_3, particulate matter, and nutrient deposition) holistically. The CMAQ model can generate estimates of hourly O_3 concentrations for the contiguous U.S., making it possible to express model outputs in terms of a variety of exposure indices (*e.g.*, W126, 8-hour average).

To further characterize O_3 air quality in terms of current and alternative secondary standard forms, an analysis was performed in the Staff Paper to evaluate the extent to which county-level O_3 air quality measured in terms of various levels of the current 8-hour average form overlapped with that measured in terms of various levels of the 12-hour W126 cumulative, seasonal form. The Staff Paper presented this analysis using recent (2002–2004) [60] county-level O_3 air quality data from AQS sites and the subset of CASTNET sites having the highest O_3 levels for the counties in which they are located. Since the current 8-hour average secondary form is a 3-year average, the analysis initially compared the 3-year averages of both the 8-hour and W126 forms. In addition, recognizing that some vegetation effects (*e.g.* crop yield loss and foliar injury) are driven solely by annual O_3 exposures and are typically evaluated with respect to exposures within the annual growing season, the Staff Paper also presented a comparison of the current 3-year average 8-hour form to the annual W126 form for the individual years, 2002 and 2004.

Results of the 3-year average comparisons showed that of the counties with air quality meeting the 3-year average form of the 0.08 ppm, 8-hour average standard, 7 counties showed 3-year average W126 values above the 21 ppm-hour level. At the lower W126 level of 13 ppm-hours, 135 counties with air quality meeting the 3-year average form of the 0.08 ppm, 8-hour average standard, would be above this W126 level. In addition, when the 3-year average of the 8-hour form was compared to annual W126 values, further variability in the degree of overlap between the 8-hour form and W126 form became apparent. For example, the relatively high 2002 O_3 air quality year showed a greater degree of overlap between those areas that would meet the levels analyzed for the current 8-hour and alternative levels of the W126 form than did the relatively low O_3 2004 air quality year. This lack of a consistent degree of overlap between the two forms in different air quality years demonstrates that annual vegetation would be expected to receive widely differing degrees of protection from cumulative seasonal exposures in some areas from year to year, even when the 3-year average of the 8-hour form was consistently met.

[60] This analysis was updated using 2003–2005 air quality as it became available, finding similar results.

It is clear that this analysis is limited by the lack of monitoring in rural areas where important vegetation and ecosystems are located, especially at higher elevation sites. This is because O_3 air quality distributions at high elevation sites often do not reflect the typical urban and near-urban pattern of low morning and evening O_3 concentrations with a high mid-day peak, but instead maintain relatively flat patterns with many concentrations in the mid-range (*e.g.*, 0.05–0.09 ppm) for extended periods. These conditions can lead to relatively low daily maximum 8-hour averages concurrently with high cumulative values so that there is potentially less overlap between an 8-hour average and a cumulative, seasonal form at these sites. The Staff Paper concludes that it is reasonable to anticipate that additional unmonitored rural high elevation areas important for vegetation may not be adequately protected even with a lower level of the 8-hour form.

The Criteria Document (EPA, 2006a), discusses policy relevant background (PRB) levels for high elevation sites and makes the following observations: (1) PRB concentrations of 0.04 to 0.05 ppm occur occasionally at high-elevation sites (*e.g.*, >1.5 km) in the spring due to the free-tropospheric influence, including some limited contribution from hemispheric pollution (O_3 produced from anthropogenic emissions outside North America); and (2) stratospheric intrusions might occasionally elevate O_3 at high-altitude sites, however, these events are rare. Therefore, the Staff Paper concludes that springtime PRB levels in the range identified above and rare stratospheric intrusions of O_3 are unlikely to influence 3 month cumulative seasonal W126 values significantly.

It further remains uncertain as to the extent to which air quality improvements designed to reduce 8-hour O_3 average concentrations would reduce O_3 exposures measured by a seasonal, cumulative W126 index. The Staff Paper indicated this to be an important consideration because: (1) The biological database stresses the importance of cumulative, seasonal exposures in determining plant response; (2) plants have not been specifically tested for the importance of daily maximum 8-hour O_3 concentrations in relation to plant response; and (3) the effects of attainment of an 8-hour standard in upwind urban areas on rural air quality distributions cannot be characterized with confidence due to the lack of monitoring data in rural and remote areas. These factors are important considerations in determining whether the current 8-hour form can appropriately provide requisite protection for vegetation.

2. Assessment of Risk to Vegetation

The Staff Paper presents results from quantitative and qualitative risk assessments of O_3 risks to vegetation (EPA, 2007). In the last review, crop yield and seedling biomass loss OTC data provided the basis for staff analyses, conclusions, and recommendations (EPA, 1996b). Since then, several additional lines of evidence have progressed sufficiently to provide staff with a more complete and coherent picture of the scope of O_3-related vegetation risks, especially those currently faced by seedling, sapling and mature tree species growing in field settings, and indirectly, forested ecosystems. Specifically, new research reflects an increased emphasis on field-based exposure methods (*e.g.*, free air exposure and ambient gradient), improved field survey biomonitoring techniques, and mechanistic tree process models. Findings from each of these research areas are discussed separately below. In conducting these assessments, the Staff Paper analyses relied on both measured and modeled air quality information. For some effects, like visible foliar injury and modeled mature tree growth response, only monitored air quality information was used. For other effects categories (*e.g.*, crop yield and tree seedling growth), staff relied on interpolated O_3 exposures.

a. Visible Foliar Injury

As discussed earlier (Section A), recent systematic injury surveys continue to document visible foliar injury symptoms diagnostic of phytotoxic O_3 exposures on sensitive bioindicator plants. These surveys produced more expansive evidence than that available at the time of the last review that visible foliar injury is occurring in many areas of the U.S. under current ambient conditions. The Staff Paper presents an assessment combining recent U.S. Forest Service Forest Inventory and Analysis (FIA) biomonitoring site data with the county level air quality data for those counties containing the FIA biomonitoring sites. This assessment showed that incidence of visible foliar injury ranged from 21 to 39 percent during the four-year period (2001–2004) across all counties with air quality levels at or below that of the current 0.08 8-hour standard. Of the counties that met an 8-hour level of 0.07 ppm in those years, 11 to 30 percent still had incidence of visible foliar

injury. The magnitude of these percentages suggests that phytotoxic exposures sufficient to induce visible foliar injury would still occur in many areas after meeting the level of the current secondary standard or alternative 0.07 ppm 8-hour standard. Additionally, the data show that visible foliar injury occurrence is geographically widespread and is occurring on a variety of plant species in forested and other natural systems. Linking visible foliar injury to other plant effects is still problematic. However, its presence indicates that other O_3-related vegetation effects could also be present.

b. Seedling and Mature Tree Biomass Loss

In the last review (EPA, 1996b), analyses of the effects of O_3 on trees were limited to 11 tree species for which C–R functions for the seedling growth stage had been developed from OTC studies conducted by the NHEERL–WED. Important tree species such as quaking aspen, ponderosa pine, black cherry, tulip poplar were found to be sensitive to cumulative seasonal O_3 exposures. Work done since the 1996 review at the AspenFACE site in Wisconsin on quaking aspen (Karnosky *et al.*, 2005) and a gradient study performed in the New York City area (Gregg *et al.* 2003) has confirmed the detrimental effects of O_3 exposure on tree growth in field studies without chambers and beyond the seedling stage (King *et al.,* 2005). These field studies are discussed above in section IV.A.

To update the seedling biomass loss analysis, C–R functions for biomass loss for available seedling tree species taken from the CD and information on tree growing regions derived from the U.S. Department of Agriculture's Atlas of United States Trees were combined with projections of air quality based on 2001 interpolated exposures, to produce estimated biomass loss for each of the seedling tree species individually. Maps of these biomass loss projections are presented in the Staff Paper. For example, quaking aspen had a wide range of O_3 exposure across its growing range and therefore, showed significant variability in projected seedling biomass loss across its range. Quaking aspen seedling biomass loss was projected to be greater than 4 percent over much of its geographic range, though it can reach above 10 percent in areas of Ohio, Pennsylvania, New York, New Jersey and California. Biomass loss for black cherry was projected to be greater than 20 percent in approximately half its range. Greater than 30 percent biomass loss for black cherry was projected in North Carolina, Tennessee, Indiana, Ohio, Pennsylvania, Arizona, Michigan, New York, New Jersey, Maryland and Delaware. For ponderosa pine, an important tree species in the western U.S., biomass loss was projected to be above 10 percent in much of its range in California. Biomass loss still occurred in many tree species when O_3 air quality was adjusted to meet the current 8-hour standard. For instance, black cherry, ponderosa pine, eastern white pine, and aspen had estimated median seedling biomass losses over portions of their growing range as high as 24, 11, 6, and 6 percent, respectively, when O_3 air quality was rolled back to just meet the current 8-hour standard. The Staff Paper noted that these results are for tree seedlings and that mature trees of the same species may have more or less of a response to O_3 exposure. Due to the potential for compounding effects over multiple years, a consensus workshop on O_3 effects reported that a biomass loss greater than 2 percent annually can be significant (Heck and Cowling, 1997). Decreased seedling root growth and survivability could affect overall stand health and composition in the long term.

In addition to the estimation of O_3 effects on seedling growth, recent work has enhanced our understanding of risks beyond the seedling stage. In order to better characterize the potential O_3 effects on mature tree growth, a tree growth model (TREGRO) was used as a tool to evaluate the effect of changing O_3 air quality scenarios from just meeting alternative O_3 standards on the growth of mature trees. TREGRO is a process-based, individual tree growth simulation model (Weinstein *et al.,* 1991) and has been used to evaluate the effects of a variety of O_3 scenarios and linked with concurrent climate data to account for O_3 and climate/meteorology interactions on several species of trees in different regions of the U.S. (Tingey *et al.,* 2001; Weinstein *et al.*, 1991; Retzlaff *et al.*, 2000; Laurence *et al.*, 1993; Laurence *et al.*, 2001; Weinstein *et al.*, 2005). The model provides an analytical framework that accounts for the nonlinear relationship between O_3 exposure and response. The interactions between O_3 exposure, precipitation and temperature are integrated as they affect vegetation, thus providing an internal consistency for comparing effects in trees under different exposure scenarios and climatic conditions. An earlier assessment of the effectiveness of national ambient air quality standards in place since the early 1970s took advantage of 40 years of air quality and climate data for the Crestline site in the San Bernardino Mountains of California to simulate ponderosa pine growth over time with the improving air quality using TREGRO (Tingey *et al.*, 2004).

The TREGRO model was used to assess growth of Ponderosa pine in the San Bernardino Mountains of California (Crestline) and the growth of yellow poplar and red maple in the Appalachian mountains of Virginia and North Carolina, Shenandoah National Park (Big Meadows) and Linville Gorge Wilderness Area (Cranberry), respectively. Total tree growth associated with 'as is' air quality, and air quality adjusted to just meet alternative O_3 standards was assessed. Ponderosa pine is one of the most widely distributed pines in western North America, a major source of timber, important as wildlife habitat, and valued for aesthetics (Burns and Honkala, 1990). Red maple is one of the most abundant species in the eastern U.S. and is important for its brilliant fall foliage and highly desirable wildlife browse food (Burns and Honkala, 1990). Yellow poplar is an abundant species in the southern Appalachian forest. It is 10 percent of the cove hardwood stands in southern Appalachians which are widely viewed as some of the country's most treasured forests because the protected, rich, moist set of conditions permit trees to grow the largest in the eastern U.S. The wood has high commercial value because of its versatility and as a substitute for increasingly scarce softwoods in furniture and framing construction. Yellow poplar is also valued as a honey tree, a source of wildlife food, and a shade tree for large areas (Burns and Honkala, 1990).

The Staff Paper analyses found that just meeting the current standard would likely continue to allow O_3-related reductions in annual net biomass gain in these species. This is based on model outputs that estimate that as O_3 levels are reduced below those of the current standard, significant improvements in growth would occur. For instance, estimated growth in red maple increased by 4 and 3 percent at Big Meadows and Cranberry sites, respectively, when air quality was rolled back to just met a W126 value of 13 ppm-hour. Yellow poplar was projected to have a growth increase between 0.6 and 8 percent under the same scenario at the two eastern sites.

Though there is uncertainty associated with the above analyses, this information should be given careful consideration in light of several other pieces of evidence. Specifically, new evidence from experimental studies that go beyond the seedling growth stage

continues to show decreased growth under elevated O_3 (King *et al.,* 2005). Some mature trees such as red oak have shown an even greater sensitivity of photosynthesis to O_3 than seedlings of the same species (Hanson *et al.*, 1994). As indicated above, smaller growth loss increments may be significant for perennial species. The potential for cumulative ''carry over'' effects as well as compounding must be considered. The accumulation of such ''carry-over'' effects over time may affect long-term survival and reproduction of individuals and ultimately the abundance of sensitive tree species in forest stands.

c. Crops

As discussed in the Staff Paper, risk of O_3 exposure and associated monetized benefits were estimated for commodity crops, fruits and vegetables. Similar to the tree seedling analysis, this analysis combined C–R information on crops, crop growing regions and interpolated exposures during each crop growing season. NCLAN crop functions were used for commodity crops. According to USDA National Agricultural Statistical Survey (NASS) data, the 9 commodity crop species (*e.g.*, cotton, field corn, grain sorghum, peanut, soybean, winter wheat, lettuce, kidney bean, potato) included in the Staff Paper analysis accounted for 69 percent of 2004 principal crop acreage planted in the U.S. in 2004.[61] The C–R functions for six fruit and vegetable species (tomatoes-processing, grapes, onions, rice, cantaloupes, Valencia oranges) were identified from the California fruit and vegetable analysis from the last review (Abt 1995). The Staff Paper noted that fruit and vegetable studies were not part of the NCLAN program and C–R functions were available only in terms of seasonal 7-hour or 12-hour mean index. This index form is considered less effective in predicting plant response for a given change in air quality than the cumulative form used with other crops. Therefore, the fruit and vegetable C–R functions were considered more uncertain than those for commodity crops.

Analyses in the Staff Paper showed that some of the most important commodity crops such as soybean, winter wheat and cotton had some projected losses under the 2001 base year air quality. Soybean yield losses were projected to be 2–4 percent in parts of Pennsylvania, New Jersey, Maryland and Texas. Winter wheat was projected to have yield losses of 2–6 percent in parts of California. Additionally, cotton was projected to have yield losses of above 6 percent in parts of California, Texas and North Carolina in 2001. The risk assessment estimated that just meeting the current 8-hour standard would still allow O_3-related yield loss to occur in some commodity crop species and fruit and vegetable species currently grown in the U.S. For example, based on median C–R function response, in counties with the highest O_3 levels, potatoes and cotton had estimated yield losses of 9–15 percent and 5–10 percent, respectively, when O_3 air quality just met the level of the current standard. Estimated yield improved in these counties when the alternative W126 standard levels were met. The very important soybean crop had generally small yield losses throughout the country under just meeting the current standard (0–4 percent).

The Staff Paper also presented estimates of monetized benefits for crops associated with the current and alternative standards. The Agriculture Simulation Model (AGSIM) (Taylor, 1994; Taylor, 1993) was used to calculate annual average changes in total undiscounted economic surplus for commodity crops and fruits and vegetables when current and alternative standard levels were met. Meeting the various alternative standards did show some significant benefits beyond the current 8-hour standard. However, the Staff Paper recognized the AGSIM modeled economic benefits had many uncertainties: For example, much of the economic benefits were from the fruits and vegetables which had uncertain C–R relationships, there was uncertainty in assumptions about the treatment and effect of government farm payment programs, and there was also uncertainty about near-term changes in agriculture sector due to the increased use of crops as biofuels. Although the AGSIM model results provided a relative comparison of agricultural benefits between alternative standards, the uncertainties limited the utility of the absolute numbers.

D. Conclusions on the Adequacy of the Current Standard

1. Background

The initial issue to be addressed in the current review of the secondary O_3 standard is whether, in view of the advances in scientific knowledge reflected in the Criteria Document and additional information on exposure and risk discussed in the Staff Paper, the existing standard should be revised. The current secondary standard is a 3-year average of the annual 4th-highest maximum 8-hour average O_3 concentration set at a level of 0.08 ppm. In evaluating whether it is appropriate to retain or revise the current secondary O_3 standard, the Administrator adopts an approach in this review that builds upon the general approach used in the last review and reflects the broader body of evidence now available.

In developing proposed conclusions on the adequacy of the current secondary O_3 standard, the Administrator has considered a weight-of-evidence approach that evaluated information across the variety of vegetation-related research areas described in the Criteria Document (*e.g.*, seedling, sapling and mature forest tree species growth stages and commodity, fruit, vegetable and forage crop species), and included the assessments of air quality, exposures, and qualitative and quantitative risks associated with alternative air quality scenarios. Evidence-based considerations included assessment of vegetation effects evidence obtained from chamber, free air, gradient, model and field-based observation studies across an array of vegetation effects endpoints. Exposure- and risk-based considerations were drawn from exposure and risk assessments that relied upon both monitored and interpolated O_3 exposures as described in the Staff Paper. These assessments reflect the availability of new tools and assessment methods, as well as the larger and more diverse body of evidence available since the last review. Specifically, estimates of exposures and risks associated with recent O_3 air quality levels, as well as estimates of the relative magnitude of exposure and risk reductions potentially associated with meeting the current 8-hour secondary O_3 NAAQS and alternative standards, have also been considered, along with all known associated uncertainties.

In this review, a series of general questions frames the approach to reaching a proposed decision on the adequacy of the current standard, beginning with: (1) To what extent does newly available information reinforce or call into question evidence of associations of O_3 exposures with effects identified in the last review?; (2) to what extent does newly available information reinforce or call into question any of the basic elements of the current standard?;

[61] Principal crops as defined by the USDA include corn, sorghum, oats, barley, winter wheat, rye, Durum wheat, other spring wheat, rice, soybeans, peanuts, sunflower, cotton, dry edible beans, potatoes, sugar beets, canola, proso millet, hay, tobacco, and sugarcane. Acreage data for the principal crops were taken from the USDA NASS 2005 Acreage Report (*http://usda.mannlib.cornell.edu/reports/nassr/field/pcp-bba/acrg0605.pdf*).

and (3) to what extent have important uncertainties identified in the last review been reduced and have new uncertainties emerged? To the extent the available information suggests that revision of the current standard may be appropriate, the question of whether the available information supports consideration of a standard that is either more or less protective than the current standard is addressed, including: (1) Whether there is evidence that vegetation effects extend to ambient O_3 concentration levels that are as low as or lower than had previously been observed, and what are the important uncertainties associated with that evidence?; (2) whether vegetation exposures and risks of concern estimated to occur in areas upon meeting the current standard are considered important from a public welfare perspective; and (3) what are the important uncertainties associated with the estimated risks?

The current secondary standard was selected to provide protection to the public welfare against a range of O_3-induced vegetation effects, particularly yield loss in agricultural crops and biomass loss in tree seedlings. As an introduction to the discussion in this section of the adequacy of the current O_3 standard, it is useful to summarize the key factors that formed the basis of the decision in the last review to revise the averaging time, level and form of the then current 1-hour secondary standard.

In the 1996 proposal notice (61 FR 65716), the Administrator proposed to replace the then existing 1-hour O_3 secondary NAAQS with one of two alternative new standards: a standard identical to the proposed and now current 0.08 ppm, 8-hour primary standard (described above), or alternatively, a new seasonal standard, SUM06, expressed as a sum of hourly concentrations greater than or equal to 0.06 ppm, cumulated daily over a 12 hour daylight window (8 am to 8 pm) during the maximum consecutive 3-month period (*e.g.*, the consecutive 3 month period with the highest SUM06 index value) during the O_3 monitoring season, set at a level of 25 ppm-hours. The latter form and level were selected to provide protection to vegetation on the basis of annual, rather than 3-year average, exposures.

In the final rule for the O_3 NAAQS published in July 1997 (62 FR 38877), the Administrator decided to replace the then current 1-hour, 0.12-ppm secondary NAAQS with a standard that was identical in every way to the new revised primary standard of an 0.08 ppm annual 4th-highest maximum 8-hour average standard averaged over 3 years. Her decision was based on: (1) Her judgment that the then existing secondary standard did not provide adequate protection for vegetation against the adverse welfare effects of O_3; (2) CASAC advice ''that a secondary NAAQS, more stringent than the present primary standard, was necessary to protect vegetation from O_3'' (Wolff, 1996); (3) her judgment that the new 8-hour average standard would provide substantially improved protection for vegetation from O_3-related adverse effects as compared to the level of protection provided by the then current 1-hour, 0.12-ppm secondary standard; (4) recognition that significant uncertainties remained with respect to exposure dynamics, air quality relationships, and the exposure, risk, and monetized valuation analyses presented in the proposal, resulting in only rough estimates of the increased public welfare likely to be afforded by each of the proposed alternative standards; (5) her judgment that there was value in allowing more time to obtain additional information to better characterize O_3-related vegetation effects under field conditions from additional research and to develop a more complete rural monitoring network and air quality database from which to evaluate the elements of an appropriate seasonal secondary standard; and (6) her judgment that there was value in allowing more time to evaluate more specifically the improvement in rural air quality and in O_3-related vegetation effects resulting from measures designed to attain the new primary standard (62 FR 38877–78).

The Administrator further concluded (62 FR 38877–78) that continued research on the effects of O_3 on vegetation under field conditions and on better characterizing the relationship between O_3 exposure dynamics and plant response would be important in the next review because: (1) The available biological database highlighted the importance of cumulative, seasonal exposures as a primary determinant of plant responses; (2) the association between daily maximum 8-hour O_3 concentrations and plant responses had not been specifically examined in field tests; (3) the impacts of attaining an 8-hour, 0.08 ppm primary standard in upwind urban areas on rural air quality distributions could not be characterized with confidence due to limited monitoring data and air quality modeling in rural and remote areas.

2. Evidence- and Exposure/Risk-Based Considerations

The new evidence available in this review as described in the Criteria Document continues to support and strengthen key policy-relevant conclusions drawn in the previous review (EPA, 2006a). Based on this new evidence, the current Criteria Document once more concludes that: (1) A plant's response to O_3 depends upon the cumulative nature of ambient exposure as well as the temporal dynamics of those concentrations; (2) current ambient concentrations in many areas of the country are sufficient to impair growth of numerous common and economically valuable plant and tree species; (3) the entrance of O_3 into the leaf through the stomata is the critical step in O_3 effects; (4) effects can occur with only a few hourly concentrations above 0.08 ppm; (5) other environmental biotic and abiotic factors are also influential to the overall impact of O_3 on plants and trees; and (6) a high degree of uncertainty remains in our ability to assess the impact of O_3 on ecosystem services.

In light of the new evidence, as described in the Criteria Document, the Staff Paper evaluates the adequacy of the current standard based on assessments of both the most policy-relevant vegetation effects evidence and exposure and risk-based information, as summarized above in sections IV.A and IV.C, respectively. In evaluating the strength of this information, the Staff Paper takes into account the uncertainties and limitations in the scientific evidence and analyses as well as the views of CASAC. The Staff Paper concludes that progress has been made since the last review and generally finds support in the available effects- and exposure/risk-based information for consideration of an O_3 standard that is more protective than the current standard. The Staff Paper further concludes that there is no support for consideration of an O_3 standard that is less protective than the current standard. This general conclusion is consistent with the advice and recommendations of CASAC.

a. Evidence-Based Considerations

In the last review, crop yield and tree seedling biomass loss data obtained in OTC studies provided the basis for the Administrator's judgment that the then current 1-hour, 0.12 ppm secondary standard was inadequate (EPA, 1996b). Since then, several additional lines of evidence have progressed sufficiently to provide a more complete and coherent picture of the scope of O_3-related

vegetation risks, especially those currently faced by sensitive seedling, sapling and mature growth stage tree species growing in field settings, and their associated forested ecosystems. Specifically, new research reflects an increased emphasis on field-based exposure methods (*e.g.*, free air, ambient gradient, and biomonitoring surveys). In reaching conclusions regarding the adequacy of the current standard, the Staff Paper has considered the combined information from all these areas together, along with associated uncertainties, in an integrated, weight-of-evidence approach.

Regarding the O_3-induced effect of visible foliar injury, observations for the years 2001 to 2004 at USDA FIA biomonitoring sites showed widespread O_3-induced leaf injury occurring in the field, including in forested ecosystems, under current ambient O_3 conditions. For a few studied species, it has been shown that the presence of visible foliar injury is further linked to the presence of other vegetation effects (*e.g.*, reduced plant growth and impaired below ground root development) (EPA, 2006), though for most species, this linkage has not been specifically studied or where studied, has not been found. Nevertheless, when visible foliar injury is present, the possibility that other O_3-induced vegetation effects could also be present for some species should be considered. Likewise, the absence of visible foliar injury should not be construed to demonstrate the absence of other O_3-induced vegetation effects. The Staff Paper concludes that it is not possible at this time to quantitatively assess the degree of visible foliar injury that should be judged adverse in all settings and across all species, and that other environmental factors can mitigate or exacerbate the degree of O_3-induced visible foliar injury expressed at any given concentration of O_3. However, the Staff Paper also concludes that the presence of visible foliar injury alone can be adverse to the public welfare, especially when it occurs in protected areas such as national parks and wilderness areas. Thus, on the basis of the available information on the widespread distribution of O_3-sensitive species within the U.S. including in areas, such as national parks, which are afforded a higher degree of protection, the Staff Paper concludes that the current standard continues to allow levels of visible foliar injury in some locations that could reasonably be considered to be adverse from a public welfare perspective. Additional monitoring of both O_3 air quality and foliar injury levels are needed in these areas of national significance to more fully characterize the spatial extent of this public welfare impact.

With respect to O_3-induced biomass loss in trees, the Staff Paper concludes that the significant new body of field-based research on trees strengthens the conclusions drawn on tree seedling biomass loss from earlier OTC work by documenting similar seedling responses in the field. For example, recent empirical studies conducted on quaking aspen at the AspenFACE site in Wisconsin have confirmed the detrimental effects of O_3 exposure on tree growth in a field setting without chambers (Isebrands *et al.*, 2000, 2001). In addition, results from an ambient gradient study (Gregg *et al.*, 2003), which evaluated biomass loss in cottonwood along an urban-to-rural gradient at several locations, found that conditions in the field were sufficient to produce substantial biomass loss in cottonwood, with larger impacts observed in downwind rural areas due to the presence of higher O_3 concentrations. These gradients from low urban to higher rural O_3 concentrations occur when O_3 precursors generated in urban areas are transported to downwind sites and are transformed into O_3. In addition,O_3 concentrations typically fall to near 0 ppm at night in urban areas due to scavenging of O_3 by NO_X and other compounds. In contrast, rural areas, due to a lack of nighttime scavenging, tend to maintain elevated O_3 concentrations for longer periods. On the basis of such key studies, the Staff Paper concludes that the expanded body of field-based evidence, in combination with the substantial corroborating evidence from OTC data, provides stronger evidence than that available in the last review that ambient levels of O_3 are sufficient to produce visible foliar injury symptoms and biomass loss in sensitive vegetative species growing in natural environments. Further, the Staff Paper judges that the consistency in response in studied species/genotypes to O_3 under a variety of exposure conditions and methodologies demonstrates that these sensitive genotypes and populations of plants are susceptible to adverse impacts from O_3 exposures at levels known to occur in the ambient air. Due to the potential for compounded risks from repeated insults over multiple years in perennial species, the Staff Paper concludes that these sensitive subpopulations are not afforded adequate protection under the current secondary O_3 standard. Despite the fact that only a relatively small portion of U.S. plant species have been studied with respect to O_3 sensitivity, those species/genotypes shown to have O_3 sensitivity span a broad range of vegetation types and public use categories, including direct-use categories like food production for human and domestic animal consumption; fiber, materials, and medicinal production; urban/private landscaping. Many of these species also contribute to the structure and functioning of natural ecosystems (*e.g.*, the EEAs) and thus, to the goods and services those ecosystems provide (Young and Sanzone, 2002), including non-use categories such as relevance to public welfare based on their aesthetic, existence or wildlife habitat value.

The Staff Paper therefore concludes that the current secondary standard is inadequate to protect the public welfare against the occurrence of known adverse levels of visible foliar injury and tree seedling biomass loss occurring in tree species (*e.g.*, ponderosa pine, aspen, black cherry, cottonwood) that are sensitive and clearly important to the public welfare.

b. Exposure- and Risk-Based Considerations

The Staff Paper also presents the results of exposure and risk assessments. Due to multiple sources of uncertainty, both known and unknown, that continue to be associated with these analyses, the Staff Paper put less weight on this information in drawing conclusions on the adequacy of the current standard. However, the Staff Paper also recognizes that some progress has been made since the last review in better characterizing some of these associated uncertainties and, therefore concluded that the results of the exposure and risk assessments continue to provide information useful to informing judgments as to the relative changes in risks predicted to occur under exposure scenarios associated with the different standard alternatives considered. Importantly, with respect to two key uncertainties, the uncertainty associated with continued reliance on C–R functions developed from OTC exposure systems to predict plant response in the field and the potential for changes in tree seedling and crop sensitivities in the intervening period since the C–R functions were developed, the Staff Paper concluded that recent research has provided information useful in judging how much weight to put on these concerns. Specifically, new field-based studies, conducted on a limited number of tree seedling and crop species to date, demonstrate plant growth and visible foliar injury responses in the field that

are similar in nature and magnitude to those observed previously under OTC exposure conditions, lending qualitative support to the conclusion that OTC conditions do not fundamentally alter the nature of the O_3-plant response. Second, nothing in the recent literature suggests that the O_3 sensitivity of crop or tree species studied in the last review and for which C–R functions were developed has changed significantly in the intervening period. Indeed, in the few recent studies where this is examined, O_3 sensitivities were found to be as great as or greater than those observed in the last review.

i. Seedling and Mature Tree Biomass Loss

Biomass loss in sensitive tree seedlings is predicted to occur under O_3 exposures that meet the level of the current secondary standard. For instance, black cherry, ponderosa pine, eastern white pine, and aspen had estimated median seedling biomass losses as high as 24, 11, 6, and 6 percent, respectively, over some portions of their growing ranges when air quality was rolled back to meet the current 8-hr standard with the 10 percent downward adjustment for the potential O_3 gradient between monitor height and short plant canopies applied. The Staff Paper notes that these results are for tree seedlings and that mature trees of the same species may have more or less of a response to O_3 exposure. Decreased root growth associated with biomass loss has the potential to indirectly affect the vigor and survivability of tree seedlings. If such effects occur on a sufficient number of seedlings within a stand, overall stand health and composition can be affected in the long term. Thus, the Staff Paper concludes that these levels of estimated tree seedling growth reduction should be considered significant and potentially adverse, given that they are well above the 2 percent level of concern identified by the 1997 consensus workshop (Heck and Cowling, 1997).

Though there is significant uncertainty associated with this analysis, the Staff Paper recommends that this information should be given careful consideration in light of several other pieces of evidence. Specifically, limited evidence from experimental studies that go beyond the seedling growth stage continues to show decreased growth under elevated O_3 levels (King *et al.*, 2005). Some mature trees such as red oak have shown an even greater sensitivity of photosynthesis to O_3 than seedlings of the same species (Hanson *et al.*, 1994). The potential for effects to ''carry over'' to the following year or cumulate over multiple years, including the potential for compounding, must be considered. The accumulation of such ''carry-over'' effects over time may affect long-term survival and reproduction of individual trees and ultimately the abundance of sensitive tree species in forest stands.

ii. Qualitative Ecosystem Risks

In addition to the quantifiable risk categories discussed above, the Staff Paper presents qualitative discussions on a number of other public welfare effects categories. In so doing, the Staff Paper concludes that the quantified risks to vegetation estimated to be occurring under current air quality or upon meeting the current secondary standard likely represent only a portion of actual risks that may be occurring for a number of reasons.

First, as mentioned above, out of the over 43,000 plant species catalogued as growing within the U.S. (USDA PLANTS database, USDA, NRCS, 2006), only a small percentage have been studied with respect to O_3 sensitivity. Most of the studied species were selected because of their commercial importance or observed O_3-induced visible foliar injury in the field. Given that O_3 impacts to vegetation also include less obvious but often more significant impacts, such as reduced annual growth rates and below ground root loss, the paucity of information on other species means the number of O_3-sensitive species that exists within U.S., could be greater than what is now known. Since no state in the lower 48 states has less than seven known O_3-sensitive plant species, with the majority of states having between 11 and 30 (see Appendix 7J–2 in Staff Paper), protecting O_3 sensitive vegetation is clearly important to the public welfare at the national scale.

Second, the Staff Paper also takes into consideration the possibility that more subtle and hidden risks to ecosystems are potentially occurring in areas where vegetation is being significantly impacted. Given the importance of these qualitative and anticipated risks to important public welfare effects categories such as ecosystem impacts leading to potential losses or shifts in ecosystem goods and services (*e.g.*, carbon sequestration, hydrology, and fire disturbance regimes), the Staff Paper concludes that any secondary standard set to protect against the known and quantifiable adverse effects to vegetation should also consider the anticipated, but currently unquantifiable, potential effects on natural ecosystems.

iii. Crop Yield Loss

Exposure and risk assessments in the Staff Paper estimated that meeting the current 8-hour standard would still allow O_3-related yield loss to occur in several fruit and vegetable and commodity crop species currently grown in the U.S. These estimates of crop yield loss are substantially lower than those estimated in the last review as a result of several factors, including adjusted exposure levels to reflect the presence of a variable O_3 gradient between monitor height and crop canopies, and use of a different econometric agricultural benefits model updated to reflect more recent agricultural policies (EPA, 2006b). Though these sources of uncertainty associated with the crop risk and benefits assessments were better documented in this review, the Staff Paper concludes that the presence of these uncertainties make the risk estimates suitable only as a basis for understanding potential trends in relative yield loss and economic benefits. The Staff Paper further recognizes that actual conditions in the field and management practices vary from farm to farm, that agricultural systems are heavily managed, and that adverse impacts from a variety of other factors (*e.g.*, weather, insects, disease) can be orders of magnitude greater than that of yield impacts predicted for a given O_3 exposure. Thus, the relevance of such estimated impacts on crop yields to the public welfare are considered highly uncertain and less useful as a basis for assessing the adequacy of the current standard. The Staff Paper notes, however, that in some experimental cases, exposure to O_3 has made plants more sensitive or vulnerable to some of these other important stressors, including disease, insect pests, and harsh weather (EPA, 2006a). The Staff Paper therefore concluded that this remains an important area of uncertainty and that additional research to better characterize the nature and significance of these interactions between O_3 and other plant stressors would be useful.

c. Summary

In summary, the Staff Paper concludes that the current secondary O_3 standard is inadequate. This conclusion is based on the extensive vegetation effects evidence, in particular the recent empirical field-based evidence on biomass loss in seedlings, saplings and mature trees, and foliar injury incidence that has become available in this review, which demonstrates the occurrence of adverse vegetation effects at ambient

levels of recent O_3 air quality, as well as evidence and exposure- and risk-based analyses indicating that adverse effects would be predicted to occur under air quality scenarios that meet the current standard.

3. CASAC Views

In a letter to the Administrator (Henderson, 2006c), the CASAC O_3 Panel, with full endorsement of the chartered CASAC, unanimously concluded that ''despite limited recent research, it has become clear since the last review that adverse effects on a wide range of vegetation including visible foliar injury are to be expected and have been observed in areas that are below the level of the current 8-hour primary and secondary ozone standards.'' Therefore, ''based on the Ozone Panel's review of Chapters 7 and 8 [of the Staff Paper], the CASAC unanimously agrees that it is not appropriate to try to protect vegetation from the substantial, known or anticipated, direct and/or indirect, adverse effects of ambient O_3 by continuing to promulgate identical primary and secondary standards for O_3. Moreover, the members of the Committee and a substantial majority of the Ozone Panel agree with EPA staff conclusions and encourage the Administrator to establish an alternative cumulative secondary standard for O_3 and related photochemical oxidants that is distinctly different in averaging time, form and level from the currently existing or potentially revised 8-hour primary standard'' (Henderson, 2006c).[62]

4. Administrator's Proposed Conclusions Concerning Adequacy of Current Standard

The Administrator recognizes that the secondary standard is to protect against ''adverse'' O_3 effects, discussed above in section IV.A.3. In considering what constitutes a vegetation effect that is also adverse to the public welfare, the Administrator took into account the Staff Paper conclusions regarding the nature and strength of the vegetation effects evidence, the exposure and risk assessment results, the degree to which the associated uncertainties should be considered in interpreting the results, and the views of CASAC and members of the public. On these bases, the Administrator proposes that the current secondary standard is inadequate to protect the public welfare from known and anticipated adverse O_3-related effects on vegetation and ecosystems. Ozone levels that would be expected to remain after meeting the current secondary standard are sufficient to cause visible foliar injury, seedling and mature tree biomass loss, and crop yield reductions to degrees that could be considered adverse depending on the intended use of the plant and its significance to the public welfare, and the current secondary standard does not provide adequate protection from such effects. Other O_3-induced effects described in the literature, including an impaired ability of many sensitive species and genotypes within species to adapt to or withstand other environmental stresses, such as freezing temperatures, pest infestations and/or disease, and to compete for available resources, would also be anticipated to occur. In the long run, the result of these impairments (*e.g.*, loss in vigor) could lead to premature plant death in O_3 sensitive species. Though effects on other ecosystem components have only been examined in isolated cases, effects such as those described above could have significant implications for plant community and associated species biodiversity and the structure and function of whole ecosystems. These considerations also support the proposed conclusion that the current secondary standard is not adequate and that revision is needed to provide additional public welfare protection.

E. Conclusions on the Elements of the Secondary Standard

Given his proposed conclusion that the current secondary standard is inadequate, the Administrator then considered what revisions to the standard are appropriate. In so doing, the Administrator has focused on revisions to the key standard elements of indicator, form, averaging time, and level. On the basis of the strength and coherence of the vegetation effects evidence suggesting that a biologically-based standard for vegetation, at a minimum, should cumulate exposures and differentially-weight higher O_3 concentrations, the Administrator judges that it is appropriate to consider revisions to the secondary standard that reflect this understanding. In addition, the Administrator also judges that the current 8-hour average form, though not based on the most biologically relevant and coherent vegetation effects literature, can also provide substantially improved protection to vegetation when set at an appropriate level. Therefore, the Administrator also considered whether revision to the level of the current 8-hour secondary standard might provide the requisite level of public welfare protection. In light of these considerations, as discussed below, the Administrator is proposing two options for revising the current secondary standard: one option is a cumulative seasonal standard (section IV.E.2) and the other option is an 8-hour average standard consistent with the revised 8-hour average standard proposed above for the primary standard (section IV.E.3). The Administrator has also considered an alternative approach to setting a cumulative, seasonal standard(s) as described below in section IV.E.2.

1. Indicator

In the last review, EPA focused on a standard for O_3 as the most appropriate surrogate for ambient photochemical oxidants. In this review, while the complex atmospheric chemistry in which O_3 plays a key role has been highlighted, no alternatives to O_3 have been advanced as being a more appropriate surrogate for ambient photochemical oxidants. Thus, as is the case for the primary standard, (discussed above in section II.D.1.), the Administrator proposes to continue to use O_3 as the indicator for a standard that is intended to address effects associated with exposure to O_3, alone and in combination with related photochemical oxidants. In so doing, the Administrator recognizes that measures leading to reductions in vegetation exposures to O_3 will also reduce exposures to other photochemical oxidants.

2. Cumulative, Seasonal Standard

The Administrator proposes to replace the current secondary standard with a new cumulative, seasonal standard expressed as an index of the annual sum of weighted hourly concentrations (using the W126 form), set at a level in the range of 7 to 21 ppm-hours. The index would be cumulated over the 12-hour daylight period (8 a.m. to 8 p.m.) during the consecutive 3-month period within the O_3 season with the maximum index value. In addition, as discussed below, the Administrator is considering an alternative approach to setting a cumulative, seasonal standard(s) that would afford differing degrees of protection for O_3-related impacts on different types of vegetation with different intended uses.

[62] One CASAC Panel member reached different conclusions from those of the broader Panel regarding certain aspects of the vegetation effects information and the appropriate degree of emphasis that should be placed on the associated uncertainties. These concerns related to how the results of O_3/vegetation exposure experiments carried out in OTC can be extrapolated to the ambient environment and how C–R functions developed in the 1980's can be used today given that he did not expect that current crop species/cultivars in use in 2002 would have the same O_3 sensitivity as those studied in NCLAN (Henderson, 2007, pg. C–18).

a. Form

The current Criteria Document and Staff Paper concluded that the recent vegetation effects literature evaluated in this review strengthens and reaffirms conclusions made in the last review that the use of a cumulative exposure index that differentially-weights ambient concentrations is best able to relate ambient exposures to vegetation response at this time (EPA, 2006a, b; see also discussion in IV.B. above). The 1996 review focused in particular on two of these cumulative forms, the SUM06 and W126. As described in the last review (EPA, 1996a, b) it was concluded that, based on statistical reanalysis of the NCLAN data, these different cumulative forms performed equally well in predicting crop yield loss response to O_3 exposure. Given that the data available at that time were unable to distinguish between these forms, the Administrator, based on the policy consideration of not including O_3 concentrations considered to be within the PRB, concluded that the SUM06 form was the more appropriate choice for a secondary standard.

In this review, the Staff Paper evaluated the continued appropriateness of the SUM06 form in light of two key pieces of information: new estimates of PRB that are lower than in the last review, and continued lack of evidence within the vegetation effects literature of a biological threshold for vegetation exposures of concern. On the basis of those policy and science-related considerations, the Staff Paper concluded that the W126 form was more appropriate in the context of this review. Specifically, the W126, by its incorporation of a sigmoidal weighting scheme, does not create an artificially imposed concentration threshold, gives proportionally more weight to the higher and typically more biologically potent concentrations, and is not significantly influenced by O_3 concentrations within the range of estimated PRB.

The CASAC, based on its assessment of the same vegetation effects science, agreed with the Criteria Document and Staff Paper and unanimously concluded that it is not appropriate to try to protect vegetation from the known or anticipated adverse effects of ambient O_3 by continuing to promulgate identical primary and secondary standards for O_3. Moreover, the members of CASAC and a substantial majority of the CASAC O_3 Panel agreed with Staff Paper conclusions and encouraged the Administrator to establish an alternative cumulative secondary standard for O_3 and related photochemical oxidants that is distinctly different in averaging time, form, and level from the current or potentially revised 8-hour primary standard. The CASAC also stated that ''the recommended metric for the secondary ozone standard is the (sigmoidally-weighted) W126 index'' (Henderson, 2007).[63]

The Administrator agrees with the conclusions drawn in the Criteria Document, Staff Paper and by CASAC that the scientific evidence available in the current review continues to demonstrate the cumulative nature of O_3-induced plant effects and the need to give greater weight to higher concentrations. Thus, the Administrator concludes that a cumulative exposure index that differentially-weights O_3 concentrations represents a reasonable policy choice for a seasonal secondary standard to protect against the effects of O_3 on vegetation. The Administrator further agrees with both the Staff Paper and CASAC that the most appropriate cumulative, concentration-weighted form to consider in this review is the sigmoidally weighted W126 form, due to his recognition that there is no evidence in the literature for an exposure threshold that would be appropriate across all O_3-sensitive vegetation and that this form is unlikely to be significantly influenced by O_3 air quality within the range of PRB levels identified in this review. Thus, the Administrator proposes as one option to replace the current 8-hour average secondary standard form with the cumulative, seasonal W126 form.

b. Averaging Times[64]

The Staff Paper, in addition to form, also considers what ''averaging'' periods or exposure durations are most relevant for vegetation, which, unlike people, is exposed to ambient air continuously throughout its lifespan. For annual species, this lifespan encompasses a period of only one year or less; while for perennials, lifespans can range from a few years to decades or centuries. However, because O_3 levels are not continuously elevated and plants are not equally sensitive to O_3 over the course of a day, season or lifetime, it becomes necessary to identify periods of exposure that have the most relevance for plant response. Exposure periods are discussed below in terms of a seasonal window, a diurnal window, and an annual versus 3-year average standard.

(1) In considering an appropriate seasonal window, the Staff Paper recognizes that, in general, many annual crops are grown for periods of a few months before being harvested. In contrast, other annual and perennial species may be photosynthetically active longer, and for some species and locations, throughout the entire year. In general, the period of maximum physiological activity and thus, maximum potential O_3 uptake for annual crops, herbaceous species, and deciduous trees and shrubs coincides with some or all of the intra-annual period defined as the O_3 season, which varies on a state-by-state basis. This is because the high temperature and high light conditions that promote the formation of tropospheric O_3 also promote physiological activity in vegetation.

The Staff Paper notes that the selection of any single seasonal exposure period for a national standard would represent a compromise, given the significant variability in growth patterns and lengths of growing seasons among the wide range of vegetation species occurring within the U.S. that may experience adverse effects associated with O_3 exposures. However, the Staff Paper further concludes that the consecutive 3-month period within the O_3 season with the highest W126 index value (*e.g.*, maximum 3 month period) would, in most cases, likely coincide with the period of greatest plant sensitivity on an annual basis. Therefore, the Staff Paper again concludes, as it did in 1996, that the annual maximum consecutive 3-month period is a reasonable seasonal time period, when combined with a cumulative, concentration weighted form, for protection of sensitive vegetation.

(2) In considering an appropriate diurnal window, the Staff Paper recognizes that over the course of the 24-hour diurnal period, plant stomatal conductance varies in response to changes in light level, soil moisture and other environmentally and genetically controlled factors. In general, stomata are most open during daylight hours in order to allow sufficient CO_2 uptake for use in carbohydrate production through the light-driven process of photosynthesis. At most locations, O_3 concentrations are also highest during the daytime, and thus, most likely to coincide with maximum stomatal uptake. It is also known however, that in some species, stomata may remain

[63] One CASAC Panel member expressed the view that the O_3 exposure indices, SUM06 and W126, are simply mathematical expressions of exposure and, thus, cannot be said to have a biological basis (Henderson, 2007, pg. C–18).

[64] While the term ''averaging time'' is used, for the cumulative, seasonal standard the time period at issue is one over which exposures during a specified period of time are cumulated, not averaged.

open sufficiently at night to allow for some nocturnal uptake to occur. In addition, at some rural, high elevation sites, the O_3 concentrations remain relatively flat over the course of the day, often at levels above estimated PRB. At these sites, nighttime W126 values can be of similar magnitude as daytime values, though the significance of these exposures is much less certain. This is because O_3 uptake during daylight hours is known to impair the light-driven process of photosynthesis, which can then lead to impacts on carbohydrate production, plant growth, reproduction (yield) and root function. It is less clear at this time to what extent and by what mechanisms O_3 uptake at night adversely impacts plant function. In addition, many species do not take up O_3 at night or occur in areas with elevated nighttime O_3 concentrations.

In light of a recent work on this topic conducted by Musselman and Minnick (2000), the Staff Paper again revisited the issue of what diurnal period is of most relevance in influencing O_3-induced effects on vegetation. This work reports that some species take up O_3 at night, but that the degree of nocturnal stomatal conductance varies widely between species and its relevance to overall O_3-induced vegetation effects remain unclear. In considering this information, the Staff Paper concludes that for the vast majority of studied species, daytime exposures represent the majority of diurnal plant O_3 uptake and are responsible for inducing the plant response of most significance to the health and productivity of the plant (*e.g.*, reduced carbohydrate production). Until additional information is available about the extent to which co-occurrence of sensitive species and elevated nocturnal O_3 exposures exists, and what levels of nighttime uptake are adverse to affected species, the Staff Paper concludes that this information continues to be preliminary, and does not provide a basis for reaching a different conclusion at this time. The Staff Paper further notes that additional research is needed to address the degree to which a 12-hour diurnal window may be under protective in areas where elevated nighttime levels of O_3 co-occur with sensitive species with a high degree of nocturnal stomatal conductance. Thus, as in the last review, the Staff Paper again concludes that based on the available science, the daytime 12-hour window (8 a.m. to 8 p.m.) is the most appropriate period over which to cumulate diurnal O_3 exposures, specifically those most relevant to plant growth and yield responses.

(3) In considering whether an annual or 3-year averaging period is more appropriate, the Staff Paper recognized that though most cumulative seasonal exposure levels of concern for vegetation have been expressed in terms of the annual timeframe, it may be appropriate to consider a 3-year averaging period for purposes of standard stability. However, the Staff Paper notes that for certain welfare effects of concern (*e.g.*, foliar injury, yield loss for annual crops, growth effects on other annual vegetation and potentially tree seedlings), an annual time frame may be a more appropriate period in which to assess what level would provide the requisite degree of protection, while for other welfare effects (*e.g.*, mature tree biomass loss), a 3-year averaging period may also be appropriate. Thus, the Staff Paper concludes that it is appropriate to consider both an annual and a 3-year averaging period. Further, the Staff Paper concludes that should a 3-year average of the 12-hour W126 form be selected, a potentially lower level should be considered to reduce the potential of adverse impacts to annual species from a single high O_3 year that could still occur while attaining a standard on average over 3-years.

The CASAC, in considering what seasonal and diurnal time periods are most appropriate when combined with a cumulative, concentration-weighted form to protect vegetation from exposures of concern, agreed that the Staff Paper conclusion regarding the 3-month seasonal period and 12-hour daylight window was appropriate, with the distinction that both time designations likely represents the minimum time periods of importance. In particular, one O_3 Panel member commented that for some species, additional O_3 exposures of importance were occurring outside the 3-month seasonal and 12-hour diurnal windows. Further, the CASAC concluded that multi-year averaging to promote a ''stable'' secondary standard is less appropriate for a cumulative, seasonal secondary standard than for a primary standard based on maximum 8-hour concentrations. CASAC further concluded that if multi-year averaging is employed to increase the stability of the secondary standard, the level of the standard should be revised downward to assure that the desired degree of protection is not exceeded in individual years.

The Administrator, in determining which seasonal and diurnal time periods are most appropriate to propose, took into account Staff Paper and CASAC views. The Administrator, in being careful to consider what is needed to provide the requisite degree of protection, no more and no less, proposes that the 3-month seasonal period and 12-hour daylight period are appropriate. Based on the Staff Paper conclusions discussed above, the Administrator is mindful that there is the potential for under-protection with a 12-hour diurnal window in areas with sufficiently elevated nighttime levels of O_3 where sensitive species with a high degree of nocturnal stomatal conductance occur. On the other hand, the Administrator also recognizes that a longer diurnal window (*e.g.*, 24-hour) has the possibility of over-protecting vegetation in areas where nighttime O_3 levels remain relatively high but where no species having significant nocturnal uptake exist. In weighing these considerations, the Administrator agrees with the Staff Paper conclusion that until additional information is available about the extent to which this co-occurrence of sensitive species and elevated nocturnal O_3 exposures exists, and what levels of nighttime uptake are adverse to affected species, this information does not provide a basis for reaching a different conclusion at this time. The Administrator also considered to what extent the 3-month period within the O_3 season was appropriate, recognizing that many species of vegetation have longer growing seasons. The Administrator further proposes that the maximum 3-month period is sufficient and appropriate to characterize O_3 exposure levels associated with known levels of plant response. Therefore, the Administrator proposes that the most appropriate exposure periods for a cumulative, seasonal form is the daytime 12-hour window (8 a.m. to 8 p.m.) during the consecutive 3-month period within the O_3 monitoring season with the maximum W126 index value.

The Administrator also proposes an annual rather than a multi-year cumulative, seasonal standard. In proposing this alternative, the Administrator also believes that it is appropriate to consider the benefits to the public welfare that would accrue from establishing a 3-year average secondary standard, and solicits comment on this alternative. In so doing, the Administrator also agrees with Staff Paper and CASAC conclusions that should a 3-year standard be finalized, the level of the standard should be set so as to provide the requisite degree of protection for those vegetation effects judged to be adverse to the public welfare within a single annual period.

c. Level

The Staff Paper, in identifying a range of levels for a 3-month, 12-hour W126 annual form appropriate to protect the public welfare from adverse impacts to vegetation from O_3 exposures, considers what information from the array of vegetation effects evidence and exposure and risk assessment results was most useful. In regards to the vegetation effects evidence, the Staff Paper finds stronger support than what was available at the time of the last review for an increased level of protection for trees and ecosystems. Specifically, this expanded body of support includes: (1) Additional field based data from free air, gradient and biomonitoring surveys demonstrating adverse levels of O_3-induced above and/or below-ground growth reductions on trees at the seedling, sapling and mature growth stages and incidence of visible foliar injury occurring at biomonitoring sites in the field at ambient levels of exposure; (2) qualitative support from free air (*e.g.*, AspenFACE) and gradient studies on a limited number of tree species for the continued appropriateness of using OTC-derived C–R functions to predict tree seedling response in the field; (3) studies that continue to document below-ground effects on root growth and ''carry-over'' effects occurring in subsequent years from O_3 exposures; and (4) increased recognition and understanding of the structure and function of ecosystems and the complex linkages through which O_3, and other stressors, acting at the organism and species level can influence higher levels within the ecosystem hierarchy and disrupt essential ecological attributes critical to the maintenance of ecosystem goods and services important to the public welfare.

Based on the above observations and on the vegetation effects and the results of the exposure and impact assessment summarized above, the Staff Paper concludes that just meeting the current standard would still allow adverse levels of tree seedling biomass loss in sensitive commercially and ecologically important tree species in many regions of the country. Seedling risk assessment results showed that some tree seedling species are extremely sensitive (*e.g.*, cottonwood, black cherry and aspen), with annual biomass losses occurring in the field of the same or greater magnitude that that of annual crops. Such information from the tree seedling risk assessment suggests that air quality levels would need to be substantially reduced to protect sensitive tree seedlings like black cherry from growth and foliar injury effects.

In addition to the currently quantifiable risks to trees from ambient exposures, the Staff Paper also considers the more subtle impacts of O_3 acting in synergy with other natural and man-made stressors to adversely affect individual plants, populations and whole systems. By disrupting the photosynthetic process, decreasing carbon storage in the roots, increasing early senescence of leaves and affecting water use efficiency in trees, O_3 exposures could potentially disrupt or change the nutrient and water flow of an entire system. Weakened trees can become more susceptible to other environmental stresses such as pest and pathogen outbreaks or harsh weather conditions. Though it is not possible to quantify all the ecological and societal benefits associated with varying levels of alternative secondary standards, the Staff Paper concludes that this information should be weighed in considering the extent to which a secondary standard should be set so as to provide potential protection against effects that are anticipated to occur.

In addition, the Staff Paper also recognizes that in the last review, the Administrator took into account the results of a 1996 consensus-building workshop as described in a January 1997 report (Heck and Cowling, 1997). At this workshop, a group of independent scientists expressed their judgments on what standard form(s) and level(s) would provide vegetation with adequate protection from O_3-related adverse effects. Consensus was reached with respect to selecting appropriate ranges of levels in terms of a cumulative, seasonal 3-month, 12-hr SUM06 standard for a number of vegetation effects endpoints. These ranges are identified below, with the estimated approximate equivalent W126 standard values shown in parentheses. For growth effects to tree seedlings in natural forest stands, a consensus was reached that a range of 10 to 15 (7 to 13) ppm-hours would be protective. For growth effects to tree seedlings and saplings in plantations, the consensus range was 12 to 16 (9 to 14) ppm-hours. For visible foliar injury to natural ecosystems, the consensus range was 8 to 12 (5 to 9) ppm-hours (Heck and Cowling, 1997).

Taking these consensus statements into account, the Administrator stated in the final rule (62 FR 38856) that ''the report lends important support to the view that the current secondary standard is not adequately protective of vegetation * * * [and] * * * foreshadows the direction of future scientific research in this area, the results of which could be important in future reviews of the O_3 secondary standard'' (62 FR 38856).

Given the importance the Administrator put on the consensus report in the last review, the Staff Paper considered to what extent new research provided empirical support for the ranges of levels identified by the experts as protective of different types of O_3-induced effects. On the basis of new field-based tree seedling growth loss and foliar injury data, and including both the above quantitative and qualitative information regarding O_3-induced effects on sensitive trees and forested ecosystems, the Staff Paper concludes that it is appropriate to consider a range for a 3-month, 12-hour, W126 standard that includes the consensus recommendations for growth effects in tree seedlings in natural forest stands.

In considering the newly available information on O_3-related effects on crops in this review, the Staff Paper observes the following regarding the strength of the underlying crop science: (1) Nothing in the recent literature points to a change in the relationship between O_3 exposure and crop response across the range of species and/or cultivars of commodity crops currently grown in the U.S. that could be construed to make less appropriate the use of commodity crop C–R functions developed in the NCLAN program; (2) new field-based studies (*e.g.*, SoyFACE) provide qualitative support in a few limited cases for the appropriateness of using OTC-derived C–R functions to predict crop response in the field; and (3) refinements in the exposure, risk and benefits assessments in this review reduce some of the uncertainties present in 1996. On the basis of these observations, the Staff Paper concludes that nothing in the newly assessed information calls into question the strength of the underlying science upon which the Administrator based her proposed decision in the last review to select a level of a cumulative, seasonal form associated with protecting 50 percent of crop cases from no more than 10 percent yield loss as providing the requisite degree of protection for commodity crops.

The Staff Paper then considered whether any additional information is available to inform judgments as to the adversity of various O_3-induced levels of crop yield loss to the public welfare. As noted above, the Staff Paper observes that agricultural systems are heavily managed, and that in addition to stress from O_3, the annual productivity of agricultural systems is vulnerable to

disruption from many other stressors (*e.g.*, weather, insects, disease), whose impact in any given year can greatly outweigh the direct reduction in annual productivity resulting from elevated O_3 exposures. On the other hand, O_3 can also more subtly impact crop and forage nutritive quality and indirectly exacerbate the severity of the impact from other stressors. Though these latter effects currently cannot be quantified, they should be considered in judging to what extent a level of protection selected to protect commodity crops should be precautionary.

Based on the above considerations, the Staff Paper concludes that the level of protection judged requisite in the last review to protect the public welfare from adverse levels of O_3-induced reductions in crop yields, as provided by a W126 level of 21 ppm-hours, remains appropriate for consideration as an upper bound of a range of appropriate levels.

Thus, the Staff Paper concludes, based on all the above considerations, that an appropriate range of 3-month, 12-hour W126 levels is 7 to 21 ppm-hours, recognizing that the level selected is largely a policy judgment as to the requisite level of protection needed. In determining the requisite level of protection for crops and trees, the Staff Paper recognizes that it is appropriate to weigh the importance of the predicted risks of these effects in the overall context of public welfare protection, along with a determination as to the appropriate weight to place on the associated uncertainties and limitations of this information.

The CASAC, in its final letter to the Administrator (Henderson, 2007), agreed with the Staff Paper recommendations that the lower bound of the range within which a seasonal W126 welfare-based (secondary) O_3 standard should be considered is approximately 7 ppm-hours; however, it did not agree with Staff's recommendation that the upper bound of the range should be as high as 21 ppm-hours. Rather, CASAC recommended that the upper bound of the range considered should be no higher than 15 ppm-hours, which the Panel estimates is approximately equivalent to a seasonal 12-hour SUM06 level of 20 ppm-hours. The lower end of this range (7 ppm-hours) is the same as the lower end of the range identified in the 1997 Consensus Workshop as protective of tree seedlings in natural forest stands from growth effects (Heck and Cowling, 1997).

The Administrator, taking Staff Paper and CASAC views into account, proposes a range of levels for a cumulative, seasonal secondary standard as expressed in terms of the maximum 3 month, 12-hour W126 form, in the range of 7 to 21 ppm-hours. This range encompasses the range of levels recommended by CASAC, and also includes a higher level as recommended in the Staff Paper. Given the uncertainty in determining the risk attributable to various levels of exposure to O_3, the Administrator believes as a public welfare policy judgment that this is a reasonable range to propose.

In taking into account the uncertainty associated with the above, the Administrator has also considered an alternative approach to establishing a secondary standard(s). This alternative approach would establish a cumulative, seasonal standard(s) that would afford differing degrees of protection for O_3-related impacts on different types of vegetation with different intended uses.

The Administrator recognizes that known O_3-sensitive plant species growing within the U.S experience a variety of O_3-induced effects, including visible foliar injury, biomass loss and yield loss, and that the public welfare significance of each of these effects can vary significantly, depending on the nature of the effect, the intended use of the plant, and/or the type of environment or location in which the plant grows. Any given O_3-related effect on vegetation (*e.g.*, biomass loss, or foliar injury) may be judged to have a different degree of impact on public welfare depending, for example, on whether that effect occurs in a Class I area, commercial cropland, or a city park. This variation in the significance of O_3-related vegetation effects from a public welfare perspective across type of effect, intended plant use, and area grown means that the level of ambient O_3 that is requisite to protect the public welfare may also vary. The level of ambient O_3 that is requisite in a federally designated Class I area may be lower than the level that is requisite in a cropland area. EPA is therefore considering and soliciting comment on an alternative approach for the secondary O_3 standard, with the aim of reasonably reflecting these variations.

Specifically, the Administrator seeks comment on an alternative approach that would establish a suite of secondary standards. The suite of standards would contain different ambient levels, with each standard at a level that is requisite to protect public welfare for that variation in plant effect, use, and/or location. For example, a secondary standard intended to provide protection to natural systems valued for their aesthetic beauty and/or important ecological functions they might serve could be set at a lower, more protective level to provide the requisite degree of protection against a broad array of O_3-related effects on important sensitive species in such areas. In contrast, while negative impacts on yield production in sensitive agricultural crops is also an important public welfare effect, O_3-related reductions in yield may be considered less significant or adverse to the public welfare, depending on the degree of impact, since the intended use of such land is to produce optimum yields and croplands are already heavily managed to achieve that goal. Thus, a secondary standard set to provide the requisite degree of crop protection for such an area could be set at a higher level.

The Administrator recognizes that variation in vegetation type and location, intended use, and impacts related to O_3 exposure can be diverse, and believes that it is appropriate to consider whether it is appropriate and feasible to establish a suite of standards that accounts more broadly for such variation. EPA recognizes that this approach is unique with regard to secondary standards and will pose unique challenges, including how to classify areas according to intended use. Some geographic areas have already been identified for specific uses, such as Federal Class I areas,[65] which are intended to conserve unimpaired natural ecosystems and their associated species for the enjoyment of future generations. Likewise, the USDA has classified cultivated areas in the U.S. into certain categories of intended use (such as cropland, rangeland, timberland) that could help inform the setting of a suite of standards.

EPA is taking comment on all aspects of this alternative approach, including whether it is appropriate to set a suite of secondary standards that varies depending on use, location, and type of effect on vegetation. EPA invites comment on the appropriateness of this approach, from the scientific, legal, and policy perspectives, and on other factors that should be considered in determining the applicability of any one level within a suite of standards.

[65] The Clean Air Act defines Class I areas as national parks over 6,000 acres, national wilderness areas and national memorial parks over 5,000 acres, and international parks. The National Park Service was created in 1916 by Congress through the National Park Service Organic Act in order to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

3. 8-Hour Average Standard

The Administrator is also proposing to revise the current secondary standard by making it identical to the proposed 8-hour primary standard, which is proposed to be within the range of 0.070 to 0.075 ppm. For this option, EPA also solicits comment on a wider range of 8-hour standard levels, including levels down to 0.060 ppm and up to the current standard (*i.e.*, effectively 0.084 ppm with the current rounding convention).

In the last review, the Staff Paper included an analysis to compare the degree of overlap between areas that would be expected not to meet the range of alternative 8-hour standards being considered for the primary NAAQS and those expected not to meet the range of values (expressed in terms of the seasonal SUM06 index) of concern for vegetation. This result suggested that improvements in national air quality expected to result from attaining an 8-hour primary standard within the recommended range of levels would also be expected to reduce levels of concern for vegetation in those same areas. In the 1997 final rule, the decision was made, on the basis of both science and policy considerations, to make the secondary identical to the primary standard. It acknowledged, however, that uncertainties remained ''as to the extent to which air quality improvements designed to reduce 8-hour average O_3 concentrations averaged over a 3-year period would reduce O_3 exposures measured by a seasonal SUM06 index'' (62 FR 38876).

On the basis of that history, the current Staff Paper analyzed the degree of overlap expected between alternative 8-hour and cumulative seasonal secondary standards (as discussed above in section IV.C.1) using recent air quality. Based on the results, the Staff Paper concluded that the degree to which the current 8-hour standard form and level would overlap with areas of concern for vegetation expressed in terms of the 12-hour W126 standard is inconsistent from year to year and would depend greatly on the level of the 12-hour W126 and 8-hour standards selected and the distribution of hourly O_3 concentrations within the annual and/or 3-year average period.

Thus, though the Staff Paper recognized again that meeting the current or alternative levels of the 8-hour average standard could result in air quality improvements that would potentially benefit vegetation in some areas, it urges caution be used in evaluating the likely vegetation impacts associated with a given level of air quality expressed in terms of the 8-hour average form in the absence of parallel W126 information. This caution is due to the concern that the analysis in the Staff Paper may not be an accurate reflection of the true situation in non-monitored, rural counties due to the lack of more complete monitor coverage in many rural areas. Further, of the counties that did not show overlap between the two standard forms, most were located in rural/remote high elevation areas which have O_3 air quality patterns that are typically different from those associated with urban and near urban sites at lower elevations. Because the majority of such areas are currently not monitored, it is believed there are likely to be additional areas that have similar air quality distributions that would lead to the same disconnect between forms. Thus, the Staff Paper concluded that it remains problematic to determine the appropriate level of protection for vegetation using an 8-hour average form.

The CASAC recognized that an important difference between the effects of acute exposures to O_3 on human health and the effects of O_3 exposures on welfare is that vegetation effects are more dependent on the cumulative exposure to, and uptake of, O_3 over the course of the entire growing season (Henderson, 2006c). The CASAC O_3 Panel members were unanimous in concluding the protection of natural terrestrial ecosystems and managed agricultural crops requires a secondary O_3 standard that is substantially different from the primary O_3 standard in averaging time, level, and form (Henderson, 2007).

A number of public commenters also presented views for the Administrator's consideration regarding the adequacy of the current standard and whether or not revisions to that standard were warranted. These commenters did not support adopting an alternative, cumulative form for the secondary standard. These commenters stated that ''though directionally a cumulative form of the standard may better match the underlying data,'' they believed further work is needed to determine whether a cumulative exposure index for the form of the secondary standard is necessary. These commenters identified a number of key concerns regarding the available evidence that, in their view, make it inappropriate to revise the secondary standard at this time. In particular they assert that (1) The key uncertainties, cited by the Administrator in the 1997 review as reasons for deciding it was not appropriate to move forward with a seasonal secondary, have not been materially reduced in the current review; and (2) the exposure assessment is inaccurate and too uncertain due to the use of low estimates of PRB, an arbitrary rollback method that is uninformed by atmospheric chemistry from photochemical models, and the use of the CMAQ model in the west, whose biases and uncertainties are insufficiently characterized and evaluated.

In considering the appropriateness of proposing a revised secondary standard that would be identical to the proposed primary standard, the Administrator took into account the approach used by the Agency in the last review, the conclusions of the Staff Paper, CASAC advice, and the views of public commenters. The Administrator first considered the Staff Paper analysis of the projected degree of overlap between counties with air quality expected to meet various alternative levels of an 8-hour standard and alternative levels of a W126 standard based on monitored air quality data. This analysis showed significant overlap within the proposed range of the primary 8-hour form and selected levels of the W126 standard form being considered, with the degree of overlap between these two forms depending greatly on the levels selected and the distribution of hourly O_3 concentrations within the annual and/or 3-year average period. On this basis, the Administrator recognizes that a secondary standard set identical to the proposed primary standard would provide a significant degree of additional protection for vegetation as compared to that provided by the current secondary standard. The Administrator also recognizes that lack of rural monitoring data makes uncertain the degree to which the proposed 8-hour or W126 alternatives would be protective, and that there would be the potential for not providing the appropriate degree of protection for vegetation in areas with air quality distributions that result in a high cumulative, seasonal exposure but do not result in high 8-hour average exposures. While this potential for under-protection is clear, the number and size of areas at issue and the degree of risk is hard to determine. However, such a standard would also tend to avoid the potential for providing more protection than is necessary, a risk that would arise from moving to a new form for the secondary standard despite significant uncertainty in determining the degree of risk for any exposure level and the appropriate level of protection, as well as uncertainty in predicting exposure and risk patterns.

The Administrator also considered the views and recommendations of

CASAC, and agrees that a cumulative, seasonal standard is the most biologically relevant way to relate exposure to plant growth response. However, as reflected in the public comments, the Administrator also recognizes that there remain significant uncertainties in determining or quantifying the degree of risk attributable to varying levels of O_3 exposure, the degree of protection that any specific cumulative, seasonal standard would produce, and the associated potential for error in determining the standard that will provide a requisite degree of protection—*i.e.* sufficient but not more than what is necessary. Given this uncertainty, the Administrator also believes it is appropriate to consider the degree of protection that would be afforded by a secondary standard that is identical to the proposed primary standard. Based on his consideration of the full range of views as described above, the Administrator proposes as a second option to revise the secondary standard to be identical in every way to the proposed primary standard.

F. Proposed Decision on the Secondary Standard

The Administrator proposes to replace the current secondary standard with one of two options. One option is a new cumulative, seasonal standard expressed as an index of the annual sum of weighted hourly concentrations (using the W126 form), set at a level in the range of 7 to 21 ppm-hours. The index would be cumulated over the 12-hour daylight period (8 a.m. to 8 p.m.) during the consecutive 3-month period within the O_3 season with the maximum index value. The other option is to revise the current secondary standard by making it identical to the proposed 8-hour primary standard, which is proposed to be within the range of 0.070 to 0.075 ppm. For this option, EPA also solicits comment on a wider range of 8-hour standard levels, including levels down to 0.060 ppm and up to the current standard (*i.e.*, effectively 0.084 ppm with the current rounding convention. The Administrator is also soliciting comment on an alternative approach for a setting cumulative, seasonal standard(s) that would afford differing degrees of protection for O_3-related impacts on different types of vegetation with different intended uses.

V. Creation of Appendix P—Interpretation of the NAAQS for Ozone

The EPA is proposing to create Appendix P to 40 CFR part 50 to reflect the proposed revisions to the primary and secondary standards discussed above. This Appendix would explain the computations necessary for determining when the proposed primary and secondary standards are met. More specifically, Appendix P addresses data completeness requirements, data reporting, handling, and rounding conventions, and example calculations. Although EPA is proposing two alternative secondary standards, the proposed Appendix has been written to address a seasonal secondary standard expressed in the W126 form. If EPA adopts a secondary standard identical to the primary standard, Appendix P will be modified accordingly. The proposed Appendix also reflects the final rule promulgated on March 22, 2007 for the treatment of data influenced by exceptional events (72 FR 13560).

Key elements of the proposed revisions to Appendix P are outlined below.

A. Data Completeness

The data completeness requirements in Appendix P proposed here for the proposed 8-hr primary standard secondary standards are the same as those in Appendix I to 40 CFR part 50 required for the current standard. To satisfy the date completeness requirement, Appendix P would require 90% data completeness, on average, for the 3-year period at a monitoring site, with no single year within the period having less than 75% data completeness. This data completeness requirement would have to be satisfied in order to determine that the standard(s) have been met at a monitoring site. A site could be found not to have met the standard(s) with less than complete data. EPA concluded in adopting these same data completeness requirements in Appendix I in 1997 that these proposed requirements are reasonable based on its earlier analysis of available air quality data that showed that 90% of all monitoring sites that are operated on a continuous basis routinely meet this objective. The EPA is seeking comment, however, on whether meteorological data would provide an objective basis for determining, on a day for which there is missing data, that the meteorological conditions were not conducive to high O_3 concentrations, and therefore, that the day could be assumed to have an O_3 concentration less than 0.070 to 0.075 ppm.

We are proposing separate data completeness requirements for the proposed seasonal secondary standard expressed in the W126 form. For such a standard, Appendix P would require a site to have 75% data completeness in a given month. Appendix P would also provide a mechanism for adjusting for missing data. Because this alternative is a seasonal cumulative index, representing a distribution of O_3 values under a range of meteorological conditions, rather than a peak statistic, the EPA is proposing a missing data procedure that would require the monthly total index to be adjusted for incomplete data by multiplying the unadjusted W126 value by the ratio of the number of possible daylight hours (8:00 a.m. to 8:00 p.m.) to the number of hours with valid ambient hourly concentrations. This adjustment is analogous to calculating an estimated number of exceedances contained within part 50 Appendix I for the one hour O_3 standard.

B. Data Handling and Rounding Conventions

Almost all State agencies now report hourly O_3 concentrations to three decimal places, in ppm, since the typical incremental sensitivity of currently used O_3 monitors is 0.001 ppm. Consistent with the current approach for computing 8-hr averages, in calculating 8-hr average O_3 concentrations from such hourly data, any calculated digits past the third decimal place would be truncated to preserve the number of significant digits in the reported data. In calculating 3-year averages of the fourth highest maximum 8-hr average concentrations, EPA is proposing to require the result to be reported to the third decimal place with digits to the right of the third decimal place truncated to preserve the number of significant digits in the reported data, as prescribed by the current standard. Analyses discussed in the Staff Paper demonstrated that taking into account the precision and bias in 1-hour O_3 measurements, the 8-hour design value had an uncertainty of approximately 0.001 ppm. Thus, EPA considers any value less than 0.001 ppm to be highly uncertain and, therefore, proposes truncating both the individual 8-hour averages used to determine the annual fourth maximum as well as the 3-year average of the fourth maxima to the third decimal place. Nevertheless, EPA solicits comment on the appropriateness of rounding to the third decimal place as well as the policy reasons behind either truncating or rounding the 3-year average to the third decimal place (with 0.0005 and greater rounding up). EPA is also seeking comment on the scientific validity of truncating the three year average as opposed to rounding it as well as the policy reasons behind either truncating or rounding the average to the third decimal place.

To determine whether the proposed standard is met, the calculated value of the fourth highest maximum 8-hour average concentrations, averaged over three years, would be compared to the level of the standard. As discussed in section II, the EPA is proposing to issue an 8-hr standard extending to three decimal places, based on the staff's analysis and conclusions discussed in the Staff paper that expressing the proposed standard to the third decimal place is consistent with the precision requirements of the current O_3 monitoring technology. Given that both the proposed standard and the calculated value of the 3-year average of the fourth highest maximum 8-hr O_3 concentration are expressed to three decimal places, the two values can be compared directly. This is different than the approach for determining compliance with the current standard O_3 standard. In comparing the calculated 3-year average (which is expressed to three decimal places) to the current standard O_3 standard (which is expressed to only two decimal places), Appendix I requires the calculated 3-year average to be rounded to two decimal places. This additional step would not be necessary for the proposed standard given that the standard and the 3-year average are each expressed to three decimal places.

For the proposed seasonal secondary standard, the annual maximum 3-month W126 value computed on a calendar year basis using the three highest, consecutive monthly W126 values would be used as the summary statistic. The resulting value would then be compared to the level of the secondary O_3 standard. The Agency is also interested in receiving comments regarding a 3-year average form summary statistic.

VI. Ambient Monitoring Related to Proposed Revised O_3 Standards

The EPA is not proposing any specific changes to existing requirements for monitoring of O_3 in the ambient air. However, we invite comment on a number of issues which naturally arise in connection with the proposed revision of the O_3 NAAQS. The EPA may propose changes to some of the existing requirements at a later date.

Current requirements regarding EPA-approved measurement methods for ambient O_3 are stated in 40 CFR part 50 Appendix D, Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere, and in 40 CFR part 53, Ambient Air Monitoring Reference and Equivalent Methods. The EPA does not intend to propose any changes to these requirements, because we believe these requirements would continue to be appropriate to support implementation of a revised O_3 NAAQS.

Presently, States (including the District of Columbia, Puerto Rico, and the Virgin Islands, and including local agencies when so delegated by the State) are required to operate minimum numbers of EPA-approved O_3 monitors based on the population of each of their Metropolitan Statistical Areas (MSA) and the most recently measured O_3 levels in each area. Each State (or in some cases portions of a State) also has a required O_3 monitoring season based on historical experience on when O_3 levels are high enough to be of regulatory or public health concern. These requirements are contained in 40 CFR part 58 Appendix D, Network Design Criteria for Ambient Air Quality Monitoring. See section 4.1, especially Tables D–2 and D–3. These requirements were last revised on October 17, 2006 as part of a comprehensive review of ambient monitoring requirements for all criteria pollutants. (71 FR 61236) Certain deviations including minimum monitoring requirements and/or monitoring season requirements may be approved by the EPA Regional Administrator on a case-by-case basis.

Required O_3 monitoring seasons range from four to 12 months. The minimum number of monitors in an MSA ranges from zero (for an area with population under 350,000 and no recent history of an O_3 design value greater than 85 percent of the NAAQS) to four (for an area with population greater than 10 million and an O_3 design value greater than 85 percent of the NAAQS). Because these requirements apply at the MSA level, large urban areas consisting of multiple MSAs can require more than four monitors. For example, the New York-Newark-Bristol NY-NJ-CT-PA combined statistical area requires about 14 monitors. In total, about 400 monitors are required in MSAs, but about 1100 are actually operating in MSAs because most States operate more than the minimum required number of monitors.

There are no EPA requirements for O_3 monitoring in less populated areas outside of MSA boundaries (*e.g.*, Metropolitan Statistical Areas) or in rural areas. However, there are about 250 O_3 monitors in counties that are not part of MSAs. Some required State monitors are placed downwind of the urban center of the MSA of interest in locations that are in some cases in a county outside the MSA itself; some States also operate a few rural monitors for research purposes. The EPA operates a network of about 56 O_3 monitors as part of its Clean Air Status and Trends Network (CASTNET). The National Park Service (NPS) operates about 27 monitors at other CASTNET sites. The NPS also has O_3 monitoring stations in parks that are not part of the CASTNET dry deposition monitoring effort including multiple O_3 stations in Great Smoky Mountains, Sequoia, Yosemite, and Joshua Tree National Parks.

Required quality assurance procedures for O_3 monitoring are given in 40 CFR Part 58 Appendix A, Quality Assurance Requirements for State and local air monitoring stations (SLAMS), special purpose monitors (SPM), and prevention of significant deterioration (PSD) Air Monitoring. The EPA does not intend to propose any changes to these quality assurance requirements, because we believe that the current measurement uncertainty goals and related procedures for assessing precision and bias as documented in paragraph 2.3.1.2 of Appendix A are appropriate to support the implementation of a revised O_3 NAAQS.

States are required to report O_3 data quarterly to EPA's Air Quality System (AQS), and most also voluntarily report their pre-validated O_3 data on an hourly basis to EPA's real time AirNow data system, where the data are used to forecast O_3 concentrations and to provide public advisories. The National Park Service and many other organizations also report their O_3 data to AQS and/or AirNow. The locations of currently operating O_3 monitors which report data to EPA's Air Quality System are available through the EPA AirData Web site *http://www.epa.gov/air/data/index.html.*

Data from O_3 monitors at CASTNET stations are currently kept in a separate national data base.[66]

The EPA invites comments on O_3 monitoring issues (other than O_3 monitoring methods and quality assurance requirements), including the following:

(1) Ozone monitoring network requirements in urban areas. Table D–2 of 40 CFR Part 58 Appendix D is based on the percentage of the O_3 NAAQS, with a break point at 85 percent of the NAAQS. Therefore, a revision of the NAAQS would automatically increase the required number of O_3 monitors. For example, assuming a final NAAQS of

[66] At present, not all ozone monitors at CASTNET sites are operated in full compliance with the quality assurance requirements of 40 CFR Part 58 Appendix D, as they have not been primarily intended for regulatory use. The EPA is working towards such compliance in the near future and towards making CASTNET ozone data available through AQS.

0.070 ppm for purposes of illustration only, about 70 MSAs with current O_3 design values in the range of about 0.060 ppm (about 85 percent of the current NAAQS) to 0.070 ppm (about 85 percent of 0.070 ppm) would be affected, with most changing from no required monitors to one, or from one required monitor to two. Because most of these areas already are operating at least as many monitors as the possible new requirement, the number of monitors which would need to be initiated (or moved from a location of excess monitors) would be only about five monitors. About 100 MSAs with populations less than 350,000 presently are without any O_3 monitors, and hence they do not have an O_3 design value for use with Table D–2. If for the purpose of applying Table D–2, these areas are treated as if they have O_3 concentrations below 85 percent of the revised NAAQS, then a NAAQS revision would not automatically result in a requirement for O_3 monitoring in these MSAs.[67] EPA invites comments on the appropriateness of the existing minimum monitoring requirements for purposes of implementing the proposed revised NAAQS, including the automatic changes to minimum monitoring requirements that would be triggered by a NAAQS revision.

(2) Ozone monitoring seasons. As mentioned, the currently required O_3 monitoring seasons range from four to 12 months of the year. In some cases, O_3 monitoring may start a couple of weeks before and may end a couple of weeks after the required season. With a lower O_3 NAAQS, the issue arises of whether in some areas the required O_3 monitoring season should be made longer. The EPA notes that under the existing regulations, the Regional Administrator may approve State-requested deviations from the established O_3 monitoring season but EPA may not increase the length of the season for an area at EPA's own initiative other than by notice and comment rulemaking.

(3) Monitoring to support implementation of a secondary O_3 NAAQS. It is fair to say that the existing O_3 monitoring requirements and current State monitoring practices are primarily oriented towards protecting against health effects in people, *i.e.*, towards implementation of the primary NAAQS. This accounts for the focus on urban areas, which can combine large populations, large emissions of O_3-forming precursors, and O_3 concentrations of concern. The purpose of the secondary NAAQS is to protect against vegetation damage and other welfare effects, which can occur in both urban and rural areas. States have largely been given discretion on whether to add additional monitors aimed specifically at achieving the objectives of the previous and current secondary NAAQS. In urban areas, EPA in general believes that an O_3 monitoring network (and monitoring season) appropriate to support implementation of the primary NAAQS will also be appropriate for implementing the secondary NAAQS. However, rural areas are presently only sparsely monitored for O_3 so violations of the secondary NAAQS in areas with sensitive vegetation may occur undetected, as a result of transport from urban areas with high precursor emissions and/or O_3 concentrations or from formation of additional O_3 from precursors emitted from sources outside urban areas. It is conceivable that rural violations of a secondary NAAQS could occur in areas with sensitive vegetation even though urban monitoring networks are showing compliance with the primary NAAQS, whether the forms and levels of the two standards are the same or different. The EPA invites comment on the likelihood of this occurring under the possible combinations of primary and secondary standards proposed in this notice, and on whether, where, and how EPA should require monitoring in rural areas specifically aimed at implementation of the secondary NAAQS (and/or promote more voluntary monitoring or conduct monitoring itself in rural areas).

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), the O_3 NAAQS action is an ''economically significant regulatory action'' because it is likely to have an annual effect on the economy of $100 million or more. Accordingly, EPA prepared this regulatory impact analysis (RIA) of the potential costs and benefits associated with this action. The RIA estimates the costs and monetized human health and welfare benefits of attaining three alternative O_3 NAAQS nationwide. Specifically, the RIA examines the alternatives of 0.075 ppm, 0.070 ppm, and 0.065 ppm. The RIA contains illustrative analyses that consider a limited number of emissions control scenarios that States and Regional Planning Organizations might implement to achieve these alternative O_3 NAAQS. However, the Clean Air Act (CAA) and judicial decisions make clear that the economic and technical feasibility of attaining ambient standards are not to be considered in setting or revising NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, although an RIA has been prepared, the results of the RIA have not been considered in issuing this final rule.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* There are no information collection requirements directly associated with the establishment of a NAAQS under section 109 of the CAA.

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 in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

[67] EPA might instead treat one or more of these counties as having a design value based on a monitor in a nearby monitored county, in which case ozone monitoring might become required in certain currently unmonitored MSAs and the number of new required monitors would increase in the illustrative NAAQS example stated above.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Rather, this rule establishes national standards for allowable concentrations of O_3 in ambient air as required by section 109 of the CAA. See also *American Trucking Associations* v. *EPA.* 175 F. 3d at 1044–45 (NAAQS do not have significant impacts upon small entities because NAAQS themselves impose no regulations upon small entities). We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 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 to 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.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The rule imposes no new expenditure or enforceable duty on any State, local or Tribal governments or the private sector, and EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Furthermore, as indicated previously, in setting a NAAQS EPA cannot consider the economic or technological feasibility of attaining ambient air quality standards, although such factors may be considered to a degree in the development of State plans to implement the standards. See also *American Trucking Associations* v. *EPA*, 175 F. 3d at 1043 (noting that because EPA is precluded from considering costs of implementation in establishing NAAQS, preparation of a Regulatory Impact Analysis pursuant to the Unfunded Mandates Reform Act would not furnish any information which the court could consider in reviewing the NAAQS). Accordingly, EPA has determined that the provisions of sections 202, 203, and 205 of the UMRA do not apply to this proposed decision. The EPA acknowledges, however, that any corresponding revisions to associated SIP requirements and air quality surveillance requirements, 40 CFR part 51 and 40 CFR part 58, respectively, might result in such effects. Accordingly, EPA will address, as appropriate, unfunded mandates if and when it proposes any revisions to 40 CFR parts 51 or 58.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule does not alter the relationship between the Federal government and the States regarding the establishment and implementation of air quality improvement programs as codified in the CAA. Under section 109 of the CAA, EPA is mandated to establish NAAQS; however, CAA section 116 preserves the rights of States to establish more stringent requirements if deemed necessary by a State. Furthermore, this rule does not impact CAA section 107 which establishes that the States have primary responsibility for implementation of the NAAQS. Finally, as noted in section E (above) on UMRA, this rule does not impose significant costs on State, local, or Tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

However, as also noted in section E (above) on UMRA, EPA recognizes that States will have a substantial interest in this rule and any corresponding revisions to associated SIP requirements and air quality surveillance requirements, 40 CFR part 51 and 40 CFR part 58, respectively. Therefore, 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 rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule concerns the establishment of O_3 NAAQS. The Tribal Authority Rule gives Tribes the opportunity to develop and implement

CAA programs such as the O_3 NAAQS, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

This proposed rule does not have Tribal implications, as specified in Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since Tribes are not obligated to adopt or implement any NAAQS. Thus, Executive Order 13175 does not apply to this rule.

Although Executive Order 13175 does not apply to this rule, EPA contacted tribal environmental professionals during the development of this rule. The EPA staff participated in the regularly scheduled Tribal Air call sponsored by the National Tribal Air Association during the spring of 2007 as this proposal was under development. EPA specifically solicits additional comment on this proposed rule from Tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health & 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.

This proposed rule is subject to Executive Order 13045 because it is an economically significant regulatory action as defined by Executive Order 12866, and we believe that the environmental health risk addressed by this action may have a disproportionate effect on children. The proposed rule will establish uniform national ambient air quality standards for O_3; these standards are designed to protect public health with an adequate margin of safety, as required by CAA section 109. However, the protection offered by these standards may be especially important for children because children, especially children with asthma, along with other sensitive population subgroups such as all people with lung disease and people active outdoors, are potentially susceptible to health effects resulting from O_3 exposure. Because children are considered a potentially susceptible population, we have carefully evaluated the environmental health effects of exposure to O_3 pollution among children. These effects and the size of the population affected are summarized in section 8.7 of the Criteria Document and section 3.6 of the Staff Paper, and the results of our evaluation of the effects of O_3 pollution on children are discussed in sections II.A–C of this preamble.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This proposed 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 in the Agency's judgment it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The purpose of this rule is to establish revised NAAQS for O_3. The rule does not prescribe specific pollution control strategies by which these ambient standards will be met. Such strategies will be developed by States on a case-by-case basis, and EPA cannot predict whether the control options selected by States will include regulations on energy suppliers, distributors, or users. Thus, EPA concludes that this rule is not likely to have any adverse energy effects and does not constitute a significant energy action as defined in Executive Order 13211.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (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 this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The proposed rule will establish uniform national standards for O_3 air pollution.

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List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: June 20, 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 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

1. The authority citation for part 50 continues to read as follows:

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

2. Section 50.15 is added to read as follows:

§ 50.15 National primary and secondary ambient air quality standards for ozone.

(a) The level of the national 8-hour primary ambient air quality standard for O_3 is (0.070–0.075) parts per million (ppm), daily maximum 8-hour average, measured by a reference method based on Appendix D to this part and designated in accordance with part 53 of this chapter.

(b) The 8-hour primary O_3 ambient air quality standard is met at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour average O_3 concentration is less than or equal to (0.070–0.075) ppm, as determined in accordance with appendix P to this part.

(c) The level of the national secondary ambient air quality standard for O_3 is a cumulative index value of (7–21) ppm-hours, measured by a reference method based on Appendix D to this part and designated in accordance with part 53 of this chapter.

(d) The secondary O_3 ambient air quality standard is a seasonal standard expressed as a sum of weighted hourly concentrations, cumulated over the 12 hour daylight period from 8 a.m. to 8 p.m. local standard time, during the consecutive 3-month period within the O_3 monitoring season with the maximum index value. The secondary O_3 standard is met at an ambient air quality monitoring site when the annual maximum consecutive 3-month cumulative index value (W126) is less than or equal to (7–21) ppm-hours, as

determined in accordance with appendix P to this part.

3. Appendix P is added to read as follows:

Appendix P to Part 50—Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone

1. General

(a) This appendix explains the data handling conventions and computations necessary for determining whether the national 8-hour primary and secondary ambient air quality standards for O_3 specified in § 50.14 are met at an ambient O_3 air quality monitoring site. Ozone is measured in the ambient air by a Federal reference method (FRM) based on appendix D of this part, as applicable, and designated in accordance with part 53 of this chapter, or by a Federal equivalent method (FEM) designated in accordance with part 53 of this chapter, or by an Approved Regional Method (ARM) designated in accordance with part 58 of this chapter. Data reporting, data handling, and computation procedures to be used in making comparisons between reported O_3 concentrations and the level of the O_3 standard are specified in the following sections. Whether to exclude, retain, or make adjustments to the data affected by exceptional events, including stratospheric O_3 intrusion and other natural events, is subject to the requirements under § 50.1, § 50.14 and § 51.930.

(b) The terms used in this appendix are defined as follows:

8-hour average is the rolling average of hourly O_3 concentrations as explained in section 2 of this appendix.

Annual fourth highest daily maximum refers to the fourth highest value measured at a monitoring location during the O_3 season for a particular year.

Daily maximum 8-hour average concentration refers to the maximum calculated 8 hour average for a particular day as explained in section 2 of this appendix.

Design values are the metrics (*i.e.*, statistics) that are compared to the NAAQS levels to determine compliance, calculated as shown in sections 3 and 4 of this appendix.

Ozone monitoring season refers to the span of time within a calendar year when individual States are required to measure ambient O_3 concentrations as listed in part 58 appendix D to this chapter.

W126 is the weighted hourly O_3 concentrations based on seasonal measurements as explained in section 4 of this appendix.

Year refers to calendar year.

2. Primary Ambient Air Quality Standard for Ozone

2.1 Data Reporting and Handling Conventions

Computing 8-hour averages. Hourly average concentrations shall be reported in parts per million (ppm) to the third decimal place, with additional digits to the right being truncated. Running 8-hour averages shall be computed from the hourly O_3 concentration data for each hour of the year and the result shall be stored in the first, or start, hour of the 8-hour period. An 8-hour average shall be considered valid if at least 75% of the hourly averages for the 8-hour period are available. In the event that only 6 (or 7) hourly averages are available, the 8-hour average shall be computed on the basis of the hours available using 6 (or 7) as the divisor (8-hour periods with three or more missing hours shall not be ignored if, after substituting one-half the minimum detectable limit for the missing hourly concentrations, the 8-hour average concentration is greater than the level of the standard). The computed 8-hour average O_3 concentrations shall be reported to three decimal places (the insignificant digits to the right of the third decimal place are truncated, consistent with the data handling procedures for the reported data).

Daily maximum 8-hour average concentrations. (a) There are 24 possible running 8-hour average O_3 concentrations for each calendar day during the O_3 monitoring season. The daily maximum 8-hour concentration for a given calendar day is the highest of the 24 possible 8-hour average concentrations computed for that day. This process is repeated, yielding a daily maximum 8-hour average O_3 concentration for each calendar day with ambient O_3 monitoring data. Because the 8-hour averages are recorded in the start hour, the daily maximum 8-hour concentrations from two consecutive days may have some hourly concentrations in common. Generally, overlapping daily maximum 8-hour averages are not likely, except in those non-urban monitoring locations with less pronounced diurnal variation in hourly concentrations.

(b) An O_3 monitoring day shall be counted as a valid day if valid 8-hour averages are available for at least 75% of possible hours in the day (*i.e.*, at least 18 of the 24 averages). In the event that less than 75% of the 8-hour averages are available, a day shall also be counted as a valid day if the daily maximum 8-hour average concentration for that day is greater than the level of the ambient standard.

2.2 Primary Standard-Related Summary Statistic

The standard-related summary statistic is the annual fourth-highest daily maximum 8-hour O_3 concentration, expressed in parts per million, averaged over three years. The 3-year average shall be computed using the three most recent, consecutive calendar years of monitoring data meeting the data completeness requirements described in this appendix. The computed 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations shall be reported to three decimal places (the insignificant digits to the right of the third decimal place are truncated, consistent with the data handling procedures for the reported data).

2.3 Comparisons With the Primary Ozone Standard

(a) The primary O_3 ambient air quality standard is met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentration is less than or equal to [0.070 to 0.075] ppm.

(b) This comparison shall be based on three consecutive, complete calendar years of air quality monitoring data. This requirement is met for the three year period at a monitoring site if daily maximum 8-hour average concentrations are available for at least 90%, on average, of the days during the designated O_3 monitoring season, with a minimum data completeness in any one year of at least 75% of the designated sampling days. When computing whether the minimum data completeness requirements have been met, meteorological or ambient data may be sufficient to demonstrate that meteorological conditions on missing days were not conducive to concentrations above the level of the standard. Missing days assumed less than the level of the standard are counted for the purpose of meeting the data completeness requirement, subject to the approval of the appropriate Regional Administrator.

(c) Years with concentrations greater than the level of the standard shall not be ignored on the ground that they have less than complete data. Thus, in computing the 3-year average fourth maximum concentration, calendar years with less than 75% data completeness shall be included in the computation if the average annual fourth maximum 8-hour concentration is greater than the level of the standard.

(d) Comparisons with the primary O_3 standard is demonstrated by examples 1 and 2 in paragraphs (d)(1) and (d)(2) respectively as follows:

EXAMPLE 1.—AMBIENT MONITORING SITE ATTAINING THE PRIMARY O_3 STANDARD

Year	Percent valid days (percent)	1st Highest daily max 8-hour Conc. (ppm)	2nd Highest daily max 8-hour Conc. (ppm)	3rd Highest daily max 8-hour Conc. (ppm)	4th Highest daily max 8-hour Conc. (ppm)	5th Highest daily max 8-hour Conc. (ppm)
2004	100	0.092	0.090	0.085	0.079	0.078
2005	96	0.084	0.083	0.075	0.072	0.070
2006	98	0.080	0.079	0.073	0.061	0.060

EXAMPLE 1.—AMBIENT MONITORING SITE ATTAINING THE PRIMARY O_3 STANDARD

Year	Percent valid days (percent)	1st Highest daily max 8-hour Conc. (ppm)	2nd Highest daily max 8-hour Conc. (ppm)	3rd Highest daily max 8-hour Conc. (ppm)	4th Highest daily max 8-hour Conc. (ppm)	5th Highest daily max 8-hour Conc. (ppm)
Average	98				0.070	

(1) As shown in example 1, the primary standard is met at this monitoring site because the 3-year average of the annual fourth-highest daily maximum 8-hour average O_3 concentrations (*i.e.*, 0.0707 ppm, truncated to 0.070 ppm) is less than or equal to [0.070 to 0.75] ppm. The data completeness requirement is also met because the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness. In Example 1, the individual 8-hour averages used to determine the annual fourth maximum are truncated to the third decimal place.

EXAMPLE 2.—AMBIENT MONITORING SITE FAILING TO MEET THE PRIMARY O_3 STANDARD

Year	Percent valid days (percent)	1st Highest daily max 8-hour Conc. (ppm)	2nd Highest daily max 8-hour Conc. (ppm)	3rd Highest daily max 8-hour Conc. (ppm)	4th Highest daily max 8-hour Conc. (ppm)	5th Highest daily max 8-hour Conc. (ppm)
2004	96	0.105	0.103	0.103	0.102	0.102
2005	74	0.104	0.103	0.092	0.091	0.088
2006	98	0.103	0.101	0.101	0.095	0.094
Average	89				0.096	

As shown in example 2, the primary standard is not met at this monitoring site because the 3-year average of the fourth-highest daily maximum 8-hour average O_3 concentrations (*i.e.*, 0.0960 ppm, truncated to 0.096 ppm) is greater than [0.070 to 0.075] ppm. Note that the O_3 concentration data for 2005 is used in these computations, even though the data capture is less than 75%, because the average fourth-highest daily maximum 8-hour average concentration is greater than [0.070 to 0.075] ppm. In Example 2, the individual 8-hour averages used to determine the annual fourth maximum are truncated to the third decimal place.

3. Design Values for Primary Ambient Air Quality Standards for Ozone

The air quality design value at a monitoring site is defined as that concentration that when reduced to the level of the standard ensures that the site meets the standard. For a concentration-based standard, the air quality design value is simply the standard-related test statistic. Thus, for the primary standard, the 3-year average annual fourth-highest daily maximum 8-hour average O_3 concentration is also the air quality design value for the site.

4. Secondary Ambient Air Quality Standard for Ozone

4.1 Data Reporting and Handling Conventions

Computing the daily index value (D.I.). The secondary O_3 standard is a seasonal standard expressed as the sum of weighted hourly concentrations, cumulated over the 12 hour daylight period, 8 a.m. to 8 p.m. local standard time (LST), during the maximum consecutive 3-month period within the O_3 monitoring season. Hourly average concentrations for each hour from 8 a.m. to 8 p.m. LST shall be reported in parts per million (ppm) to the third decimal place, with additional digits to the right being truncated. The first step in computing the daily index value, D.I., for the daylight hours is to apply a sigmoidal weighting function in the form of Equation 1 in this appendix:

Equation 1

$$O_3 * \left(\frac{1}{1 + \left(4403 * e^{-126 * O_3} \right)} \right)$$

to each measurement of hourly average concentration, where O_3 is the average hourly O_3 concentration expressed in ppm. The computed value of the sigmoidally weighted hourly concentration shall be expressed to three decimal places (the remaining digits to the right are truncated). An illustration of computing a daily index value is below:

EXAMPLE 3.—DAILY INDEX VALUE CALCULATION FOR AN AMBIENT O_3 MONITORING SITE

Start hour	Concentration (ppm)	Weighted concentration (ppm)
8:00 AM	0.045	0.002
9:00 AM	0.060	0.018
10:00 AM	0.075	0.055
11:00 AM	0.080	0.067
12:00 PM	0.079	0.065
1:00 PM	0.082	0.071
2:00 PM	0.085	0.077
3:00 PM	0.088	0.082
4:00 PM	0.083	0.073
5:00 PM	0.081	0.069
6:00 PM	0.065	0.029
7:00 PM	0.056	0.011

Daily index value (D.I.) = 0.002 + 0.018 + 0.055 + 0.067 + 0.065 + 0.071 + 0.077 + 0.082 + 0.073 + 0.069 + 0.029 + 0.011 = 0.619 ppm-hours

Computing the monthly cumulative index (W126). The daily index value is computed at each monitoring site for each calendar day in each month during the O_3 monitoring. At an individual monitoring site, a month is counted as a valid O_3 monitoring month if hourly average O_3 concentrations are available for at least 75% of the possible index hours in the month. For months with less than 75% data completeness, the monthly cumulative index value shall be adjusted for incomplete sampling by multiplying the unadjusted W126 cumulative index value by the ratio of the number of possible daylight hours to the number of hours with valid ambient hourly concentrations using Equation 2 in this appendix:

Equation 2

$$M.I. = \sum_{j=1}^{n} (D.I.) * (n * 12) / v$$

Where,

M.I. = the monthly sum of the weighted daylight hours,

D.I. = the daily sum of the weighted daylight hours,

n = the number of days in the calendar month,

v = the number of daylight hours (8:00 a.m.—8:00 p.m. LST) with valid hourly O_3 concentrations.

4.2 Secondary Standard-related Summary Statistic

The standard-related summary statistic is the annual maximum consecutive 3-month W126 value expressed in ppm-hours. Specifically, the annual W126 value is computed on a calendar year basis using the three highest, consecutive monthly W126 values.

4.3 Comparisons with the Secondary Ozone Standard

The secondary ambient O_3 air quality standard is met when the annual maximum W126 value based on a consecutive 3-month period at an O_3 air quality monitoring site is less than or equal to [7 to 21] ppm-hours. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed W126 value with the level of the standard. The first decimal place of the computed W126 value is rounded, with values equal to or greater than of 0.5 rounding up.

EXAMPLE 4.—CALCULATION OF THE MAXIMUM 3-MONTH W126 VALUE AT AN AMBIENT AIR QUALITY MONITORING SITE FAILING TO MEET THE SECONDARY O_3 STANDARD

	April	May	June	July	August	September	October
Monthly W126	4.442	9.124	12.983	16.153	13.555	4.364	1.302
3-Month Total	na	na	26.549	38.260	42.691	34.072	19.221

As shown in example 4, the maximum consecutive 3-month W126 value for this site is 43 ppm-hours. Because 43 ppm-hours is greater than [7 to 21] ppm-hours, the secondary standard is not met at this ambient air quality monitoring site.

[FR Doc. E7–12416 Filed 7–10–07; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday,
July 11, 2007

Part III

Department of the Treasury

Office of the Comptroller of the Currency

Office of Thrift Supervision

Federal Reserve System

Federal Deposit Insurance Corporation

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2007–0012]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1290]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–AC97

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID OTS–2007–0030]

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS).

ACTION: Notice and request for comment.

SUMMARY: The staffs of the OCC, the Board, the FDIC, and OTS (collectively, the ''agencies'') have combined three previously adopted publications of informal staff guidance answering questions regarding community reinvestment (Interagency Questions and Answers). The Interagency Questions and Answers address frequently asked questions about community reinvestment to assist agency personnel, financial institutions, and the public. The agencies are proposing nine new questions and answers, as well as substantive and technical revisions to the existing Interagency Questions and Answers. Among the proposed new questions and answers is one that addresses activities engaged in by a majority-owned financial institution with a minority-or women-owned financial institution or a low-income credit union. In addition, three revisions are intended to encourage institutions to work with homeowners who are unable to make mortgage payments by highlighting that they can receive CRA consideration for foreclosure prevention programs for low- and moderate-income homeowners, consistent with the interagency Statement on Working with Mortgage Borrowers issued April 17, 2007. Public comment is invited on the proposed new and revised questions and answers, as well as any other community reinvestment issues.

DATES: Comments on the proposed questions and answers are requested by September 10, 2007.

ADDRESSES: Comments should be directed to:

OCC: You may submit comments by any of the following methods:

- *E-mail: regs.comments@occ.treas.gov.*
- *Fax:* (202) 874–4448.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2007–0012'' in your comment. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. OP–1290, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN number 3064–AC97 by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include the RIN number in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN number. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

OTS: You may submit comments, identified by ID OTS–2007–0030, by any of the following methods:

- *E-mail: regs.comments@ots.treas.gov.* Please include ID OTS–2007–0030 in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: ID OTS–2007–0030.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: ID OTS–2007–0030.

Instructions: All submissions received must include the agency name and

docket number for this notice. All comments received will be entered into the docket without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

• *Viewing Comments On-Site:* You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750; or Karen Tucker, National Bank Examiner, Compliance Policy Division, (202) 874–4428, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Anjanette M. Kichline, Senior Supervisory Consumer Financial Services Analyst, (202) 785–6054; or Brent Lattin, Attorney, (202) 452–3667, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Mira Marshall, Acting Chief, CRA & Fair Lending Section, (202) 898–3912; Faye Murphy, Fair Lending Specialist, Division of Supervision and Consumer Protection, (202) 898–6613; or Susan van den Toorn, Counsel, Legal Division, (202) 898–8707, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Celeste Anderson, Senior Project Manager, Compliance and Consumer Protection, (202) 906–7990; or Richard Bennett, Counsel, Regulations and Legislation Division, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

The OCC, the Board, the FDIC, and OTS implement the Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) through their CRA regulations. *See* 12 CFR parts 25, 228, 345, and 563e. The OCC, Board, and FDIC revised their CRA regulations in a joint final rule published on August 2, 2005 (70 FR 44256) (2005 joint final rule). OTS did not join the agencies in adopting the August 2005 joint final rule; OTS published separate final rules on August 18, 2004 (69 FR 51155), March 2, 2005 (70 FR 10023), April 12, 2006 (71 FR 18614), and March 22, 2007 (72 FR 13429). Upon the effective date of OTS's March 2007 final rule, July 1, 2007, OTS's CRA regulation will be substantially the same as the CRA regulations of the OCC, Board, and FDIC.

The agencies' regulations are interpreted primarily through ''Interagency Questions and Answers Regarding Community Reinvestment,'' which provide guidance for use by agency personnel, financial institutions, and the public, and which are supplemented periodically. Interagency Questions and Answers were first published under the auspices of the Federal Financial Institution Examination Council in 1996 (61 FR 54647), and were revised on July 12, 2001 (2001 Questions and Answers) (66 FR 36620).

Subsequent to the adoption of the 2005 joint final rule, the OCC, Board, and FDIC, after notice and public comment, published new guidance in the form of questions and answers on March 10, 2006 (71 FR 12424) (2006 Questions and Answers). Because of the desire to provide guidance about the 2005 joint final rule in a timely manner, the 2006 Questions and Answers addressed primarily matters related to the 2005 joint final rule, without updating the 2001 Questions and Answers. On September 5, 2006, after notice and public comment, OTS published new guidance in the form of questions and answers pertaining to the revised definition of ''community development'' and certain other provisions of the CRA rule common to all four agencies (OTS's September 2006 Questions and Answers). 71 FR 52375. The 2001 Questions and Answers remained effective along with the new 2006 Questions and Answers and OTS's September 2006 Questions and Answers.

These Proposed Interagency Questions and Answers and Request for Comment

The document published today combines the previously adopted 2001 Questions and Answers with the 2006 Questions and Answers and OTS's September 2006 Questions and Answers. In addition, the agencies are proposing for comment nine new questions and answers that will be added to the Interagency Questions and Answers. These nine new questions and answers are described below. OTS is also proposing four new and one revised questions and answers that are virtually identical to new and revised questions and answers the OCC, Board, and FDIC adopted in the 2006 Questions and Answers. The proposed questions and answers that are new for OTS are Q&As § ____.12(u)(2)—1, § ____.26(c)—1, § ____.26(c)(3)—1, and § ____.26(c)(4)—1; the proposed revised question and answer for OTS is Q&A § ____.26—1. These Q&As primarily relate to intermediate small savings associations.

The agencies are also proposing to revise many of the previously adopted questions and answers. Most of the revisions are not substantive, rather they clarify or update the existing questions and answers, move existing questions and answers within the guidance (Q&As § ____.21(a)—1 and § ____.28(b)—1), or merely conform the numbering of the question to the correct regulatory provision. The agencies also propose to delete an appendix that listed contact information for Bureau of Census offices because institutions may now obtain information from the FFIEC's Web site. The agencies are explicitly requesting comment on specific questions and answers in which the revisions may be deemed to be of significance. These proposed revised questions and answers are also discussed below.

The proposed new and revised questions and answers have been added to the combined Interagency Questions and Answers, which is being published in its entirety to enable commenters to review the proposed revisions in the context of the rest of the guidance. The text of the combined Interagency Questions and Answers is found at the end of this publication. Language that is proposed to be deleted as compared to the 2001 and 2006 Questions and Answers adopted by the OCC, Board, and FDIC is bracketed; language that is proposed to be added to these agencies' guidance is enclosed within arrows. Where these agencies' current questions and answers differ substantially from those of OTS, the differences are footnoted. After the agencies have considered any comments received in response to this proposal, the agencies will publish the final guidance in the **Federal Register**.

The Interagency Questions and Answers are grouped by the provision of the CRA regulations that they discuss, are presented in the same order as the regulatory provisions, and employ an abbreviated method of citing to the regulations. For example, the small bank

performance standards for national banks appear at 12 CFR 25.26; for Federal Reserve System member banks supervised by the Board, they appear at 12 CFR 228.26; for state nonmember banks, they appear at 12 CFR 345.26; and for thrifts, the small savings association performance standards appear at 12 CFR 563e.26. Accordingly, the citation would be to 12 CFR ____.26. Each question is numbered using a system that consists of the regulatory citation (as described above) and a number, connected by a dash. For example, the first question addressing 12 CFR ____.26 would be identified as § ____.26—1.

Although a particular question and answer may be found under one regulatory provision, e.g., 12 CFR ____.22 relating to the lending test, its content may also be applicable to, for example, small institutions, which are evaluated pursuant to small institution performance standards found at 12 CFR ____.26. Thus, readers with a particular interest in small institution issues, for example, should also consult the guidance that describes the lending, investment, and service tests. To assist readers in finding relevant guidance, the Interagency Questions and Answers will be indexed by topic when they are adopted as final guidance.

Proposed New Questions and Answers

The agencies specifically request comment on the nine proposed new questions and answers described below.

I. *Investments in minority- or women-owned financial institutions and low-income credit unions.*

The CRA statute provides that, when evaluating the CRA performance of a non-minority-owned and non-women-owned (majority-owned) financial institution, the agencies may consider as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions provided that these activities help meet the credit needs of local communities in which such institutions are chartered. 12 U.S.C. 2903(b). The agencies' CRA regulations do not specifically address activities that a majority-owned financial institution may engage in with a minority- or women-owned financial institution or a low-income credit union.

The Interagency Questions and Answers currently describe investments in minority- and women-owned financial institutions and low-income credit unions as an example of a qualified investment in Q&A § ____.12(t)—4.

The agencies have been asked whether a majority institution's activity in conjunction with a minority- or women-owned financial institution or low-income credit union must benefit the majority-owned institution's assessment area(s) or the broader statewide or regional area that includes the majority-owned institution's assessment area(s). The CRA statute specifies that the activities must help meet the credit needs of local communities in which the minority- or women-owned institutions or low-income credit unions are chartered.

The agencies generally evaluate institutions' activities in the institution's assessment area(s) or a broader statewide or regional area that includes the assessment area(s). For example, a community development loan is defined, in part, as one benefiting the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s). 12 CFR ____.12(h)(2)(ii). Similarly, the investment test evaluates an institution's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes its assessment area(s). 12 CFR ____.23(a). In addition, the service test evaluates an institution's record of helping to meet the credit needs of its assessment area(s) through its provision of retail banking and community development services. 12 CFR ____.24(a). Finally, the community development test applicable to wholesale and limited purpose institutions states that community development activities that benefit the institution's assessment area(s) or the broader statewide or regional area that includes its assessment area(s) are considered in a CRA evaluation, and community development activities that benefit areas outside the institution's assessment area(s) will be considered if the institution has adequately addressed the needs of its assessment area(s). 12 CFR ____.25(e).

The agencies propose a new question and answer, §____.12(g)—4, that would give full effect to section 2903(b)'s broader geographic language. The proposed question and answer would state that activities engaged in by a majority-owned financial institution with a minority- or women-owned financial institution or a low-income credit union that benefit the local communities where the minority- or women-owned financial institution or low-income credit union is located will be favorably considered in the CRA performance evaluation of the majority-owned institution. The minority- or women-owned institution or low-income credit union need not be located in, and the activities need not benefit, the assessment area(s) of the majority-owned institution or the broader statewide or regional area that includes its assessment area(s).

II. *Intermediate small institutions' affordable home mortgage loans and small business and small farm loans.*

Q&A §____.12(h)—2 states that mortgage loans made by a retail institution that is not required to report such loans under the Home Mortgage Disclosure Act (HMDA) will be evaluated as home mortgage loans, and that small business and small farm loans made by an institution that is not required to report small business and small farm loan data under the CRA regulations will, nonetheless, be evaluated as small business and small farm loans. Institutions do not have the option of having such loans considered as community development loans.

The agencies are proposing a new question and answer, §____.12(h)—3, which would clarify this guidance only as it affects intermediate small institutions. Intermediate small institutions are not required to collect and report small business and small farm loan data pursuant to the CRA regulations. Further, some intermediate small institutions may not be required to report home mortgage loans under the HMDA. Unlike large or small retail institutions, intermediate small institutions' lending is evaluated using two performance tests, which are rated separately—the retail lending test and the community development test. If the current guidance (Q&A §____.12(h)—2) were applied to an intermediate small institution, its overall CRA performance under the two tests may be adversely affected because home mortgage loans and small loans to businesses and farms that have a community development purpose could never be considered under the community development test. The proposed question and answer would permit institutions evaluated under the intermediate small institution performance standards to choose to have such loans evaluated as community development loans, provided the loans otherwise meet the regulatory definition of ''community development,'' *or* as retail home mortgages, small business loans, or small farm loans, as applicable. An institution that elects to have certain home mortgage, small business, or small farm loans considered as community

development loans should notify its examiners of that decision prior to the start of its CRA examination.

Please note that the agencies are also proposing to revise Q&A §____.12(h)—2 to except intermediate small institutions from applicability of that guidance.

III. *Examples of ''other loan data.''*

The agencies' CRA regulations, at 12 CFR ____.22(a)(2), state that originations and purchases of loans, as well as *any other loan data* the institution may choose to provide, including data on loans outstanding, commitments, and letters of credit will be considered in an institution's evaluation. Q&A §____.22(a)(2)—3 provides that information about home mortgage loan modification, extension, and consolidation agreements (MECAs) may be provided by an institution to examiners as ''other loan data.'' Other questions and answers found throughout the guidance describe various lending-related activities as ''other loan data.'' *See, e.g.*, Q&As §____.12(l)—2 and §____.42(c)(2)—3.

The agencies are proposing a new question and answer, which will follow the question and answer discussing MECAs, listing in one place the other various activities mentioned throughout the interagency guidance that may be provided to examiners for consideration as ''other loan data.'' In addition, the proposed question and answer, Q&A §____.22(a)(2)—4, includes a discussion about when information on loans for properties with a certain amount or percentage of units set aside for affordable housing may be provided to examiners as ''other loan data.'' If these loans are in an amount greater than $1 million, they would not be collected or reported as small business loans. If the loans do not have a primary purpose of community development, they would not be collected or reported as community development loans. Therefore, to ensure that institutions may have these loans considered during their CRA evaluations, the question and answer provides that institutions may, at their option, provide information about them to examiners as ''other loan data.''

IV. *Purchased loan participations.*

The agencies' staffs have received a number of questions about whether institutions that purchase loan participations should collect and report them, as applicable, as purchases of loans, and whether they will receive lending consideration for such purchases. The proposed question and answer, Q&A §____.22(a)(2)—6, provides that loan participations are treated as the purchase of a loan, even though the institution has purchased only a part of a loan. Institutions receive the same consideration for their loan participations as they would receive for a purchased whole loan of the same type and amount. Although this proposed question and answer interprets the large institution lending test, 12 CFR ____.22(a)(2), the same guidance would also apply to the other examination types—small institution test, community development test applicable to wholesale and limited purpose institutions, and the strategic plan. (For guidance about reporting loan participations, see proposed new Q&A §____.42(b)(2)—4 and Q&A §____.42(a)(2)—1, as proposed to be revised.)

V. *Small business loans secured by a one-to-four family residence.*

In 2005, the agencies published technical revisions to their CRA regulations that reflected changes in the standards for defining metropolitan statistical areas made by the U.S. Office of Management and Budget (OMB) in December 2000; census tracts designated by the U.S. Census Bureau (Census); and changes to the Board's Regulation C (12 CFR part 203), which implements the HMDA. 70 FR 15570 (Mar. 28, 2005). In the supplementary information published with the agencies' technical revisions, the agencies discussed the effect that the Board's revisions to Regulation C regarding the treatment of refinancings of home mortgage loans would have on CRA evaluations. 70 FR at 15573. As explained in the supplementary information, revised Regulation C defined the term, ''refinancing,'' so that a loan is reportable as a refinancing if it satisfies and replaces an existing obligation, and both the new and the existing obligation are secured by a lien on a dwelling. 12 CFR 203.2(k). The agencies revised the definition of ''home mortgage loan'' in their CRA regulations to include refinancings, as well as home purchase loans and home improvement loans, as defined in the Board's regulations at 12 CFR 203.2. *See* 12 CFR ____.12(l).

For banks subject to the Call Report instructions: Because of the change in the Regulation C definition, loans to refinance small business or small farm loans are reportable as home mortgage loans for HMDA purposes (and would ordinarily be considered as home mortgage loans for CRA purposes) if they are secured by a dwelling and the replaced loan also was secured by a dwelling. If a dwelling continues to serve as collateral solely through an abundance of caution and where the terms of the loan, as a consequence, have not been made more favorable than they would have been in the absence of the lien, then the refinancing is also reportable for Call Report and CRA purposes as a loan to a small business or a loan to a small farm. If a refinancing of a small business or small farm loan is reported both as a home mortgage loan under HMDA and as a loan to a small business or a loan to a small farm on the Call Report and on the CRA disclosure, there is the potential for ''double counting'' of these loans in CRA examinations. *See* 70 FR at 15573.

For savings associations subject to the Thrift Financial Reporting instructions: Because of the change in the Regulation C definition, a savings association's loans to refinance small business or small farm loans are reportable as home mortgage loans if they are secured by a dwelling and the replaced loan also was secured by a dwelling. This is true even if the loans are reported as non-mortgage commercial loans on the Thrift Financial Report (TFR). This results in the potential for ''double counting'' of the loans in CRA examinations. *See* 70 FR at 15573.

To clarify some of these issues, the agencies are proposing a new question and answer, Q&A §____.22(a)(2)—7, to provide guidance about small business and small farm loans where a dwelling serves as collateral.

VI. *Investments in a national or regional fund.*

The agencies are proposing additional guidance, Q&A §____.23(a)—2, to clarify that an institution that makes a loan or investment in a national or regional community development fund should be able to demonstrate that the investment meets the geographic requirements of the CRA regulation. If a fund does not become involved in a community development activity that meets both the purpose and geographic requirements of the regulation for the institution, the institution's investment generally would not be considered under the investment or community development tests. The agencies are also proposing to highlight in the Q&A an example of a fund providing foreclosure relief to low- and moderate-income homeowners.

VII. *Examination as an intermediate small institution.*

The agencies allow a one-year ''lag period'' between when an institution is no longer a small institution (i.e., it had assets meeting or exceeding the small institution asset threshold amount delineated in 12 CFR ____.12(u)(1) as of December 31 of both of the prior two calendar years) and when it reports CRA data to be used in its evaluation under the lending, investment, and service tests. *See* 12 CFR ____.42(b). The lag

period allows the institution to collect loan data for one year before being evaluated under the lending, investment, and service tests.

The agencies' staffs have been asked whether an institution that was a small institution, but not an intermediate small institution, will also be allowed a one-year lag period before it is evaluated as an intermediate small institution once it becomes an intermediate small institution. The proposed question and answer, Q&A §____.26(a)(2)—1, clarifies that there is no lag period between becoming an intermediate small institution and being examined as an intermediate small institution because there is no data collection and reporting requirement for intermediate small institutions.

VIII. *Reporting of a participation in a community development loan.*

Under the CRA regulations, an institution is required to report the aggregate number and aggregate amount of community development loans originated or purchased. 12 CFR ____.42(b)(2). The agencies' staffs have been asked what loan purchase amount institutions that purchase participations in community development loans should report—the principal balance of the loan at origination or the amount of the participation purchased.

The agencies are proposing a new question and answer, Q&A §____.42(b)(2)—4, to clarify that institutions that purchase community development loan participations should report only the amount of their purchase. The proposed data collection and reporting of purchases of community development loan participations is different from the collection and reporting of purchases of small business and small farm loan participations. An institution reports the amount at the origination of the loan when it purchases a participation in a small business or small farm loan. *See* Q&A §____.42(a)(2)—1. As explained in that question and answer, reporting the amount of the loan at origination is consistent with the Call Report's or Thrift Financial Report's use of the ''original amount of the loan'' to determine whether a loan should be reported as a ''loan to a small business'' or a ''loan to a small farm'' and in which loan size category a loan should be reported. However, when assessing the volume of small business and small farm loan purchases for purposes of evaluating lending test performance under the CRA, examiners evaluate an institution's small business and small farm lending based on the amount of the participation that is purchased. *See id.*

The CRA regulations require that, when reporting small business and small farm loans originated or purchased, institutions report, among other things, the amount of the loans at origination. 12 CFR ____.42(a)(2). However, when reporting community development loan data, an institution reports only the aggregate number and aggregate amount of community development loans originated or purchased. 12 CFR ____.42(b)(2). Because the regulation does not specify whether the amount of purchased community development loans must be the amount of the loan at origination or the amount of the loan at purchase, the agencies propose that institutions should report the amount of the loan participations purchased. Reporting only the amount of the loan participation that was purchased will provide a more accurate picture of institutions' community development loan activities. The agencies specifically request comment on whether having a different collection and reporting treatment for community development loans is appropriate.

IX. *Refinanced or renewed community development loans.*

The agencies are proposing a question and answer, Q&A §____.42(b)(2)—5, to clarify that, generally, the same limitations that apply to the reporting of refinancings and renewals of small business and small farm loans apply to refinancings and renewals of community development loans. *See* Q&A §____.42(a)—5. Generally, an institution may report only one community development loan origination (including a renewal or refinancing of that loan that is treated as an origination) per loan per year. If the loan amount is increased upon renewal or refinancing, the institution may report only the increase if the origination of the loan was also reported during the same year.

Revised Questions and Answers

The agencies are proposing revisions to a number of previously adopted questions and answers. Many of the proposed revisions update the guidance to reflect the 2005 technical revisions that conformed the agencies' regulations to OMB, Census, and Board regulatory revisions, and to the changes made in the 2005 joint final rule and OTS's March 2007 final rule. In many instances, the proposed revisions merely clarify existing guidance by conforming the guidance to the revised regulations, improving readability, or adopting current terminology.

Although most of the proposed revisions are deemed to be insignificant clarifications, the agencies specifically request comment on the following revised questions and answers:

I. *Activities that promote economic development.*

Q&A §____.12(g)(3)—1 describes the types of activities that promote economic development by financing small businesses and small farms. The agencies are proposing to revise Q&A §____.12(g)(3)—1 to clarify the language in the current answer and to add loans to or investments in Rural Business Investment Companies (RBICs) and New Markets Tax Credit-eligible Community Development Entities (CDEs) as types of loans or investments that the agencies will presume to promote economic development.

After notice and comment, the agencies added an investment in a RBIC as an example of a qualified investment in Q&A §____.12(t)—4. 71 FR at 12433; 71 FR at 52379 (OTS). The purpose of the Rural Business Investment Program, which is a joint initiative between the U.S. Small Business Administration and the U.S. Department of Agriculture, is intended to promote economic development by financing small businesses located primarily in rural areas. Thus, the agencies propose to revise Q&A §____.12(g)(3)—1 to provide that there is a presumption that an investment in a RBIC will promote economic development.

Likewise, the agencies are proposing that loans to or investments in CDEs will be presumed to promote economic development. Loans to or investments in CDEs pursuant to the New Markets Tax Credit program generally have a primary purpose of community development, as that term is defined in the CRA regulations. To the extent that a CDE lends to or invests in small businesses or farms, a loan to or investment in the CDE promotes economic development by financing small businesses or farms. Also, because the primary mission of the CDE is to service ''low-income communities,'' loans and investments made by the CDE generally would help to revitalize or stabilize low- or moderate-income geographies. Thus, the agencies propose to revise Q&A §____.12(g)(3)—1 to provide that there is also a presumption that an investment in a CDE will promote economic development.

II. *Examples of community development loans.*

Q&A §____.12(h)—1 provides examples of community development loans. For the same reasons as addressed above in connection with the proposed revision to Q&A §____.12(g)(3)—1, the agencies propose to revise the fourth bullet in the answer

to Q&A §____.12(h)—1 to add a loan to a New Markets Tax Credit-eligible CDE as an example of a community development loan.

The agencies also propose to add a new bullet to the same question and answer stating that another example of a community development loan is a loan in an amount greater than $1 million to a business, when the loan is made as part of the Small Business Administration's (SBA's) 504 Certified Development Company program. (Such loans in amounts of $1 million or less would be small business loans for CRA purposes.) The SBA's 504 loan program is a long-term financing tool for economic development within a community. (See 13 CFR 120.800 *et seq.* for additional information about SBA's 504 program.) The 504 program provides growing businesses with long-term, fixed-rate financing for major fixed assets, such as land and buildings. A Certified Development Company is a nonprofit corporation that works with the SBA and private-sector lenders to provide financing to local small businesses. Loans to businesses under the 504 program must meet job creation criteria or a community development goal, or have a public policy goal. Generally, to meet the job creation criteria, a business must create or retain one job for every $50,000 provided by the SBA, except for ''Small Manufacturers,'' which have a $100,000 job creation or retention goal. Examples of the 504 program's public policy goals include business district revitalization, rural development, and expansion of minority business development. Based on the economic development and community revitalization purposes and goals of the 504 program, the agencies believe that loans to businesses made in connection with the program would have a primary purpose of community development, as defined in the CRA regulations.

III. *Examples of community development services.*

Q&A §____.12(i)—3 provides examples of community development services. The agencies propose to add a new example of a community development service to this question and answer. The agencies believe that increasing access to financial services by opening or maintaining branches or other facilities that help to revitalize or stabilize a low- or moderate-income area, designated disaster area, or a distressed or underserved nonmetropolitan middle-income area would have a primary purpose of community development under the fourth prong of the definition of ''community development.'' Thus, the agencies propose to add a new bullet in the answer to state that opening or maintaining branches and other facilities that help to revitalize or stabilize low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies is an example of a community development service and would be considered as a community development service unless the opening or maintaining of the branches or other facilities has been considered in the evaluation of the institution's retail banking services under 12 CFR ____.24(d). See Q&As §____.12(g)(4)(ii)—2, §____.12(g)(4)(iii)—3, and §____.12(g)(4)(iii)—4 for additional guidance about activities that revitalize or stabilize designated disaster areas and distressed or underserved nonmetropolitan middle-income geographies, respectively. (With regard to an institution that is evaluated under the service test, branch openings are already considered as part of the availability and effectiveness of the institution's systems for delivering retail banking services. *See* 12 CFR ____.24(d)(2). Similarly, whether an institution maintains branches is also considered under the service test when examiners evaluate the distribution of the institution's branches based on geography income and the institution's record of opening and closing branches. *See* 12 CFR____.24(d)(1) & (2).

The agencies also propose to revise the example of community development services describing various types of consumer counseling services to highlight credit counseling that can assist borrowers in avoiding foreclosure on their homes.

Finally, the agencies propose to add to the examples of financial services with the primary purpose of community development that increase access to financial services for low- or moderate-income individuals individual development accounts (IDAs) and free payroll check cashing. (A cross-reference to this revised Q&A would be added to Q&A §____.24(d)—2, which provides guidance about how examiners evaluate an institution's activities in connection with IDAs.)

IV. *Federal Home Loan Bank unpaid dividends.*

Since the 1995 revision of the CRA regulations, the agencies have agreed that Federal Home Loan Bank (FHLB) stock does not have a sufficient connection to community development to be considered a qualified investment. *See* Joint Final Rule, 60 FR 22156, 22161 (May 4, 1995). The agencies' staffs have received questions from financial institutions about whether funds retained by the FHLBs to support the Affordable Housing Program (AHP), in lieu of being paid out in dividends to investing institutions, would receive consideration as qualified investments. The agencies propose to clarify that the required annual AHP contributions of the FHLBs are not qualified investments because they are not investments by the investing financial institution members, but rather a use of its own funds by the FHLB. The agencies propose to revise Q&A §____.12(t)—3 to state that FHLB unpaid dividends are not qualified investments.

V. *Examples of qualified investments.*

Q&A §____.12(t)—4 provides examples of qualified investments. For the same reasons as addressed above in connection with the proposed revision to Q&A §____.12(g)(3)—1, the agencies propose to revise the first bullet in the answer to Q&A §____.12(t)—4 to add an investment in a New Markets Tax Credit-eligible CDE as an example of a qualified investment.

The agencies also propose to add a new fourth bullet that clarifies that an investment in a community development venture capital company that promotes economic development by financing small businesses would also be an example of a qualified investment. Although private community development venture capital companies are not statutorily authorized and government insured or guaranteed like the examples in the current third bullet of the Q&A (e.g., small business investment companies), community development venture capital companies may provide financing for small businesses that supports permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or supports permanent job creation, retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment by Federal, state, local, or tribal governments.

VI. *Small institution adjustment.*

Q&A §____.12(u)(2)—1, which was adopted by the OCC, Board, and FDIC in the 2006 Questions and Answers, provides information about the annual adjustments to the asset-size thresholds for small institutions and intermediate small institutions. (OTS does not currently have a comparable Q&A but is proposing to add one through this notice.) The agencies are proposing that this Q&A also refer the reader to the FFIEC's Web site for historical and current asset-size threshold information.

VII. *Responsive lending activities.*

Q&A § ____.22(a)—1 discusses types of lending activities that help meet the credit needs of an institution's assessment areas and that may warrant favorable consideration as activities that are responsive to the needs of the institution's assessment areas. The agencies propose to revise the answer to highlight that establishing loan programs that provide relief to low- and moderate-income homeowners who are facing foreclosure is another type of lending activity that would warrant favorable consideration as being responsive to the needs of an institution's assessment areas. The agencies encourage institutions to develop and participate in such programs, consistent with safe and sound lending practices.

VIII. *Constraints on affiliate lending.*

Q&A § ____.22(c)(2)(i)—1 explains the constraint that no affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or loan purchase. The agencies propose to revise the answer by adding illustrative examples to help explain this provision. The answer states that a bona fide sale of a loan originated by one affiliate to another affiliate would be considered a loan origination by the first institution and a loan purchase by the other affiliate; however, the same institution may not claim both the origination and the purchase of the same loan. The question would also be revised to indicate that this guidance is relevant to all institutions, regardless of their examination type.

IX. *Retail banking services delivery systems.*

Q&A § ____.24(d)—1 explains how examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services. The agencies propose to revise Q&A § ____.24(d)—1 to correspond more closely to the service test performance criteria. The regulation provides that examiners will evaluate the current distribution of an institution's branches and, in the context of its current distribution of the institution's branches, the institution's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals. The text of the answer would be modified to conform more closely to the regulatory language.

X. *Assessment areas may not extend substantially beyond metropolitan statistical area (MSA) boundaries.*

Q&As § ____.41(e)(4)—1 and § ____.41(e)(4)—2 address the maximum size of an assessment area and whether one assessment area may consist of both an MSA and two counties that both abut the MSA. The agencies propose to revise these two questions and answers to reflect the changes in the Standards for Defining Metropolitan and Micropolitan Statistical Areas by the OMB. Although the OMB continues to designate MSAs, the OMB no longer designates Consolidated MSAs (CMSAs), which consisted of Primary MSAs. The OMB has also adopted a new area designation: Metropolitan division. As previously noted, in the 2005 technical revisions, the agencies aligned their CRA regulations with the OMB's new nomenclature. *See* 70 FR 15570.

The proposed revisions to Q&As § ____.41(e)(4)—1 and § ____.41(e)(4)—2 adopt the revised nomenclature and also memorialize guidance that the agencies provided in the supplementary information that was published with the 2005 technical revisions. The agencies had noted in the supplementary information that one commenter suggested that the agencies, in their 2005 technical revisions, replace ''CMSA'' with ''CSA'' (combined statistical area), another new area standard that OMB adopted in 2000. The agencies declined to do so, but advised in the supplementary information that it may be appropriate for some institutions to delineate an assessment area based on a CSA. However, because CSAs can vary greatly in area and population, the agencies indicated that whether an assessment area should consist of a CSA is a determination to be made by each institution, considering its size, business strategy, capacity, and constraints, and subject to review by the appropriate agency. The agencies further noted that, if an institution designates an assessment area comprised of a CSA that, for example, consists of an MSA and a micropolitan statistical area (a new area standard adopted by OMB that is less populated than an MSA and considered a nonmetropolitan area for CRA purposes), examiners will separately evaluate performance in the MSA and the micropolitan statistical area within the assessment area because each of these areas has a distinct median income. Proposed revised Q&As § ____.41(e)(4)—1 and § ____.41(e)(4)—2 incorporate this information.

XI. *Reporting data under the CRA regulations.*

Q&A § ____.42—1 addresses when an institution must collect and report data. It focuses on a growing institution: One that was a small institution but that, over time, has outgrown that classification. The agencies propose to revise this question and answer for two reasons. First, because the definition of ''small institution'' has been revised and the asset-size threshold for small institutions is adjusted annually, the text and example in the guidance require updating. The proposed revision refers to the definition of a ''small institution'' in the agencies' CRA regulations so that the asset-size threshold does not become out-of-date as a result of annual adjustments. It also directs readers to the FFIEC's Web site for examples, over time, based on the revised and adjusted asset-size thresholds for small institutions. Second, the mailing address to which an institution reports CRA data has been changed, and the proposed new guidance reflects the revised address.

XII. *Reporting home equity lines of credit for both home improvement and business purposes.*

Q&A § ____.42(a)—7 addresses the reporting of a home equity line of credit, part of which is for home improvement purposes and part of which is for small business purposes. Because of changes in the treatment of refinancings of loans secured by dwellings in the Board's Regulation C (12 CFR part 203), which implements the HMDA (described above), the agencies are proposing to revise this question and answer to make it consistent with the revised Regulation C requirements.

XIII. *Participations in small business or small farm loans.*

Q&A § ____.42(a)(2)—1 provides guidance regarding the reporting of the amount of a small business or small farm loan that an institution purchases. The agencies propose to revise this question and answer to clarify that the guidance also applies to purchases of small business or small farm loan participations. The CRA regulations explicitly require institutions to collect and maintain ''the loan amount at origination'' when collecting data about small business and small farm loans. 12 CFR____.42(a)(2). The agencies are proposing to revise the question and answer to clarify that this data collection requirement applies to participations, as well as to the purchase of whole loans.

OTS Request for Comments

OTS specifically solicits comment on whether it should adopt the four new and one revised questions and answers that are virtually identical to guidance the OCC, Board, and FDIC adopted in the 2006 Questions and Answers. Those new questions and answers for OTS are Q&As § ____.12(u)(2)—1, § ____26(c)—1, § ____.26(c)(3)—1, and § ____.26(c)(4)—

1; the proposed revised question and answer for OTS is Q&A § ____.26—1.

General Comments

In addition to the specific requests for comments on the proposed new and revised questions and answers, public comment is invited on issues raised by the CRA and the Interagency Questions and Answers. If, after reading the Interagency Questions and Answers, financial institutions, examiners, community organizations, or other interested parties have unanswered questions or comments about the agencies' community reinvestment regulations, they should submit them to the agencies. Such questions may be addressed in future revisions to the Interagency Questions and Answers.

Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999, 12 U.S.C. 4809, requires the agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. Although this proposed guidance is not a proposed rule, comments are nevertheless invited on whether the proposed interagency questions and answers are stated clearly and effectively organized, and how the guidance might be revised to make it easier to read.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The SBREFA requires an agency, for each rule for which it prepares a final regulatory flexibility analysis, to publish one or more compliance guides to help small entities understand how to comply with the rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC and the FDIC certified that the 2005 joint final rule would not have a significant economic impact on a substantial number of small entities. 70 FR at 44264. Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certified that its March 22, 2007, April 12, 2006, March 2, 2005, and August 18, 2004 final rules would not have a significant economic impact on a substantial number of small entities. 72 FR 13429, 13434 (March 22, 2007); 71 FR 18614, 18617 (April 12, 2006); 70 FR 10023, 10030 (March 2, 2005); 69 FR 51155, 51161 (August 18, 2004).

The Board prepared a final regulatory flexibility analysis in connection with the 2005 joint final rule and found that the final rule minimized the economic impact on small entities by making the twelve small member banks that were not eligible for the streamlined CRA process prior to adoption of the joint final rule, eligible for the streamlined CRA process. Further, the joint final rule was intended by all three agencies to reduce unnecessary burden while maintaining or improving the CRA regulations' effectiveness in evaluating performance.

In the agencies' continuing efforts to provide clear, understandable regulations and to comply with the letter and the spirit of the SBREFA, the agencies have compiled the Interagency Questions and Answers. The Interagency Questions and Answers serve the same purpose as the compliance guide described in the SBREFA by providing guidance on a variety of issues of particular concern to small institutions.

The text of the combined Interagency Questions and Answers Regarding Community Reinvestment follows.

Language that is proposed to be deleted as compared to the current OCC, Board, and FDIC questions and answers is bracketed; language that is proposed to be added to these agencies' questions and answers is enclosed within arrows. Where these agencies' current questions and answers differ substantially from those of OTS, the differences are footnoted.

Interagency Questions and Answers Regarding Community Reinvestment

§ ____.11 Authority, purposes, and scope.

§ ____.11(c) Scope.

§§ ____.11(c)(3) & 563e.11(c)(2) Certain special purpose institutions.

§§ ____.11(c)(3) & 563e.11(c)(2)—1: *Is the list of special purpose institutions exclusive?*

A1. No, there may be other examples of special purpose institutions. These institutions engage in specialized activities that do not involve granting credit to the public in the ordinary course of business. Special purpose institutions typically serve as correspondent banks, trust companies, or clearing agents or engage only in specialized services, such as cash management controlled disbursement services. A financial institution, however, does not become a special purpose institution merely by ceasing to make loans and, instead, making investments and providing other retail banking services.

§§ ____.11(c)(3) & 563e.11(c)(2)—2: *To be a special purpose institution, must an institution limit its activities in its charter?*

A2. No. A special purpose institution may, but is not required to, limit the scope of its activities in its charter, articles of association, or other corporate organizational documents. An institution that does not have legal limitations on its activities, but has voluntarily limited its activities, however, would no longer be exempt from Community Reinvestment Act (CRA) requirements if it subsequently engaged in activities that involve granting credit to the public in the ordinary course of business. An institution that believes it is exempt from CRA as a special purpose institution should seek confirmation of this status from its supervisory agency.

§ ____.12 Definitions.

§ ____.12(a) Affiliate.

§ ____.12(a)—1: *Does the definition of ''affiliate'' include subsidiaries of an institution?*

A1. Yes, ''affiliate'' includes any company that controls, is controlled by, or is under common control with another company. An institution's subsidiary is controlled by the institution and is, therefore, an affiliate.

§ [§]____.12(f) [& 563e.12(e)] Branch.

§ [§]____.12(f) [& 563e.12(e)]—1: *Do the definitions of ''branch,'' ''automated teller machine (ATM),'' and ''remote service facility (RSF)'' include mobile branches, ATMs, and RSFs?*

A1. Yes. Staffed mobile offices that are authorized as branches are considered ''branches►,◄'' and mobile 'ATMs' and 'RSFs' are considered ''ATMs'' and ''RSFs.''

§ [§]____.12(f)[& 563e.12(e)]—2: *Are loan production offices (LPOs) branches for purposes of the CRA?*

A2. LPOs and other offices are not ''branches'' unless they are authorized as branches of the institution through the regulatory approval process of the institution's supervisory agency.

§ [§]____.12([h]►g◄)[& 563.12(g)] Community development.

§ [§]____.12([h]►g◄)[& 563.12(g)]—1: *Are community development activities limited to those that promote economic development?*

A1. No. Although the definition of ''community development'' includes activities that promote economic development by financing small businesses or farms, the rule does not limit community development loans and services and qualified investments to those activities. Community development also includes community- or tribal-based child care, educational, health, or social services targeted to low- or moderate-income persons, affordable housing for low- or moderate-income individuals, and activities that

revitalize or stabilize low- or moderate-income areas►, designated disaster areas, or underserved or distressed nonmetropolitan middle-income geographies◄.

§ [§]____.12([h]►g◄)[& 563e.12(g)]—2: *Must a community development activity occur inside a low- or moderate-income area►, designated disaster area, or underserved or distressed nonmetropolitan middle-income area◄ in order for an institution to receive CRA consideration for the activity?*

A2. No. Community development includes activities [outside of low- and moderate-income areas]►, regardless of their location,◄ that provide affordable housing for, or community services targeted to, low- or moderate-income individuals and activities that promote economic development by financing small businesses and farms. Activities that stabilize or revitalize particular low- or moderate-income areas►, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas◄ (including by creating, retaining, or improving jobs for low- or moderate-income persons) also qualify as community development, even if the activities are not located in these [low- or moderate-income] areas. One example is financing a supermarket that serves as an anchor store in a small strip mall located at the edge of a middle-income area, if the mall stabilizes the adjacent low-income community by providing needed shopping services that are not otherwise available in the low-income community.

§ [§]____.12([h]►g◄)[& 563e.12(g)]—3: *Does the regulation provide flexibility in considering performance in high-cost areas?*

A3. Yes, the flexibility of the performance standards allows examiners to account in their evaluations for conditions in high-cost areas. Examiners consider lending and services to individuals and geographies of all income levels and businesses of all sizes and revenues. In addition, the flexibility in the requirement that community development loans, community development services, and qualified investments have as their ''primary'' purpose community development allows examiners to account for conditions in high-cost areas. For example, examiners could take into account the fact that activities address a credit shortage among middle-income people or areas caused by the disproportionately high cost of building, maintaining or acquiring a house when determining whether an institution's loan to or investment in an organization that funds affordable housing for middle-income people or areas, as well as low- and moderate-income people or areas, has as its primary purpose community development.

►§ ____.12(g)—4: *The CRA provides that, in assessing the CRA performance of non-minority- and non-women-owned (majority-owned) financial institutions, examiners may consider as a factor capital investments, loan participations, and other ventures undertaken by the institutions in cooperation with minority- or women-owned financial institutions and low-income credit unions, provided that these activities help meet the credit needs of local communities in which the minority- or women-owned institutions or low-income credit unions are chartered. Must such activities also benefit the majority-owned financial institution's assessment area?*

A4. No. Although the regulations generally provide that an institution's CRA activities will be evaluated for the extent to which they benefit the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s), the agencies apply a broader geographic criterion when evaluating capital investments, loan participations, and other ventures undertaken by that institution in cooperation with minority- or women-owned institutions or low-income credit unions, as provided by the CRA. Thus, such activities will be favorably considered in the CRA performance evaluation of the institution (as loans, investments, or services, as appropriate), even if the minority- or women-owned institution or low-income credit union is not located in, or such activities do not benefit, the assessment area(s) of the majority-owned institution or the broader statewide or regional area that includes its assessment area(s). The activities must, however, help meet the credit needs of the local communities in which the minority- or women-owned institutions or low-income credit unions are chartered.◄

§ [§]____.12([h]►g◄)(1)[& 563e.12(g)] *Affordable housing (including multifamily rental housing) for low- or moderate-income individuals*

§ [§]____.12([h]►g◄)(1)[& 563e.12(g)(1)]—1: *When determining whether a project is ''affordable housing for low- or moderate-income individuals,'' thereby meeting the definition of ''community development,'' will it be sufficient to use a formula that relates the cost of ownership, rental►,◄ or borrowing to the income levels in the area as the only factor, regardless of whether the users, likely users, or beneficiaries of that affordable housing are low- or moderate-income individuals?*

A1. The concept of ''affordable housing'' for low- or moderate-income individuals does hinge on whether low- or moderate-income individuals benefit, or are likely to benefit, from the housing. It would be inappropriate to give consideration to a project that exclusively or predominately houses families that are not low- or moderate-income simply because the rents or housing prices are set according to a particular formula.

For projects that do not yet have occupants, and for which the income of the potential occupants cannot be determined in advance, or in other projects where the income of occupants cannot be verified, examiners will review factors such as demographic, economic►,◄ and market data to determine the likelihood that the housing will ''primarily'' accommodate low- or moderate-income individuals. For example, examiners may look at median rents of the assessment area and the project; the median home value of either the assessment area, low- or moderate-income geographies or the project; the low- or moderate-income population in the area of the project; or the past performance record of the organization(s) undertaking the project. Further, such a project could receive consideration if its express, bona fide intent, as stated, for example, in a prospectus, loan proposal►,◄ or community action plan, is community development.

§ [§]____.12([h]►g◄)(3)[& 563e.12(g)(3)] Activities that promote economic development by financing businesses or farms that meet certain size eligibility standards.

§ [§]____.12([h]►g◄)(3)[& 563.12(g)(3)]—1: ''*Community development'' includes activities that promote economic development by financing businesses or farms that meet certain size eligibility standards. Are all activities that finance businesses and farms that meet these size eligibility standards considered to be community development?*

A1. No. [To be considered as] ►The concept of◄ ''community development'' under [§§] ►12 CFR◄____.12([h]►g◄)(3)[and 563e.12(g)(3)] ►involves both a ''size'' test and a ''purpose'' test. An institution's◄[, a] loan, investment, or service[, whether made]►meets the ''size'' test if it finances, either◄ directly or through an intermediary, [must meet both a size test and a purpose test. An activity meets the size

requirement if it finances entities that] ►entities that◄ either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of $1 million or less.

To meet the ►''◄purpose test,►''◄ the [activity]► institution's loan, investment, or service◄ must promote economic development. [An activity is]► These activities are◄ considered to promote economic development if [it supports]► they support◄ permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or supports permanent job creation, retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment by Federal, state, local►,◄ or tribal governments. The agencies will presume that any loan to or investment in a SBDC, SBIC, [or]► Rural Business Investment Company,◄ New Markets Venture Capital Company►, or New Markets Tax Credit-eligible Community Development Entity◄ promotes economic development. ►(But also refer to Q&As § ____.42(b)(2)— 2, § ____.12(h)—2, and § ____.12(h)—3 for more information about which loans may be considered community development loans.)◄

In addition to their quantitative assessment of the amount of a financial institution's community development activities, examiners must make qualitative assessments of an institution's leadership in community development matters and the complexity, responsiveness, and impact of the community development activities of the institution. In reaching a conclusion about the impact of an institution's community development activities, examiners may, for example, determine that a loan to a small business in a low- or moderate-income geography that provides needed jobs and services in that area may have a greater impact and be more responsive to the community credit needs than does a loan to a small business in the same geography that does not directly provide additional jobs or services to the community.

§ [§]____.12([h]►g◄)(4)[& 563e.12(g)(4)] Activities that revitalize or stabilize [low- or moderate-income]► certain◄ geographies.

§ ____.12(g)(4)—1: *Is the revised definition of community development,* effective September 1, 2005 ►(under the OCC, Board, and FDIC rules) and effective April 12, 2006 (under OTS's rule), ◄applicable to all [banks]► institutions◄ or only to intermediate small [banks]► institutions◄? [1]

A1. The revised definition of community development is applicable to all [banks]► institutions◄. ►Examiners will not use the revised definition to qualify activities that were funded or provided prior to September 1, 2005 (under the OCC, Board, and FDIC rules) or prior to April 12, 2006 (under OTS's rule).◄

§ ____.12(g)(4)—2: *Will activities that provide housing for middle-income and upper-income persons qualify for favorable consideration as community development activities when they help to revitalize or stabilize a distressed or underserved nonmetropolitan middle-income geography or designated disaster areas?*

A2. An activity that provides housing for middle- or upper-income individuals qualifies as an activity that revitalizes or stabilizes a distressed nonmetropolitan middle-income geography or a designated disaster area if the housing directly helps to revitalize or stabilize the community by attracting new, or retaining existing, businesses or residents and, in the case of a designated disaster area, is related to disaster recovery. The Agencies generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography or designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods. Thus, for example, a loan solely to develop middle- or upper-income housing in a community in need of low- and moderate-income housing would be given very little weight if there is only a short-term benefit to low- and moderate-income individuals in the community through the creation of temporary construction jobs. ([A]► Except in connection with intermediate small institutions, a◄ housing-related loan is not evaluated as a ''community development loan'' if it has been reported or collected by the institution or its affiliate as a home mortgage loan, unless it is a multifamily dwelling loan. *See* ► 12 CFR ◄[§]____.12([i]►h◄)(2)(i) and Q&As § [§]____.12([i]►h◄) [& 563e.12(h)]—2► and § __.12(h)—3◄.) An activity will be presumed to revitalize or stabilize such a geography or area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan. *See* Q&As § [§]____.12([h]►g◄)(4)(i)[& 563.12(g)(4)]—1 and § [§]____.12([i]►h◄) [& 563e.12(h)]—[4]►5◄.

In *underserved* nonmetropolitan middle-income geographies, activities that provide housing for middle- and upper-income individuals may qualify as activities that revitalize or stabilize such underserved areas if the activities also provide housing for low- or moderate-income individuals. For example, a loan to build a mixed-income housing development that provides housing for middle- and upper-income individuals in an underserved nonmetropolitan middle-income geography would receive positive consideration if it also provides housing for low- or moderate-income individuals.

§ [§]____.12([h]►g◄)(4)►(i)◄[& 563e.12(g)(4)] Activities that revitalize or stabilize low- or moderate-income geographies.

§ [§]____.12([h]►g◄)(4)►(i)◄[& 563e.12(g)(4)]—1: *What [are] activities [that]►are considered◄to ''revitalize or stabilize'' a low- or moderate-income geography►, and how are those activities considered◄?*

A1. Activities that revitalize or stabilize a low- or moderate-income geography are activities that help to attract ►new, or◄[and] retain ►existing,◄ businesses [and]►or◄ residents. Examiners will presume that an activity revitalizes or stabilizes a low- or moderate-income geography if the activity has been approved by the governing board of an Enterprise Community or Empowerment Zone (designated pursuant to 26 U.S.C. § 1391) and is consistent with the board's strategic plan. They will make the same presumption if the activity has received similar official designation as consistent with a federal, state, local►,◄ or tribal government plan for the revitalization or stabilization of the ►low- or moderate-income◄ geography. To determine whether other activities revitalize or stabilize a low- or moderate-income geography, examiners will evaluate the activity's actual impact on the geography, if information about this is available. If not, examiners will determine whether the activity is consistent with the community's formal or informal plans for the revitalization and stabilization of the low- or moderate-income geography. For more information on what activities revitalize

[1] The inserts and deletions are shown as compared to the current Q&A for the OCC, Board, and FDIC. The current Q&A for OTS reads: ''Is the same definition of community development applicable to all savings associations? Yes, one definition of community development is applicable to all savings associations.'' 71 FR at 52377.

or stabilize a low- or moderate-income geography, see ►Q&As◄ § [§]____.12([h]►g◄)[& 563e.12(g)]—2 and § [§]____.12 ([i]►h◄)[& 563.12(h)]—4.

§____.12(g)(4)(ii) Activities that revitalize or stabilize designated disaster areas.

§____.12(g)(4)(ii)—1: *What is a ''designated disaster area'' and how long does it last?*

A1. A ''designated disaster area'' is a major disaster area designated by the federal government. Such disaster designations include, in particular, Major Disaster Declarations administered by the Federal Emergency Management Agency (FEMA) (*http://www.fema.gov*), but excludes counties designated to receive only FEMA Public Assistance Emergency Work Category A (Debris Removal) and/or Category B (Emergency Protective Measures).

Examiners will consider [bank]►institution◄ activities related to disaster recovery that revitalize or stabilize a designated disaster area for 36 months following the date of designation. Where there is a demonstrable community need to extend the period for recognizing revitalization or stabilization activities in a particular disaster area to assist in long-term recovery efforts, this time period may be extended.

§____.12(g)(4)(ii)—2: *What activities are considered to ''revitalize or stabilize'' a designated disaster area, and how are those activities considered?*

A2. The Agencies generally will consider an activity to revitalize or stabilize a designated disaster area if it helps to attract new, or retain existing, businesses or residents and is related to disaster recovery. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization or stabilization plan or disaster recovery plan. The Agencies generally will consider all activities relating to disaster recovery that revitalize or stabilize a designated disaster area, but will give greater weight to those activities that are most responsive to community needs, including the needs of low- or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to help retain businesses in the area that employ local residents, including low- and moderate-income individuals; providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals; providing financing or other assistance for essential community-wide infrastructure, community services, and rebuilding needs; and activities that provide housing, financial assistance, and services to individuals in designated disaster areas and to individuals who have been displaced from those areas, including low- and moderate-income individuals (*see, e.g.,* Q&As §____.12([j]►i◄)[& 563e.12(i)]–3; §____.12([s]►t◄)[& 563e.12(r)]—4; §____.22(b)(2) & (3)–4; §____.22(b)(2) & (3)—5; and §____.24(d)(3)–1).

§____.12(g)(4)(iii) Activities that revitalize or stabilize distressed or underserved nonmetropolitan middle-income geographies.

§____.12(g)(4)(iii)—1: *What criteria are used to identify distressed or underserved nonmetropolitan, middle-income geographies?*

A1. Eligible nonmetropolitan middle-income geographies are those designated by the Agencies as being in distress or that could have difficulty meeting essential community needs (underserved). A particular geography could be designated as both distressed and underserved. As defined in ►12 CFR◄[§]____.12(k), a geography is a census tract delineated by the United States Bureau of the Census.

A nonmetropolitan middle-income geography will be designated as distressed if it is in a county that meets one or more of the following triggers: (1) An unemployment rate of at least 1.5 times the national average, (2) a poverty rate of 20 percent or more, or (3) a population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

A nonmetropolitan middle-income geography will be designated as underserved if it meets criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The Agencies will use as the basis for these designations the ''urban influence codes,'' numbered ''7,'' ''10,'' ''11,'' and ''12,'' maintained by the Economic Research Service of the United States Department of Agriculture.

The Agencies [will] publish data source information along with the list of eligible nonmetropolitan census tracts on the Federal Financial Institutions Examination Council Web site (*http://www.ffiec.gov*).

§____.12(g)(4)(iii)—2: *How often will the Agencies update the list of designated distressed and underserved nonmetropolitan middle-income geographies?*

A2. The Agencies will review and update the list annually [as needed]. The list [will be] ►is◄ published on the Federal Financial Institutions Examination Council Web site (*http://www.ffiec.gov*).

To the extent that changes to the designated census tracts occur, the Agencies have determined to adopt a one-year ''lag period.'' This lag period will be in effect for the twelve months immediately following the date when a census tract that was designated as distressed or underserved is removed from the designated list. Revitalization or stabilization activities undertaken during the lag period will receive consideration as community development activities if they would have been considered to have a primary purpose of community development if the census tract in which they were located were still designated as distressed or underserved.

§____.12(g)(4)(iii)—3: *What activities are considered to ''revitalize or stabilize'' a distressed nonmetropolitan middle-income geography, and how are those activities evaluated?*

A3: An activity revitalizes or stabilizes a distressed nonmetropolitan middle-income geography if it helps to attract new, or retain existing, businesses or residents. An activity will be presumed to revitalize or stabilize the area if the activity is consistent with a bona fide government revitalization or stabilization plan. The Agencies generally will consider all activities that revitalize or stabilize a distressed nonmetropolitan middle-income geography, but will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods. Qualifying activities may include, for example, providing financing to attract a major new employer that will create long-term job opportunities, including for low- and moderate-income individuals, and activities that provide financing or other assistance for essential infrastructure or facilities necessary to attract or retain businesses or residents. *See* Q&As § [§]____.12([h](►g◄)(4)[& 563e.12(g)(4)►(i)◄]—1 and § [§]____.12([i] ►h◄)[& 563e.12(h)]—[4] ►5◄ .

§ ____.12(g)(4)(iii)—4: *What activities are considered to ''revitalize or stabilize'' an underserved nonmetropolitan middle-income*

geography, and how are those activities evaluated?

A4. The regulation provides that activities revitalize or stabilize an underserved nonmetropolitan middle-income geography if they help to meet essential community needs, including needs of low- or moderate-income individuals. Activities such as financing for the construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, or affordable housing, will be evaluated under these criteria to determine if they qualify for revitalization or stabilization consideration. Examples of the types of projects that qualify as meeting essential community needs, including needs of low- or moderate-income individuals, would be a new or expanded hospital that serves the entire county, including low- and moderate-income residents; an industrial park for businesses whose employees include low- or moderate-income individuals; a new or rehabilitated sewer line that serves community residents, including low- or moderate-income residents; a mixed-income housing development that includes affordable housing for low- and moderate-income families; or a renovated elementary school that serves children from the community, including children from low- and moderate-income families.

Other activities in the area, such as financing a project to build a sewer line spur that connects services to a middle- or upper-income housing development while bypassing a low- or moderate-income development that also needs the sewer services, generally would not qualify for revitalization or stabilization consideration in geographies designated as underserved. However, if an underserved geography is also designated as distressed or a disaster area, additional activities may be considered to revitalize or stabilize the geography, as explained in Q&As § ____.12(g)(4)(ii)—2 and § ____.12(g)(4)(iii)—3.

§ [§] ____.12([i] ►h◄)[& 563e.12(h)] Community development loan.

§ [§] ____.12([i] ►h◄)[& 563e.12(h)]–1: *What are examples of community development loans?*

A1. Examples of community development loans include, but are not limited to, loans to:

- Borrowers for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property serving low- and moderate-income persons;
- Not-for-profit organizations serving primarily low- and moderate-income housing or other community development needs;
- Borrowers to construct or rehabilitate community facilities that are located in low- and moderate-income areas or that serve primarily low- and moderate-income individuals;
- Financial intermediaries including Community Development Financial Institutions (CDFIs), ►New Markets Tax Credit-eligible Community Development Entities,◄ Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds or pools, and low-income or community development credit unions that primarily lend or facilitate lending to promote community development[.] ►;◄
- Local, state, and tribal governments for community development activities; [and]
- Borrowers to finance environmental clean-up or redevelopment of an industrial site as part of an effort to revitalize the low- or moderate-income community in which the property is located[.]►; and
- Businesses, in an amount greater than $1 million, when made as part of the Small Business Administration's 504 Certified Development Company program.◄

The rehabilitation and construction of affordable housing or community facilities, referred to above, may include the abatement or remediation of, or other actions to correct, environmental hazards, such as lead-based paint, that are present in the housing, facilities, or site.

§ [§] ____.12([i]►h◄)[& 563e.12(h)]—2: *If a retail institution that is not required to report under the Home Mortgage Disclosure Act (HMDA) makes affordable home mortgage loans that would be HMDA-reportable home mortgage loans if it were a reporting institution, or if a small institution that is not required to collect and report loan data under ►the◄ CRA makes small business and small farm loans and consumer loans that would be collected and/or reported if the institution were a large institution, may the institution have these loans considered as community development loans?*

A2. No. Although small institutions are not required to report or collect information on small business and small farm loans and consumer loans, and some institutions are not required to report information about their home mortgage loans under HMDA, if these institutions are retail institutions, the agencies will consider in their CRA evaluations the institutions' originations and purchases of loans that would have been collected or reported as small business, small farm, consumer or home mortgage loans, had the institution been a collecting and reporting institution under the CRA or the HMDA. Therefore, these loans will not be considered as community development loans►, unless the small institution is an intermediate small institution (*see* § ____.12(h)—3)◄. Multifamily dwelling loans, however, may be considered as community development loans as well as home mortgage loans. *See also* ►Q&A◄ § ____.42(b)(2)—2.

►§ ____.12(h)—3: *May an intermediate small institution that is not subject to HMDA reporting have home mortgage loans considered as community development loans? Similarly, may an intermediate small institution have small business and small farm loans and consumer loans considered as community development loans?*

A3. Yes. These loans may be considered, at the institution's option, as community development loans provided they meet the regulatory definition of ''community development.'' However, these loans may not be considered under both the lending test and the community development test for intermediate small institutions. Thus, if an institution elects that these loans be considered under the community development test, the loans may not also be considered under the lending test, and would be excluded from the lending test analysis.◄

§ [§] ____.12([i]►h◄)[& 563e.12(h)] —[3] ►4◄: *Do secured credit cards or other credit card programs targeted to low- or moderate-income individuals qualify as community development loans?*

A3. No. Credit cards issued to low- or moderate-income individuals for household, family, or other personal expenditures, whether as part of a program targeted to such individuals or otherwise, do not qualify as community development loans because they do not have as their primary purpose any of the activities included in the definition of ''community development.''

§ [§] ____.12([i] ►h◄)[& 563e.12(h)]—[4]►5◄: *The regulation indicates that community development includes ''activities that revitalize or stabilize low- or moderate-income geographies.'' Do all loans in a low-to moderate-income geography have a stabilizing effect?*

A4. No. Some loans may provide only indirect or short-term benefits to low- or moderate-income individuals in a low- or moderate-income geography. These loans are not considered to have a community development purpose. For example, a loan for upper-income housing in a [distressed] ►low- or moderate-income◄ area is not considered to have a community development purpose simply because of the indirect benefit to low- or moderate-income persons from construction jobs or the increase in the local tax base that supports enhanced services to low- and moderate-income area residents. On the other hand, a loan for an anchor business in a [distressed] ►low- or moderate-income◄ area (or a nearby area)[, which] ►that◄ employs or serves residents of the area[,] and ►,◄ thus►,◄ stabilizes the area, may be considered to have a community development purpose. For example, in [an underserved, distressed] ►a low-income◄ area, a loan for a pharmacy that employs and [provides supplies to]►serves◄ residents of the area promotes community development.

§ [§]____.12([i]►h◄)[& 563e.12(h)]—[5]►6◄: *Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A5. No. The regulations recognize that community development organizations and programs are efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multistate basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The institution's assessment area(s) need not receive an immediate or direct benefit from the institution's specific participation in the broader organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s).

In addition, a retail institution that, considering its performance context, has adequately addressed the community development needs of its assessment area(s) will receive consideration for certain other community development activities. These community development activities must benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s). Examiners will consider these activities even if they will not benefit the institution's assessment area(s).

§ [§]____.12([i]►h◄)[& 563e.12(h)]—[6]►7◄: *What is meant by the term ''regional area''?*

A6. A ''regional area'' may be [as small as a city or county or] as large as a multistate area. For example, the ''mid-Atlantic states'' may comprise a regional area.

Community development loans and services and qualified investments to statewide or regional organizations that have a bona fide purpose, mandate, or function that includes serving the geographies or individuals within the institution's assessment area(s) will be considered as addressing assessment area needs. When examiners evaluate community development loans and services and qualified investments that benefit a regional area that includes the institution's assessment area(s), they will consider the institution's performance context as well as the size of the regional area and the actual or potential benefit to the institution's assessment area(s). With larger regional areas, benefit to the institution's assessment area(s) may be diffused and, thus ►,◄ less responsive to assessment area needs.

In addition, as long as an institution has adequately addressed the community development needs of its assessment area(s), it will also receive consideration for community development activities that benefit geographies or individuals located somewhere within the broader statewide or regional area that includes the institution's assessment area(s), even if those activities do not benefit its assessment area(s).

§ [§]____.12([i]►h◄)[& 563e.12(h)]—[7]►8◄: *What is meant by the term ''primary purpose'' as that term is used to define what constitutes a community development loan, a qualified investment or a community development service?*

A7. A loan, investment or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, ►designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas, ◄ providing affordable housing for, or community services targeted to, low- or moderate-income persons, or promoting economic development by financing small businesses and farms that meet the requirements set forth in ►12 CFR ◄ [§ §]____.12([h]►g◄)[or 563e.12(g)]. To determine whether an activity is designed for an express community development purpose, the agencies apply one of two approaches. First, if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes, then the activity will be considered to possess the requisite primary purpose. Alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the activity may still be considered to possess the requisite primary purpose if (1) the express, bona fide intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; (2) the activity is specifically structured (given any relevant market or legal constraints or performance context factors) to achieve the expressed community development purpose; and (3) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved. The fact that an activity provides indirect or short-term benefits to low- or moderate-income persons does not make the activity community development, nor does the mere presence of such indirect or short-term benefits constitute a primary purpose of community development. Financial institutions that want examiners to consider certain activities under either approach should be prepared to demonstrate the activities' qualifications.

§ [§]____.12([j]►i◄)[& 563e.12(i)] Community development service.

§ [§]____.12([j]►i◄)[& 563e.12(i)]—1: *In addition to meeting the definition of ''community development'' in the regulation, community development services must also be related to the provision of financial services. What is meant by ''provision of financial services''?*

A1. Providing financial services means providing services of the type generally provided by the financial services industry. Providing financial services often involves informing community members about how to get or use credit or otherwise providing credit services or information to the community. For example, service on the board of directors of an organization

that promotes credit availability or finances affordable housing is related to the provision of financial services. Providing technical assistance about financial services to community-based groups, local or tribal government agencies, or intermediaries that help to meet the credit needs of low- and moderate-income individuals or small businesses and farms is also providing financial services. By contrast, activities that do not take advantage of the employees' financial expertise, such as neighborhood cleanups, do not involve the provision of financial services.

§ [§]____.12([j]►i◄)[& 563e.12(i)]—2: *Are personal charitable activities provided by an institution's employees or directors outside the ordinary course of their employment considered community development services?*

A2. No. Services must be provided as a representative of the institution. For example, if a financial institution's director, on her own time and not as a representative of the institution, volunteers one evening a week at a local community development corporation's financial counseling program, the institution may not consider this activity a community development service.

§ [§]____.12[j]►i◄)[& 563e.12(i)]—3: *What are examples of community development services?*

A3. Examples of community development services include, but are not limited to, the following:

• Providing financial services to low- and moderate-income individuals through branches and other facilities located in low- and moderate-income areas, unless the provision of such services has been considered in the evaluation of [a bank's]►an institution's◄ retail banking services under ►12 CFR◄[§]____.24(d);

• ►Increasing access to financial services by opening or maintaining branches or other facilities that help to revitalize or stabilize a low- or moderate-income geography, a designated disaster area, or a distressed or underserved nonmetropolitan middle-income geography, unless the opening or maintaining of such branches or other facilities has been considered in the evaluation of the institution's retail banking services under 12 CFR ____.24(d);◄

• Providing technical assistance on financial matters to nonprofit, tribal or government organizations serving low- and moderate-income housing or economic revitalization and development needs;

• Providing technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks' Affordable Housing Program;

• Lending employees to provide financial services for organizations facilitating affordable housing construction and rehabilitation or development of affordable housing;

• Providing credit counseling, home-buyer and home-maintenance counseling, financial planning or other financial services education to promote community development and affordable housing, including credit counseling to assist borrowers in avoiding foreclosure on their homes;

• Establishing school savings programs [and developing]►;◄

• ►Developing◄ or teaching financial [education] ►literacy◄ curricula for low- or moderate-income individuals;

• Providing electronic benefits transfer and point of sale terminal systems to improve access to financial services, such as by decreasing costs, for low- or moderate-income individuals;

• Providing international [remittances] ►remittance◄ services that increase access to financial services by low- and moderate-income persons (for example, by offering reasonably priced international [remittances] ►remittance◄ services in connection with a low-cost account); and

• Providing other financial services with the primary purpose of community development, such as low-cost bank accounts, including ''Electronic Transfer Accounts'' provided pursuant to the Debt Collection Improvement Act of 1996, ►individual development accounts (IDAs),◄ or free government ►or payroll◄ check cashing that increases access to financial services for low- or moderate-income individuals.

Examples of technical assistance activities that might be provided to community development organizations include:

• Serving on a loan review committee;

• Developing loan application and underwriting standards;

• Developing loan processing systems;

• Developing secondary market vehicles or programs;

• Assisting in marketing financial services, including development of advertising and promotions, publications, workshops and conferences;

• Furnishing financial services training for staff and management;

• Contributing accounting/bookkeeping services; and

• Assisting in fund raising, including soliciting or arranging investments.

§ [§]____.12([k]►j◄)[& 563e.12(j)] Consumer loan.

§ [§]____.12([k]►j◄)[& 563e.12(j)]—1: *Are home equity loans considered ''consumer loans''?*

A1. Home equity loans made for purposes other than home purchase, home improvement or refinancing home purchase or home improvement loans are consumer loans if they are extended to one or more individuals for household, family, or other personal expenditures.

§ [§]____.12 ([k]►j◄)[& 563e.12(j)]—2: *May a home equity line of credit be considered a ''consumer'' loan even if part of the line is for home improvement purposes?*

A2. If the predominant purpose of the line is home improvement, the line may only be reported under HMDA and may not be considered a consumer loan. However, the full amount of the line may be considered a ''consumer loan'' if its predominant purpose is for household, family, or other personal expenditures, and to a lesser extent home improvement, and the full amount of the line has not been reported under HMDA. This is the case even though there may be ''double counting'' because part of the line may also have been reported under HMDA.

§ [§]____.12 ([k]►j◄)[& 563e.12(j)]—3: *How should an institution collect or report information on loans the proceeds of which will be used for multiple purposes?*

A3. If an institution makes a single loan or provides a line of credit to a customer to be used for both consumer and small business purposes, consistent with the Call Report and TFR instructions, the institution should determine the major (predominant) component of the loan or the credit line and collect or report the entire loan or credit line in accordance with the regulation's specifications for that loan type.

§ [§]____.12 ([m]►l◄)[& 563e.12(l)] Home mortgage loan.

§ [§]____.12 ([m]►l◄)[& 563e.12(l)]—1: *Does the term ''home mortgage loan'' include loans other than ''home purchase loans''?*

A1. Yes. ''Home mortgage loan'' includes [a] ''home improvement loan,'' [as well as a] ''home purchase loan,'' ►and ''refinancing,''◄ as defined in the HMDA regulation, Regulation C, 12 CFR part 203. This definition also includes multifamily (five-or-more families) dwelling loans[,] ►and◄ loans for the purchase of manufactured homes[, and refinancings of home improvement and home purchase

loans]. ►*See also* Q&A § ____.22(a)(2)—7.◄

§ [§]____.12 ([m]►l◄)[& 563e.12(l)]—2: *Some financial institutions broker home mortgage loans. They typically take the borrower's application and perform other settlement activities; however, they do not make the credit decision. The broker institutions may also initially fund these mortgage loans, then immediately assign them to another lender. Because the broker institution does not make the credit decision, under Regulation C (HMDA), they do not record the loans on their HMDA–LARs, even if they fund the loans. May an institution receive any consideration under CRA for its home mortgage loan brokerage activities?*

A2. Yes. A financial institution that funds home mortgage loans but immediately assigns the loans to the lender that made the credit decisions may present information about these loans to examiners for consideration under the lending test as ''other loan data.'' Under Regulation C, the broker institution does not record the loans on its HMDA–LAR because it does not make the credit decisions, even if it funds the loans. An institution electing to have these home mortgage loans considered must maintain information about all of the home mortgage loans that it has funded in this way. Examiners will consider [this] ►these◄ other loan data using the same criteria by which home mortgage loans originated or purchased by an institution are evaluated.

Institutions that do not provide funding but merely take applications and provide settlement services for another lender that makes the credit decisions will receive consideration for this service as a retail banking service. Examiners will consider an institution's mortgage brokerage services when evaluating the range of services provided to low-, moderate-, middle- and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies. Alternatively, an institution's mortgage brokerage service may be considered a community development service if the primary purpose of the service is community development. An institution wishing to have its mortgage brokerage service considered as a community development service must provide sufficient information to substantiate that its primary purpose is community development and to establish the extent of the services provided.

§ [§]____.12 ([n]►m◄) [& 563e.12(m)] Income level.

§ [§]____.12 ([n]►m◄)[& 563e.12(m)]—1: *Where do institutions find income level data for geographies and individuals?*

A1. The income levels for *geographies,* i.e., census tracts[and block numbering areas], are derived from Census Bureau information and are updated ►approximately◄ every ten years. [Institutions may contact their regional Census Bureau office or the Census Bureau's Income Statistics Office at (301) 763–8576 to obtain income levels for geographies. *See* Appendix A of these Interagency Questions and Answers for a list of the regional Census Bureau offices.] The income levels for *individuals* are derived from information calculated by the Department of Housing and Urban Development (HUD) and updated annually. [Institutions may contact HUD at (800) 245–2691 to request a copy of ''FY [year number, e.g., 1996] Median Family Incomes for States and their Metropolitan and Nonmetropolitan Portions.'']

[Alternatively, institutions] ►Institutions◄ may obtain [a list of the 1990 Census Bureau-calculated] ►2000 geography income information◄ and the annually updated HUD median family incomes for metropolitan statistical areas (MSAs) and statewide nonmetropolitan areas by [calling] ►accessing◄ the Federal Financial Institution Examination Council's (FFIEC's) [HMDA Help] ►Web site at *http://www.ffiec.gov/cra* or by calling the FFIEC's CRA Assistance◄ Line at (202) [452–2016]►872–7584◄. [A free copy will be faxed to the caller through the ''fax-back'' system. Institutions may also call this number to have ''faxed-back'' an order form, from which they may order a list providing the median family income level, as a percentage of the appropriate MSA or nonmetropolitan median family income, of every census tract and block numbering area (BNA). This list costs $50. Institutions may also obtain the list of MSA and statewide nonmetropolitan area median family incomes or an order form through the FFIEC's home page on the Internet at <*http://www.ffiec.gov*.]

§ [§]____.12 ([o]► n◄)[& 563e.12(n)] Limited purpose institution

§ [§]____.12 ([o]►n◄)[& 563e.12(n)]—1: *What constitutes a ''narrow product line'' in the definition of ''limited purpose institution''?*

A1. An institution offers a narrow product line by limiting its lending activities to a product line other than a traditional retail product line required to be evaluated under the lending test (i.e., home mortgage, small business, and small farm loans). Thus, an institution engaged only in making credit card or motor vehicle loans offers a narrow product line, while an institution limiting its lending activities to home mortgages is not offering a narrow product line.

§ [§]____.12 ([o]►n◄)[& 563e.12(n)]—2: *What factors will the agencies consider to determine whether an institution that, if limited purpose, makes loans outside a narrow product line, or, if wholesale, engages in retail lending, will lose its limited purpose or wholesale designation because of too much other lending?*

A2. Wholesale institutions may engage in some retail lending without losing their designation if this activity is incidental *and* done on an accommodation basis. Similarly, limited purpose institutions continue to meet the narrow product line requirement if they provide other types of loans on an infrequent basis. In reviewing other lending activities by these institutions, the agencies will consider the following factors:

- Is the [other] ►retail◄ lending provided as an incident to the institution's wholesale lending?
- Are the ►retail◄ loans provided as an accommodation to the institution's wholesale customers?
- Are the ►other types of◄ loans made only infrequently to the limited purpose institution's customers?
- Does only an insignificant portion of the institution's total assets and income result from the other lending?
- How significant a role does the institution play in providing that type(s) of loan(s) in the institution's assessment area(s)?
- Does the institution hold itself out as offering that type(s) of loan(s)?
- Does the lending test or the community development test present a more accurate picture of the institution's CRA performance?

§[§]____.12([o]►n◄)[& 563e.12(n)]—3: *Do ''niche institutions'' qualify as limited purpose (or wholesale) institutions?*

A3. Generally, no. Institutions that are in the business of lending to the public, but specialize in certain types of retail loans (for example, home mortgage or small business loans) to certain types of borrowers (for example, to high-end income level customers or to corporations or partnerships of licensed professional practitioners) (''niche institutions'') generally would not qualify as limited purpose (or wholesale) institutions.

§[§]____.12([s]►t◄)[& 563e.12(r)] Qualified investment.

§[§]____.12([s]►t◄)[& 563e.12(r)]1: *Does the CRA regulation provide*

authority for institutions to make investments?

A1. No. The CRA regulation does not provide authority for institutions to make investments that are not otherwise allowed by Federal law.

§[§]____.12([s]►t◄)[& 563e.12(r)]—2: *Are mortgage-backed securities or municipal bonds ''qualified investments''?*

A2. As a general rule, mortgage-backed securities and municipal bonds are not qualified investments because they do not have as their primary purpose community development, as defined in the CRA regulations. Nonetheless, mortgage-backed securities or municipal bonds designed primarily to finance community development generally are qualified investments. Municipal bonds or other securities with a primary purpose of community development need not be housing-related. For example, a bond to fund a community facility or park or to provide sewage services as part of a plan to redevelop a low-income neighborhood is a qualified investment. ►Certain municipal bonds in underserved nonmetropolitan middle-income geographies may also be qualified investments. *See* Q&A § ____.12(g)(4)(iii)— 4.◄ Housing-related bonds or securities must primarily address affordable housing (including multifamily rental housing) needs ►of low- or moderate-income individuals◄ in order to qualify. *See also* ►Q&A◄ § ____.23(b)—2.

§[§]____.12([s]►t◄)[& 563e.12(r)]—3: *Are Federal Home Loan Bank stocks ►or unpaid dividends◄ and membership reserves with the Federal Reserve Banks ''qualified investments''?*

A3. No. Federal Home Loan Bank (FHLB) stocks ►or unpaid dividends◄ and membership reserves with the Federal Reserve Banks do not have a sufficient connection to community development to be qualified investments. However, FHLB member institutions may receive CRA consideration ►as a community development service◄ for technical assistance they provide on behalf of applicants and recipients of funding from the FHLB's Affordable Housing Program. *See* ►Q&A◄ §[§]____.12([j]►i◄)[& 563e.12(i)]—3.

§[§]____.12([s]►t◄)[& 563e.12(r)]—4: *What are examples of qualified investments?*

A4. Examples of qualified investments include, but are not limited to, investments, grants, deposits or shares in or to:

- Financial intermediaries (including Community Development Financial Institutions (CDFIs), ► New Markets Tax Credit-eligible Community Development Entities,◄ Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds, and low-income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation;
- Organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing;
- Organizations, including, for example, Small Business Investment Companies (SBICs), specialized SBICs, and Rural Business Investment Companies (RBICs) that promote economic development by financing small businesses;►
- Community development venture capital companies that promote economic development by financing small businesses;◄
- Facilities that promote community development ►by providing community services◄ for low- and moderate-income individuals, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's centers, and alcohol and drug recovery centers;
- Projects eligible for low-income housing tax credits;
- State and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development;
- Not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as counseling for credit, home-ownership, home maintenance, and other financial [services education] ►literacy programs◄; and
- Organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development, such as, for example, day care operations and job training programs that enable [people] ►low- or moderate-income individuals◄ to work.

►*See also* Q&As § ____.12(g)(4)(ii)—2; § ____.12(g)(4)(iii)—3; § ____.12(g)(4)(iii)—4.◄

§[§]____.12([s]►t◄)[&563e.12(r)]—5: *Will an institution receive consideration for charitable contributions as ''qualified investments''?*

A5. Yes, provided they have as their primary purpose community development as defined in the regulations. A charitable contribution, whether in cash or an in-kind contribution of property, is included in the term ''grant.'' A qualified investment is not disqualified because an institution receives favorable treatment for it (for example, as a tax deduction or credit) under the Internal Revenue Code.

§[§]____.12([s]►t◄)[& 563e.12(r)]—6: *An institution makes or participates in a community development loan. The institution provided the loan at below-market interest rates or ''bought down'' the interest rate to the borrower. Is the lost income resulting from the lower interest rate or buy-down a qualified investment?*

A6. No. The agencies will, however, consider the ►responsiveness,◄ innovativeness►,◄ and complexity of the community development loan within the bounds of safe and sound banking practices.

§[§]____.12([s]►t◄)[& 563e.12(r)]—7: *Will the agencies consider as a qualified investment the wages or other compensation of an employee or director who provides assistance to a community development organization on behalf of the institution?*

A7. No. However, the agencies will consider donated labor of employees or directors of a financial institution [in the service test if the activity is] ►as◄ a community development service ►if the activity meets the regulatory definition of ''community development service.''◄

§ ____.12(t)—►8◄: When evaluating a qualified investment, what consideration will be given for prior-period investments?

A1. When evaluating [a bank's]►an institution's◄ qualified investment record, examiners will consider investments that were made prior to the current examination, but that are still outstanding. Qualitative factors will affect the weighting given to both current period and outstanding prior-period qualified investments. For example, a prior-period outstanding investment with a multi-year impact that addresses assessment area community development needs may receive more consideration than a current period investment of a comparable amount that is less responsive to area community development needs.

§[§]____.12([t]►u◄)[& 563e.12(s)] Small institution.

[§§ ____.12(t) & 563e.12(s)—1: *How are the ''total bank and thrift assets'' of a holding company determined?*

A1. ''Total banking and thrift assets'' of a holding company are determined by combining the total assets of all banks

and/or thrifts that are majority-owned by the holding company. An institution is majority-owned if the holding company directly or indirectly owns more than 50 percent of its outstanding voting stock.]

§ [§]____.12([t]►u◄)[& 563e.12(s)]—[2]►1◄: *How are Federal and State branch assets of a foreign bank calculated for purposes of the CRA?*

A[2]►1◄. A Federal or State branch of a foreign bank is considered a small institution if the Federal or State branch has ►assets◄ less than [$250 million in assets] ►the asset threshold delineated in 12 CFR ____.12(u)(1) for small institutions.◄ [and the total assets of the foreign bank's or its holding company's U.S. bank and thrift subsidiaries that are subject to the CRA are less than $1 billion. This calculation includes not only FDIC-insured bank and thrift subsidiaries, but also the assets of any FDIC-insured branch of the foreign bank and the assets of any uninsured Federal or State branch (other than a limited branch or a Federal agency) of the foreign bank that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. § 3103(a)(8)).]

►*§ ____.12(u)(2) Small Institution Adjustment*◄

§ ____.12(u)(2)—1: *How often will the asset size thresholds for small [banks] ►institutions◄ and intermediate small [banks] ►institutions◄ be changed, and how will these adjustments be communicated?* [2]

A1. The asset size thresholds for ''small [banks] ►institutions◄'' and ''intermediate small [banks] ►institutions◄'' will be adjusted annually based on changes to the Consumer Price Index. More specifically, the dollar thresholds will be adjusted annually based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted for each twelve-month period ending in November, with rounding to the nearest million. Any changes in the asset size thresholds will be published in the **Federal Register**. ►Historical and current asset-size threshold information may be found on the FFIEC's Web site at *http://www.ffiec.gov/cra.*◄

§ [§]____.12([u]►v◄)[& 563e.12(t)] Small Business Loan

§ [§]____.12([u]►v◄)[& 563e.12(t)]—1: *Are loans to nonprofit organizations considered small business loans or are they considered community development loans?*

A1. To be considered a small business loan, a loan must meet the definition of ''loan to small business'' in the instructions in the ''Consolidated Reports of Conditions and Income'' (Call Report) and ''Thrift Financial Report'' (TFR). In general, a loan to a nonprofit organization, for business or farm purposes, where the loan is secured by nonfarm nonresidential property and the original amount of the loan is $1 million or less, if a business loan, or $500,000 or less, if a farm loan, would be reported in the Call Report and TFR as a small business or small farm loan. If a loan to a nonprofit organization is reportable as a small business or small farm loan, it cannot also be considered as a community development loan, except by a wholesale or limited purpose institution. Loans to nonprofit organizations that are not small business or small farm loans for Call Report and TFR purposes may be considered as community development loans if they meet the regulatory definition[.] ►of ''community development.''◄

§ [§]____.12([u]►v◄)[& 563e.12(t)]—2: *Are loans secured by commercial real estate considered small business loans?*

A2. Yes, depending on their principal amount. Small business loans include loans secured by ''nonfarm nonresidential properties,'' as defined in the Call Report and TFR, in amounts [less than] ►of◄ $1 million ►or less◄.

§ [§]____.12([u]►v◄)[& 563e.12(t)]—3: *Are loans secured by nonfarm residential real estate to finance small businesses ''small business loans''?*

A3. *Applicable to banks filing Call Reports:* Typically not. Loans secured by nonfarm residential real estate that are used to finance small businesses are not included as ''small business'' loans for Call Report purposes unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution. (*See* Call Report Glossary definition of ''Loan Secured by Real Estate.'') The agencies recognize that many small businesses are financed by loans that would not have been made or would have been made on less favorable terms had they not been secured by residential real estate. If these loans promote community development, as defined in the regulation, they may be considered as community development loans. Otherwise, at an institution's option, the institution may collect and maintain data separately concerning these loans and request that the data be considered in its CRA evaluation as ''Other Secured Lines/Loans for Purposes of Small Business.'' ►*See also* Q&A § ____.22(a)(2)—7.◄

Applicable to institutions that file TFRs: Possibly, depending how the loan is classified for TFR purposes. Loans secured by nonfarm residential real estate to finance small businesses may be included as small business loans only if they are reported on the TFR as nonmortgage, commercial loans. (*See* TFR Q&A No. 62.) Otherwise, loans that meet the definition of mortgage loans, for TFR reporting purposes, may be classified as mortgage loans.

§ [§]____.12([u]►v◄)[& 563e.12(t)]—4: *Are credit cards issued to small businesses considered ''small business loans''?*

A4. Credit cards issued to a small business or to individuals to be used, with the institution's knowledge, as business accounts are small business loans if they meet the definitional requirements in the Call Report or TFR instructions.

§ [§]____.12([w]►x◄)[& 563e.12(v)] Wholesale Institution

§ [§]____.12([w]►x◄)[& 563e.12(v)]—1: *What factors will the agencies consider in determining whether an institution is in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers?*

A1. The agencies will consider whether:

- The institution holds itself out to the retail public as providing such loans; and
- The institution's revenues from extending such loans are significant when compared to its overall operations►, including off-balance sheet activities◄.

A wholesale institution may make some retail loans without losing its wholesale designation as described above in ►Q&A◄§ [§]____.12([o]►n◄)[& 563e.12(n)]—2.

§ ____.21 Performance tests, standards, and ratings, in general.

§ ____.21(a) Performance tests and standards.

►§ ____.21(a)—1: *How will examiners apply the performance criteria?*

A1. Examiners will apply the performance criteria reasonably and fairly, in accord with the regulations, the examination procedures, and this guidance. In doing so, examiners will disregard efforts by an institution to manipulate business operations or present information in an artificial light that does not accurately reflect an

[2] The inserts and deletions are shown as compared to the current Q&A for the OCC, Board, and FDIC. There currently is no comparable Q&A for OTS.

institution's overall record of lending performance.◄

§ ____.21(a)—[1]►2◄: *Are all community development activities weighted equally by examiners?*

A1. No. Examiners will consider the responsiveness to credit and community development needs, as well as the innovativeness and complexity, if applicable, of an institution's community development lending, qualified investments, and community development services. These criteria include consideration of the degree to which they serve as a catalyst for other community development activities. The criteria are designed to add a qualitative element to the evaluation of an institution's performance. (►''Innovativeness'' and ''complexity'' are not factors in the community development test applicable to intermediate small institutions.)◄

§ ____.21(b) Performance context.

§ ____.21(b)—1: [Is]►*What is*◄ *the performance context[essentially the same as the former regulation's needs assessment]?*

A1. [No.] The performance context is a broad range of economic, demographic, and institution- and community-specific information that an examiner reviews to understand the context in which an institution's record of performance should be evaluated. The agencies will provide examiners with [much]►some◄ of this information[prior to the examination]. The performance context is not a formal[or written] assessment of community credit needs.

§ ____.21(b)(2) Information maintained by the institution or obtained from community contacts.

§ ____.21(b)(2)—1: *Will examiners consider performance context information provided by institutions?*

A1. Yes. An institution may provide examiners with any information it deems relevant, including information on the lending, investment, and service opportunities in its assessment area(s). This information may include data on the business opportunities addressed by lenders not subject to the CRA. Institutions are not required, however, to prepare a ► formal◄ needs assessment. If an institution provides information to examiners, the agencies will not expect information other than what the institution normally would develop to prepare a business plan or to identify potential markets and customers, including low- and moderate-income persons and geographies in its assessment area(s). The agencies will not evaluate an institution's efforts to ascertain community credit needs or rate an institution on the quality of any information it provides.

§ ____.21(b)(2)—2: *Will examiners conduct community contact interviews as part of the examination process?*

A2. Yes. Examiners will consider information obtained from interviews with local community, civic, and government leaders. These interviews provide examiners with knowledge regarding the local community, its economic base, and community development initiatives. To ensure that information from local leaders is considered—particularly in areas where the number of potential contacts may be limited—examiners may use information obtained through an interview with a single community contact for examinations of more than one institution in a given market. In addition, the agencies [will]►may◄ consider information obtained from interviews conducted by other agency staff and by the other agencies. In order to augment contacts previously used by the agencies and foster a wider array of contacts, the agencies [will]►may◄ share community contact information.

§ ____.21(b)(4) Institutional capacity and constraints.

§ ____.21(b)(4)—1: *Will examiners consider factors outside of an institution's control that prevent it from engaging in certain activities?*

A1. Yes. Examiners will take into account statutory and supervisory limitations on an institution's ability to engage in any lending, investment, and service activities. For example, a savings association that has made few or no qualified investments due to its limited investment authority may still receive a low satisfactory rating under the investment test if it has a strong lending record.

§ ____.21(b)(5) Institution's past performance and the performance of similarly situated lenders

§ ____.21(b)(5)—1: *Can an institution's assigned rating be adversely affected by poor past performance?*

A1. Yes. The agencies will consider an institution's past performance in its overall evaluation. For example, an institution that received a rating of ''needs to improve'' in the past may receive a rating of ''substantial noncompliance'' if its performance has not improved.

§ ____.21(b)(5)—2: *How will examiners consider the performance of similarly situated lenders?*

A2. The performance context section of the regulation permits the performance of similarly situated lenders to be considered, for example, as one of a number of considerations in evaluating the geographic distribution of an institution's loans to low-, moderate-, middle-, and upper-income geographies. This analysis, as well as other analyses, may be used, for example, where groups of contiguous geographies within an institution's assessment area(s) exhibit abnormally low penetration. In this regard, the performance of similarly situated lenders may be analyzed if such an analysis would provide accurate insight into the institution's lack of performance in those areas. The regulation does not require the use of a specific type of analysis under these circumstances. Moreover, no ratio developed from any type of analysis is linked to any lending test rating.

§ ____.22 Lending test.

§ ____.22(a) Scope of test.

§ ____.22(a)—1: *Are there any types of lending activities that help meet the credit needs of an institution's assessment area(s) and that may warrant favorable consideration as activities that are responsive to the needs of the institution's assessment area(s)?*

A1. Credit needs vary from community to community. However, there are some lending activities that are likely to be responsive in helping to meet the credit needs of many communities. These activities include:

- Providing loan programs that include a financial education component about how to avoid lending activities that may be abusive or otherwise unsuitable;
- Establishing loan programs that provide small, unsecured consumer loans in a safe and sound manner (i.e., based on the borrower's ability to repay) and with reasonable terms;
- Offering lending programs, which feature reporting to consumer reporting agencies, that transition borrowers from loans with higher interest rates and fees (based on credit risk) to lower-cost loans, consistent with safe and sound lending practices. Reporting to consumer reporting agencies allows borrowers accessing these programs the opportunity to improve their credit histories and thereby improve their access to competitive credit products[.] ►;
- Establishing loan programs that provide relief to low- and moderate-income homeowners who are facing foreclosure on their homes.◄

Examiners may consider favorably such lending activities, which have features augmenting the success and effectiveness of the ►small, intermediate small, or large◄ institution's lending programs.

§ ____.22(a)(1) Types of loans considered.

§ ____.22(a)(1)—1: *If a large retail institution is not required to collect and report home mortgage data under the HMDA, will the agencies still evaluate the institution's home mortgage lending performance?*

A1. Yes. The agencies will sample the institution's home mortgage loan files in order to assess its performance under the lending test criteria.

§ ____.22(a)(1)—2: *When will examiners consider consumer loans as part of an institution's CRA evaluation?*

A2. Consumer loans will be evaluated if the institution so elects ►and has collected and maintained the data◄ ; [and] an institution that elects not to have its consumer loans evaluated will not be viewed less favorably by examiners than one that does. However, if consumer loans constitute a substantial majority of the institution's business, the agencies will evaluate them even if the institution does not so elect. The agencies interpret ''substantial majority'' to be so significant a portion of the institution's lending activity by number [or] ►and◄ dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded.

§ ____.22(a)(2) Loan originations and purchases/other loan data.

§ ____.22(a)(2)—1: *How are lending commitments (such as letters of credit) evaluated under the regulation?*

A1. The agencies consider lending commitments (such as letters of credit) only at the option of the institution ►, regardless of examination type◄ . Commitments must be legally binding between an institution and a borrower in order to be considered. Information about lending commitments will be used by examiners to enhance their understanding of an institution's performance ►, but will be evaluated separately from the loans◄ .

§ ____.22(a)(2)—2: *Will examiners review application data as part of the lending test?*

A2. Application activity is not a performance criterion of the lending test. However, examiners may consider this information in the performance context analysis because this information may give examiners insight on, for example, the demand for loans.

§ ____.22(a)(2)—3: *May a financial institution receive consideration under CRA for home mortgage loan modification, extension, and consolidation agreements (MECAs), in which it obtains home mortgage loans from other institutions without actually purchasing or refinancing the home mortgage loans, as those terms have been interpreted under CRA and HMDA, as implemented by 12 CFR [pt.] ►part◄ 203?*

A3. Yes. In some states, MECAs, which are not considered loan refinancings because the existing loan obligations are not satisfied and replaced, are common. Although these transactions are not considered to be purchases or refinancings, as those terms have been interpreted under CRA, they do achieve the same results. [An] ►A small, intermediate small, or large◄ institution may present information about its MECA activities with respect to home mortgages to examiners for consideration under the lending test as ''other loan data.''

►§ ____.22(a)(2)—4: *In addition to MECAs, what are other examples of ''other loan data''?*

A4. Other loan data include, for example:

- Loans funded for sale to the secondary markets that an institution has not reported under HMDA;
- Unfunded loan commitments and letters of credit;
- Commercial and consumer leases;
- Loans secured by nonfarm residential real estate, not taken as an abundance of caution, that are used to finance small businesses or small farms and that are not reported as small business/small farm loans or reported under HMDA;
- Loans that do not have a primary purpose of community development, but where a certain amount or percentage of units is set aside for affordable housing; and
- An increase to a small business or small farm line of credit if the increase would cause the total line of credit to exceed $1 million, in the case of a small business line, or $500,000, in the case of a small farm line. ◄

§ ____.22(a)(2)—[4] ►5◄ : *Do institutions receive consideration for originating or purchasing loans that are fully guaranteed?*

A4. Yes. [The test evaluates] ►For all examination types, examiners evaluate◄ an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans. [The test does] ►Examiners do◄ not take into account whether or not such loans are guaranteed.

►§ ____.22(a)(2)—6: *Do institutions receive consideration for purchasing loan participations?*

A5. Yes. Examiners will consider the amount of loan participations purchased when evaluating an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans, regardless of examination type. ◄

► § ____.22(a)(2)—7: *How are refinancings of small business loans, which are secured by a one-to-four family residence and that have been reported under HMDA as a refinancing, evaluated under CRA?*

A6. *For banks subject to the Call Report instructions:* A loan of $1 million or less with a business purpose that is secured by a one-to-four family residence is considered a small business loan for CRA purposes only if the security interest in the residential property was taken as an abundance of caution and where the terms have not been made more favorable than they would have been in the absence of the lien. (See Call Report Glossary definition of ''Loan Secured by Real Estate.'') If this same loan is refinanced and the new loan is also secured by a one-to-four family residence, but only through an abundance of caution, this loan is reported not only as a refinancing under HMDA, but also as a small business loan under CRA. (Note that small farm loans are similarly treated.)

It is not anticipated that ''double-reported'' loans will be so numerous as to affect the typical institution's CRA rating. In the event that an institution reports a significant number or amount of loans as both home mortgage and small business loans, examiners will consider that overlap in evaluating the institution's performance and generally will consider the ''double-reported'' loans as small business loans for CRA consideration.

The origination of a small business or small farm loan that is secured by a one-to-four family residence is not reportable under HMDA, unless the purpose of the loan is home purchase or home improvement. Nor is the loan reported as a small business or small farm loan if the security interest is not taken merely as an abundance of caution. Any such loan may be provided to examiners as ''other loan data'' (''Other Secured Lines/Loans for Purposes of Small Business'') for consideration during a CRA evaluation. *See* Q&A § ____.12(v)—3. The

refinancings of such loans *would be* reported under HMDA.

For savings associations subject to the Thrift Financial Reporting instructions: A loan of $1 million or less with a business purpose secured by a one-to-four family residence is considered a small business loan for CRA purposes if it is reported as a small business loan for TFR purposes and was not reported on the TFR as a mortgage loan (TFR Instructions for Commercial Loans: Secured). If this same loan is refinanced and the new loan is also secured by a one-to-four family residence, and was not reported for TFR purposes as a mortgage loan, this loan is reported not only as a refinancing for HMDA, but is also reported as a small business loan under the TFR and CRA. The origination of a small business or small farm loan that is secured by a one-to-four family residence is not reportable under HMDA, unless the purpose of the loan is home purchase or home improvement. Nor is the loan reported as small business or small farm if it was reported as a mortgage on the TFR report.

OTS does not anticipate that ''double-reported'' loans will be so numerous as to affect the typical institution's CRA rating. In the event that an institution reports a significant number or amount of loans as both home mortgage and small business loans, examiners will consider that overlap in evaluating the institution's performance and generally will consider the ''double-reported'' loans as small business loans for CRA consideration.

The origination of a small business or small farm loan that is secured by a one-to-four family residence should be reported in accordance with Q&A § ____.12(v)—3. The refinancings of such loans *would be* reported under HMDA.◄

§ ____.22(b) Performance criteria.

[§ ____.22(b)—1: *How will examiners apply the performance criteria in the lending test?* [3]

A1. Examiners will apply the performance criteria reasonably and fairly, in accord with the regulations, the examination procedures, and this Guidance. In doing so, examiners will disregard efforts by an institution to manipulate business operations or present information in an artificial light that does not accurately reflect an institution's overall record of lending performance.]

[3] Note that this Q&A would be slightly revised and moved to become Q&A § ____.22(a)—1, not deleted.

§ ____.22(b)(1) Lending activity.

§ ____.22(b)(1)—1: *How will the agencies apply the lending activity criterion to discourage an institution from originating loans that are viewed favorably under CRA in the institution itself and referring other loans, which are not viewed as favorably, for origination by an affiliate?*

A1. Examiners will review closely institutions with (1) a small number and amount of home mortgage loans with an unusually good distribution among low- and moderate-income areas and low- and moderate-income borrowers and (2) a policy of referring most, but not all, of their home mortgage loans to affiliated institutions. If an institution is making loans mostly to low- and moderate-income individuals and areas and referring the rest of the loan applicants to an affiliate for the purpose of receiving a favorable CRA rating, examiners may conclude that the institution's lending activity is not satisfactory because it has inappropriately attempted to influence the rating. In evaluating an institution's lending, examiners will consider legitimate business reasons for the allocation of the lending activity.

§ ____.22(b)(2) & (3) Geographic distribution and borrower characteristics.

§ ____.22(b)(2) & (3)—1: *How do the geographic distribution of loans and the distribution of lending by borrower characteristics interact in the lending test ►applicable to either large or small institutions◄?*

A1. Examiners generally will consider both the distribution of an institution s loans among geographies of different income levels►,◄ and among borrowers of different income levels and businesses ►and farms◄ of different sizes. The importance of the borrower distribution criterion, particularly in relation to the geographic distribution criterion, will depend on the performance context. For example, distribution among borrowers with different income levels may be more important in areas without identifiable geographies of different income categories. On the other hand, geographic distribution may be more important in areas with the full range of geographies of different income categories.

§ ____.22(b)(2) & (3)—2: *Must an institution lend to all portions of its assessment area?*

A2. The term ''assessment area'' describes the geographic area within which the agencies assess how well an institution►, regardless of examination type,◄ has met the specific performance tests and standards in the rule. The agencies do not expect that simply because a census tract [or block numbering area] is within an institution's assessment area(s), the institution must lend to that census tract[or block numbering area]. Rather the agencies will be concerned with conspicuous gaps in loan distribution that are not explained by the performance context. Similarly, if an institution delineated the entire county in which it is located as its assessment area, but could have delineated its assessment area as only a portion of the county, it will not be penalized for lending only in that portion of the county, so long as that portion does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies. The capacity and constraints of an institution, its business decisions about how it can best help to meet the needs of its assessment area(s), including those of low- and moderate-income neighborhoods, and other aspects of the performance context, are all relevant to explain why the institution is serving or not serving portions of its assessment area(s).

§ ____.22(b)(2) & (3)—3: *Will examiners take into account loans made by affiliates when evaluating the proportion of an institution's lending in its assessment area(s)?*

A3. Examiners will not take into account loans made by affiliates when determining the proportion of an institution's lending in its assessment area(s), even if the institution elects to have its affiliate lending considered in the remainder of the lending test evaluation. However, examiners may consider an institution's business strategy of conducting lending through an affiliate in order to determine whether a low proportion of lending in the assessment area(s) should adversely affect the institution's lending test rating.

§ ____.22(b)(2) & (3)—4: *When will examiners consider loans (other than community development loans) made outside an institution's assessment area(s)?*

A4. Consideration will be given for loans to low- and moderate-income persons and small business and farm loans outside of an institution's assessment area(s), provided the institution has adequately addressed the needs of borrowers within its assessment area(s). The agencies will apply this consideration not only to loans made by large retail institutions being evaluated under the lending test, but also to loans made by small►and intermediate small◄ institutions being

evaluated under [the small institution]►their respective◄ performance standards. Loans to low- and moderate-income persons and small businesses and farms outside of an institution s assessment area(s), however, will not compensate for poor lending performance within the institution s assessment area(s).

§ ____.22(b)(2) & (3)—5: *Under the lending test►applicable to small, intermediate small, or large institutions◄, how will examiners evaluate home mortgage loans to middle- or upper-income individuals in a low- or moderate-income geography?*

A5. Examiners will consider these home mortgage loans under the performance criteria of the lending test, i.e., by number and amount of home mortgage loans, whether they are inside or outside the financial institution's assessment area(s), their geographic distribution, and the income levels of the borrowers. Examiners will use information regarding the financial institution's performance context to determine how to evaluate the loans under these performance criteria. Depending on the performance context, examiners could view home mortgage loans to middle-income individuals in a low-income geography very differently. For example, if the loans are for homes or multifamily housing located in an area for which the local, state, tribal, or Federal government or a community-based development organization has developed a revitalization or stabilization plan (such as a Federal enterprise community or empowerment zone) that includes attracting mixed-income residents to establish a stabilized, economically diverse neighborhood, examiners may give more consideration to such loans, which may be viewed as serving the low- or moderate-income community's needs as well as serving those of the middle- or upper-income borrowers. If, on the other hand, no such plan exists and there is no other evidence of governmental support for a revitalization or stabilization project in the area and the loans to middle- or upper-income borrowers significantly disadvantage or primarily have the effect of displacing low- or moderate-income residents, examiners may view these loans simply as home mortgage loans to middle- or upper-income borrowers who happen to reside in a low- or moderate-income geography and weigh them accordingly in their evaluation of the institution.

§ ____.22(b)(4) Community development lending.

§ ____.22(b)(4)—1: *When evaluating an institution's record of community development lending►under the lending test applicable to large institutions◄, may an examiner distinguish among community development loans on the basis of the actual amount of the loan that advances the community development purpose?*

A1. Yes. When evaluating the institution s record of community development lending under ►12 CFR◄ [§]____.22(b)(4), it is appropriate to give greater weight to the amount of the loan that is targeted to the intended community development purpose. For example, consider two $10 million projects (with a total of 100 units each) that have as their express primary purpose affordable housing and are located in the same community. One of these projects sets aside 40 percent of its units for low-income residents and the other project allocates 65 percent of its units for low-income residents. An institution would report both loans as $10 million community development loans under the ►12 CFR◄ [§]____.42(b)(2) aggregate reporting obligation. However, transaction complexity, innovation and all other relevant considerations being equal, an examiner should also take into account that the 65 percent project provides more affordable housing for more people per dollar expended.

Under ►12 CFR◄ [§]____.22(b)(4), the extent of CRA consideration an institution receives for its community development loans should bear a direct relation to the benefits received by the community and the innovation or complexity of the loans required to accomplish the activity, not simply to the dollar amount expended on a particular transaction. By applying all lending test performance criteria, a community development loan of a lower dollar amount could meet the credit needs of the institution's community to a greater extent than a community development loan with a higher dollar amount, but with less innovation, complexity, or impact on the community.

§ ____.22(b)(5) Innovative or flexible lending practices.

§ .22(b)(5)—1: *What is the range of practices that examiners may consider in evaluating the innovativeness or flexibility of an institution s lending ►under the lending test applicable to large institutions◄?*

A1. In evaluating the innovativeness or flexibility of an institution's lending practices (and the complexity and innovativeness of its community development lending), examiners will not be limited to reviewing the overall variety and specific terms and conditions of the credit products themselves. In connection with the evaluation of an institution's lending, examiners also may give consideration to related innovations when they augment the success and effectiveness of the institution's lending under its community development loan programs or, more generally, its lending under its loan programs that address the credit needs of low- and moderate-income geographies or individuals. For example:

- In connection with a community development loan program, [a bank] ►an institution◄ may establish a technical assistance program under which the [bank] ►institution◄, directly or through third parties, provides affordable housing developers and other loan recipients with financial consulting services. Such a technical assistance program may, by itself, constitute a community development service eligible for consideration under the service test of the CRA regulations. In addition, the technical assistance may be favorably considered as an innovation that augments the success and effectiveness of the related community development loan program.
- In connection with a small business lending program in a low- or moderate-income area and consistent with safe and sound lending practices, [a bank] ►an institution◄ may implement a program under which, in addition to providing financing, the [bank] ►institution◄ also contracts with the small business borrowers. Such a contracting arrangement would not, standing alone, qualify for CRA consideration. However, it may be favorably considered as an innovation that augments the loan program's success and effectiveness, and improves the program's ability to serve community development purposes by helping to promote economic development through support of small business activities and revitalization or stabilization of low- or moderate-income geographies.

§ ____.22(c) Affiliate lending.

§ ____.22(c)(1) In general.

§ ____.22(c)(1)—1: *If an institution►, regardless of examination type,◄ elects to have loans by its affiliate(s) considered, may it elect to have only certain categories of loans considered?*

A1. Yes. An institution may elect to have only a particular category of its affiliate's lending considered. The basic categories of loans are home mortgage loans, small business loans, small farm loans, community development loans, and the five categories of consumer

loans (motor vehicle loans, credit card loans, home equity loans, other secured loans, and other unsecured loans).

§ ____.22(c)(2) Constraints on affiliate lending.

§ ____.22(c)(2)(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase.

§ ____.22(c)(2)(i)—1: *[How] ►Regardless of examination type, how◄ is this constraint on affiliate lending applied?*

A1. This constraint prohibits one affiliate from claiming a loan origination or purchase claimed by another affiliate. However, an institution can count as a purchase a loan originated by an affiliate that the institution subsequently purchases, or count as an origination a loan later sold to an affiliate, provided the same loans are not sold several times to inflate their value for CRA purposes. ►For example, assume that two institutions are affiliated. Bank A originates a loan and claims it as a loan origination. Bank B later purchases the loan. Bank B may count the loan as a purchased loan.

The same institution may not count both the origination and purchase. Thus, for example, if an institution claims loans made by an affiliated mortgage company as loan originations, the institution may not also count the loans as purchased loans if it later purchases the loans from its affiliate.◄

§ ____.22(c)(2)(ii) If an institution elects to have its supervisory agency consider loans within a particular lending category made by one or more of the institution s affiliates in a particular assessment area, the institution shall elect to have the agency consider all loans within that lending category in that particular assessment area made by all of the institution's affiliates.

§ ____.22(c)(2)(ii)—1: [How] ►*Regardless of examination type, how◄ is this constraint on affiliate lending applied?*

A1. This constraint prohibits ''cherry-picking'' affiliate loans within any one category of loans. The constraint requires an institution that elects to have a particular category of affiliate lending in a particular assessment area considered to include all loans of that type made by all of its affiliates in that particular assessment area. For example, assume that an institution has [one or more]►several◄ affiliates, [such as]►including◄ a mortgage [bank]►company◄ that makes loans in the institution's assessment area. If the institution elects to include the mortgage [bank's]►company's◄ home mortgage loans, it must include all of [mortgage bank's] ►its affiliates'◄ home mortgage loans made in its assessment area. [The]►In addition, the◄ institution cannot elect to include only those low- and moderate-income home mortgage loans made by [the mortgage bank affiliate] ►its affiliates◄ and not home mortgage loans to middle- and upper-income individuals or areas.

§ ____.22(c)(2)(ii)–2: [How]►*Regardless of examination type, how◄ is this constraint applied if an institution's affiliates are also insured depository institutions subject to the CRA?*

A2. Strict application of this constraint against ''cherry-picking'' to loans of an affiliate that is also an insured depository institution covered by the CRA would produce the anomalous result that the other institution would, without its consent, not be able to count its own loans. Because the agencies did not intend to deprive an institution subject to the CRA of receiving consideration for its own lending, the agencies read this constraint slightly differently in cases involving a group of affiliated institutions, some of which are subject to the CRA and share the same assessment area(s). In those circumstances, an institution that elects to include all of its mortgage affiliate's home mortgage loans in its assessment area would not automatically be required to include all home mortgage loans in its assessment area of another affiliate institution subject to the CRA. However, all loans of a particular type made by any affiliate in the institution's assessment area(s) must either be counted by the lending institution or by another affiliate institution that is subject to the CRA. This reading reflects the fact that a holding company may, for business reasons, choose to transact different aspects of its business in different subsidiary institutions. However, the method by which loans are allocated among the institutions for CRA purposes must reflect actual business decisions about the allocation of banking activities among the institutions and should not be designed solely to enhance their CRA evaluations.

§ ____.22(d) Lending by a consortium or a third party.

§ ____.22(d)—1: *Will equity and equity-type investments in a third party receive consideration under the lending test?*

A1. If an institution has made an equity or equity-type investment in a third party, community development loans made by the third party may be considered under the lending test. On the other hand, asset-backed and debt securities that do not represent an equity-type interest in a third party will not be considered under the lending test unless the securities are booked by the purchasing institution as a loan. For example, if an institution purchases stock in a community development corporation (''CDC'') that primarily lends in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, the institution may claim a pro rata share of the CDC's loans as community development loans. The institution's pro rata share is based on its percentage of equity ownership in the CDC. ►Q&A◄ § ____.23(b)—1 provides information concerning consideration of an equity or equity-type investment under the investment test and both the lending and investment tests.► (Note that in connection with an intermediate small institution's CRA performance evaluation, community development loans, including pro rata shares of community development loans, are considered only in the community development test.)◄

§ ____.22(d)–2: [How] ►*Regardless of examination type, how◄ will examiners evaluate loans made by consortia or third parties [under the lending test]?*

A2. Loans originated or purchased by consortia in which an institution participates or by third parties in which an institution invests will[only] be considered►only◄ if they qualify as community development loans and will[only] be considered►only◄ under the community development criterion[of the lending test]. However, loans originated directly on the books of an institution or purchased by the institution are considered to have been made or purchased directly by the institution, even if the institution originated or purchased the loans as a result of its participation in a loan consortium. These loans would be considered under[all] the lending test►or community development◄ test criteria appropriate to them depending on the type of loan►and type of examination◄.

§ ____.22(d)—3: *In some circumstances, an institution may invest in a third party, such as a community development bank, that is also an insured depository institution and is thus subject to CRA requirements. If the investing institution requests its supervisory agency to consider its pro rata share of community development loans made by the third party, as allowed under 12 CFR____.22(d), may*

the third party also receive consideration for these loans?

A3. Yes, ►regardless of examination type,◄as long as the financial institution and the third party are not affiliates. The regulations state, at 12 CFR____.22(c)(2)(i), that two affiliates may not both claim the same loan origination or loan purchase. However, if the financial institution and the third party are not affiliates, the third party may receive consideration for the community development loans it originates, and the financial institution that invested in the third party may also receive consideration for its pro rata share of the same community development loans under 12 CFR____.22(d).

§ ____.23 Investment test.

§ ____.23(a) Scope of test.

§ ____.23(a)—1: *May an institution►, regardless of examination type,◄ receive consideration under the CRA regulations if it invests indirectly through a fund, the purpose of which is community development, as that is defined in the CRA regulations?*

A1: Yes, the direct or indirect nature of the qualified investment does not affect whether an institution will receive consideration under the CRA regulations because the regulations do not distinguish between ''direct'' and ''indirect'' investments. Thus, an institution's investment in an equity fund that, in turn, invests in projects that, for example, provide affordable housing to low- and moderate-income individuals, would receive consideration as a qualified investment under the CRA regulations, provided the investment benefits one or more of the institution's assessment area(s) or a broader statewide or regional area(s) that includes one or more of the institution's assessment area(s). Similarly, an institution may receive consideration for a direct qualified investment in a nonprofit organization that, for example, supports affordable housing for low- and moderate-income individuals in the institution's assessment area(s) or a broader statewide or regional area(s) that includes the institution's assessment area(s).

►§____.23(a)—2: *In order to receive CRA consideration, should an institution be able to demonstrate that an investment in a national or regional fund with a primary purpose of community development meets the geographic requirements of the CRA regulation by benefiting one or more of the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A2. Yes. A financial institution should be able to demonstrate that the investment meets the geographic requirements of the CRA regulation, although the agencies will employ appropriate flexibility in this regard. There are several ways to demonstrate that the institution's investment meets the geographic requirements. For example, if an institution invests in a new nationwide fund providing foreclosure relief to low- and moderate-income homeowners, written documentation provided by fund managers in connection with the institution's investment indicating that the fund will use its best efforts to invest in a qualifying activity that meets the geographic requirements may be used for these purposes. Similarly, a fund may explicitly earmark all projects or investments to its investors and their specific assessment areas. (Note, however, that a financial institution has not demonstrated that the investment meets the geographic requirements of the CRA regulation if the fund ''double-counts'' investments, by earmarking the same dollars or the same portions of projects or investments in a particular geography to more than one investor.) In addition, if a fund does not earmark projects or investments to individual institution investors, an allocation method may be used that recognizes that each investor institution has an undivided interest in all projects in a fund; thus, each investor institution may claim its pro-rata share of each project that meets the geographic requirements of that institution. If, however, a fund does not become involved in a community development activity that meets both the purpose and geographic requirements of the regulation for the institution, the institution's investment generally would not be considered under the investment or community development tests. See Q&As §____.12(h)—6 and §____.12(h)—7 for additional information about the geographic requirements for qualified investments (recognition of investments benefiting an area outside an institution's assessment area(s)).◄

§____.23(b) Exclusion.

§____.23(b)—1: *Even though the regulations state that an activity that is considered under the lending or service tests cannot also be considered under the investment test, may parts of an activity be considered under one test and other parts be considered under another test?*

A1. Yes, in some instances the nature of an activity may make it eligible for consideration under more than one of the performance tests. For example, certain investments and related support provided by a large retail institution to a CDC may be evaluated under the lending, investment, and service tests. Under the service test, the institution may receive consideration for any community development services that it provides to the CDC, such as service by an executive of the institution on the CDC's board of directors. If the institution makes an investment in the CDC that the CDC uses to make community development loans, the institution may receive consideration under the lending test for its pro-rata share of community development loans made by the CDC. Alternatively, the institution's investment may be considered under the investment test, assuming it is a qualified investment. In addition, an institution may elect to have a part of its investment considered under the lending test and the remaining part considered under the investment test. If the investing institution opts to have a portion of its investment evaluated under the lending test by claiming [a]►its pro rata◄ share of the CDC's community development loans, the amount of investment considered under the investment test will be offset by that portion. Thus, the institution[only] would receive consideration under the investment test for ►only◄ the amount of its investment multiplied by the percentage of the CDC's assets that meet the definition of a qualified investment.

§____.23(b)—2: *If home mortgage loans to low- and moderate-income borrowers have been considered under an institution's lending test, may the institution that originated or purchased them also receive consideration under the investment test if it subsequently purchases mortgage-backed securities that are primarily or exclusively backed by such loans?*

A2. No. Because the institution received lending test consideration for the loans that underlie the securities, the institution may not also receive consideration under the investment test for its purchase of the securities. Of course, an institution may receive investment test consideration for purchases of mortgage-backed securities that are backed by loans to low- and moderate-income individuals as long as the securities are not backed primarily or exclusively by loans that the same institution originated or purchased.

§ ____.23(e) Performance criteria

§ ____.23(e)–1: *When applying the ►four◄ performance criteria of [§] ►12 CFR◄____.23(e), may an*

examiner distinguish among qualified investments based on how much of the investment actually supports the underlying community development purpose?

A1. Yes. [Although § ____.23(e)(1) speaks in terms of the dollar amount of qualified investments, the criterion permits] ►By applying all the criteria, a qualified investment of a lower dollar amount may be weighed more heavily under the investment test than a qualified investment with a higher dollar amount that has fewer qualitative enhancements. The criteria permit◄ an examiner to ►qualitatively◄ weight certain investments differently or to make other appropriate distinctions when evaluating an institution's record of making qualified investments. For instance, an examiner should take into account that a targeted mortgage-backed security that qualifies as an affordable housing issue that has only 60 percent of its face value supported by loans to low-or moderate-income borrowers would not provide as much affordable housing for low- and moderate-income individuals as a targeted mortgage-backed security with 100 percent of its face value supported by affordable housing loans to low- and moderate-income borrowers. The examiner should describe any differential weighting (or other adjustment), and its basis in the [Public] ►Performance◄ Evaluation. ►See also Q&A § ____.12(t)–8 for a discussion about the qualitative consideration of prior period investments.◄ [However, no matter how a qualified investment is handled for purposes of § ____.23(e)(1), it will also be evaluated with respect to the qualitative performance criteria set forth in § ____.23(e)(2), (3), and (4). By applying all criteria, a qualified investment of a lower dollar amount may be weighed more heavily under the Investment Test than a qualified investment with a higher dollar amount, but with fewer qualitative enhancements.]

§ ____.23(e)—2: *How do examiners evaluate an institution's qualified investment in a fund, the primary purpose of which is community development, as [that is] defined in the CRA regulations?*

A2. When evaluating qualified investments that benefit an institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s) ►under the investment test◄, examiners will look at the following four performance criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

With respect to the first criterion, examiners will determine the dollar amount of qualified investments by relying on the figures recorded by the institution according to generally accepted accounting principles (GAAP). Although institutions may exercise a range of investment strategies, including short-term investments, long-term investments, investments that are immediately funded, and investments with a binding, up-front commitment that are funded over a period of time, institutions making the same dollar amount of investments over the same number of years, all other performance criteria ►and performance context◄ being equal, would receive the same level of consideration. Examiners will include both new and outstanding investments in this determination. [The dollar amount] ►In addition, the review◄ of qualified investments[also] will [include] ►consider◄ the dollar amount of legally binding commitments recorded by the institution according to GAAP.

The extent to which qualified investments receive consideration, however, depends on how examiners evaluate the investments under the remaining three performance criteria—innovativeness and complexity, responsiveness, and degree to which the investment is not routinely provided by private investors. Examiners also will consider factors relevant to the institution's CRA performance context, such as the effect of outstanding long-term qualified investments, the pay-in schedule, and the amount of any cash call, on the capacity of the institution to make new investments.

§ ____.24 Service test.

§ ____.24(d) Performance criteria—retail banking services.

§ ____.24(d)—1: *How do examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services?*

A1. Convenient access to full service branches within a community is an important factor in determining the availability of credit and non-credit services. Therefore, the service test performance standards place primary emphasis on full service branches while still considering alternative systems, such as automated teller machines (''ATMs''). The principal focus is on an institution's current distribution of branches[; therefore] ►and its record of opening and closing branches, particularly branches located in low-or moderate-income geographies or primarily serving low-or moderate-income individuals. However,◄ an institution is not required to expand its branch network or operate unprofitable branches. Under the service test, alternative systems for delivering retail banking services, such as ATMs, are considered only to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals.

§ ____.24(d)—2: *How do examiners evaluate an institution's activities in connection with Individual Development Accounts (IDAs)?*

A2. Although there is no standard IDA program, IDAs typically are deposit accounts targeted to low- and moderate-income families that are designed to help them accumulate savings for education or job-training, down-payment and closing costs on a new home, or start-up capital for a small business. Once participants have successfully funded an IDA, their personal IDA savings are matched by a public or private entity. Financial institution participation in IDA programs comes in a variety of forms, including providing retail banking services to IDA account holders, providing matching dollars or operating funds to an IDA program, designing or implementing IDA programs, providing consumer financial education to IDA account holders or prospective account holders, or other means. The extent of financial institutions' involvement in IDAs and the products and services they offer in connection with the accounts will vary. Thus, subject to 12 CFR ____.23(b), examiners evaluate the actual services and products provided by an institution in connection with IDA programs as one or more of the following: community development services, retail banking services, qualified investments, home mortgage loans, small business loans, consumer loans, or community development loans. ►*See, e.g.*, Q&A § ____.12(i) 3.

Note that all types of institutions may participate in IDA programs. Their IDA activities are evaluated under the performance criteria of the type of examination applicable to the particular institution.◄

§ ____.24(d)(3) Availability and effectiveness of alternative systems for delivering retail banking services.

§ ____.24(d)(3)—1: *How will examiners evaluate alternative systems for delivering retail banking services?*

A1. The regulation recognizes the multitude of ways in which an institution can provide services, for example, ATMs, banking by telephone or computer, and bank-by-mail programs. Delivery systems other than branches will be considered under the regulation to the extent that they are effective alternatives to branches in providing needed services to low- and moderate-income areas and individuals. The list of systems in the regulation is not intended to be [inclusive] ►comprehensive◄.

§ ____.24(d)(3)—2: *Are debit cards considered under the service test as an alternative delivery system?*

A2. By themselves, no. However, if debit cards are a part of a larger combination of products, such as a comprehensive electronic banking service, that allows an institution to deliver needed services to low- and moderate-income areas and individuals in its community, the overall delivery system that includes the debit card feature would be considered an alternative delivery system.

§ ____.24(e) Performance criteria—community development services.

§ ____.24(e)—1: *Under what conditions may an institution receive consideration for community development services offered by affiliates or third parties?*

A1. At an institution's option, the agencies will consider services performed by an affiliate or by a third party on the institution's behalf under the service test if the services provided enable the institution to help meet the credit needs of its community. Indirect services that enhance an institution's ability to deliver credit products or deposit services within its community and that can be quantified may be considered under the service test, if those services have not been considered already under the lending or investment test (*see* ►Q&A◄ § ____.23(b)—1). For example, an institution that contracts with a community organization to provide home ownership counseling to low- and moderate-income home buyers as part of the institution's mortgage program may receive consideration for that indirect service under the service test. In contrast, donations to a community organization that offers financial services to low- or moderate-income individuals may be considered under the investment test, but would not also be eligible for consideration under the service test. Services performed by an affiliate will be treated the same as affiliate loans and investments made in the institution's assessment area and may be considered if the service is not claimed by any other institution. *See* ►12 CFR◄ [§§]____.22(c) and ____.23(c).

§ ____.25 Community development test for wholesale or limited purpose institutions.

§ ____.25(a) Scope of test.

§ ____.25(a)—1: *How can certain credit card banks help to meet the credit needs of their communities without losing their exemption from the definition of ''bank'' in the Bank Holding Company Act (the BHCA), as amended by the Competitive Equality Banking Act of 1987 (CEBA)?*

A1. Although the BHCA restricts institutions known as CEBA credit card banks to credit card operations, a CEBA credit card bank can engage in community development activities without losing its exemption under the BHCA. A CEBA credit card bank could provide community development services and investments without engaging in operations other than credit card operations. For example, the bank could provide credit card counseling, or the financial expertise of its executives, free of charge, to community development organizations. In addition, a CEBA credit card bank could make qualified investments, as long as the investments meet the guidelines for passive and noncontrolling investments provided in the BHC Act and the Board's Regulation Y. Finally, although a CEBA credit card bank cannot make any loans other than credit card loans, under [§] ►12 CFR◄ ____.25(d)(2) (community development test-indirect activities), the bank could elect to have part of its qualified passive and noncontrolling investments in a third-party lending consortium considered as community development lending, provided that the consortium's loans otherwise meet the requirements for community development lending. When assessing a CEBA credit card bank's CRA performance under the community development test, examiners will take into account the bank's performance context. In particular, examiners will consider the legal constraints imposed by the BHCA on the bank's activities, as part of the bank's performance context in [§] ►12 CFR◄ ____.21(b)(4).

§ ____.25(d) Indirect activities.

§ ____.25(d)—1: *How are investments in third party community development organizations considered under the community development test?*

A1. Similar to the lending test for retail institutions, investments in third party community development organizations may be considered as qualified investments or as community development loans or both (provided there is no double counting), at the institution's option, as described above in the discussion regarding §§ ____.22(d) and ____.23(b).

§ ____.25(e) Benefit to assessment area(s).

§ ____.25(e)—1: *How do examiners evaluate a wholesale or limited purpose institution's qualified investment in a fund that invests in projects nationwide and which has a primary purpose of community development, as that is defined in the regulations?*

A1. If examiners find that a wholesale or limited purpose institution has adequately addressed the needs of its assessment area(s), they will give consideration to qualified investments, as well as community development loans and community development services, by that institution nationwide. In determining whether an institution has adequately addressed the needs of its assessment area(s), examiners will consider qualified investments that benefit a broader statewide or regional area that includes the institution's assessment area(s).

§ ____.25(f) Community development performance rating.

§ ____.25(f)—1: *Must a wholesale or limited purpose institution engage in all three categories of community development activities (lending, investment, and service) to perform well under the community development test?*

A1. No, a wholesale or limited purpose institution may perform well under the community development test by engaging in one or more of these activities.

§ ____.26 Small institution performance standards.

§ ____.26—1: *When evaluating a small or intermediate small [bank's] ►institution's◄ performance, will examiners consider, at the institution's request, retail and community development loans originated or purchased by affiliates, qualified investments made by affiliates, or community development services provided by affiliates?* [4]

A1: Yes. However, a small institution that elects to have examiners consider affiliate activities must maintain sufficient information that the examiners may evaluate these activities under the appropriate performance

[4] The inserts and deletions are shown as compared to the current Q&A for the OCC, Board, and FDIC. The comparable Q&A for OTS does not currently refer to the intermediate small institution test. *See* 71 FR at 52379.

criteria and ensure that the activities are not claimed by another institution. The constraints applicable to affiliate activities claimed by large institutions also apply to small and intermediate small institutions. *See* [Q&A] ►Q&As addressing◄ §____.22(c)(2) and related guidance provided to large institutions regarding affiliate activities. Examiners will not include affiliate lending in calculating the percentage of loans and, as appropriate, other lending-related activities located in [a bank's] ►an institution's◄ assessment area.

►*§____.26(a) Performance criteria.*

§____.26(a)(2) Intermediate small institutions.◄

►§____.26(a)(2)—1: *When is an institution examined as an intermediate small institution?*

A1. When a small institution has met the intermediate small institution asset threshold delineated in §____.12(u)(1) for two consecutive calendar year-ends, the institution may be examined under the intermediate small institution examination procedures. The regulation does not specify an additional lag period between becoming an intermediate small institution and being examined as an intermediate small institution, as it does for large institutions, because an intermediate small institution is not subject to CRA data collection and reporting requirements. Institutions should contact their primary regulator for information on examination schedules.◄

§____.26[(a) Performance criteria] ►*(b) Lending test.*◄

§____.26([a]►b◄)—1: *May examiners consider, under one or more of the performance criteria of the small institution performance standards, lending-related activities, such as community development loans and lending-related qualified investments, when evaluating a small institution?*

A1. Yes. Examiners can consider ''lending-related activities,'' including community development loans and lending-related qualified investments, when evaluating the first four performance criteria of the small institution performance test. Although lending-related activities are specifically mentioned in the regulation in connection with only the first three criteria (i.e., loan-to-deposit ratio, percentage of loans in the institution's assessment area, and lending to borrowers of different incomes and businesses of different sizes), examiners can also consider these activities when they evaluate the fourth criteria—geographic distribution of the institution's loans.

►Although lending-related community development activities are evaluated under the community development test applicable to intermediate small institutions, these activities may also augment the loan-to-deposit ratio analysis (12 CFR ____.26(b)(1)) and the percentage of loans in the intermediate small institution's assessment area analysis (12 CFR ____.26(b)(2)), if appropriate.◄

§____.26([a]►b◄)—2: *What is meant by ''as appropriate'' when referring to the fact that lending-related activities will be considered, ''as appropriate,'' under the various small institution performance criteria?*

A2. ''As appropriate'' means that lending-related activities will be considered when it is necessary to determine whether an institution meets or exceeds the standards for a satisfactory rating. Examiners will also consider other lending-related activities at an institution's request ►, provided they have not also been considered under the community development test applicable to intermediate small institutions◄.

§____.26([a]►b ◄)—3: *When evaluating a small institution's lending performance, will examiners consider, at the institution's request, community development loans originated or purchased by a consortium in which the institution participates or by a third party in which the institution has invested?*

A3. Yes. However, a small institution that elects to have examiners consider community development loans originated or purchased by a consortium or third party must maintain sufficient information on its share of the community development loans so that the examiners may evaluate these loans under the small institution performance criteria.

§____.26([a]►b◄)—4: *Under the small institution* ►*lending test*◄ *performance standards, will examiners consider both loan originations and purchases?*

A4. Yes, consistent with the other assessment methods in the regulation, examiners will consider both loans originated and purchased by the institution. Likewise, examiners may consider any other loan data the small institution chooses to provide, including data on loans outstanding, commitments, and letters of credit.

§ ____.26([a]►b◄)—5: *Under the small institution* ►*lending test*◄ *performance standards, how will qualified investments be considered for purposes of determining whether a small institution receives a satisfactory CRA rating?*

A5. The small institution lending test performance standards focus on lending and other lending-related activities. Therefore, examiners will consider only lending-related qualified investments for the [purposes] ►purpose◄ of determining whether [the] ►a◄ small institution ► that is not an intermediate small institution◄ receives a satisfactory CRA rating.

§ ____.26([a] ►*b*◄*)(1) Loan-to-deposit ratio.*

§ ____.26([a]►b◄)(1)—1: *How is the loan-to-deposit ratio calculated?*

A1. A small institution's loan-to-deposit ratio is calculated in the same manner that the Uniform Bank Performance Report/Uniform Thrift Performance Report (UBPR/UTPR) determines the ratio. It is calculated by dividing the institution's net loans and leases by its total deposits. The ratio is found in the Liquidity and Investment Portfolio section of the UBPR and UTPR. Examiners will use this ratio to calculate an average since the last examination by adding the quarterly loan-to-deposit ratios and dividing the total by the number of quarters.

§ ____.26([a]►b◄)(1)—2: *How is the ''reasonableness'' of a loan-to-deposit ratio evaluated?*

A2. No specific ratio is reasonable in every circumstance, and each small institution's ratio is evaluated in light of information from the performance context, including the institution's capacity to lend, demographic and economic factors present in the assessment area, and the lending opportunities available in the assessment area(s). If a small institution's loan-to-deposit ratio appears unreasonable after considering this information, lending performance may still be satisfactory under this criterion taking into consideration the number and the dollar volume of loans sold to the secondary market or the number and amount and innovativeness or complexity of community development loans and lending-related qualified investments.

§ ____.26([a]►b◄)(1)—3: *If an institution makes a large number of loans off-shore, will examiners segregate the domestic loan-to-deposit ratio from the foreign loan-to-deposit ratio?*

A3. No. Examiners will look at the institution's net loan-to-deposit ratio for the whole institution, without any adjustments.

§ ____.26([a]►b◄)(2) Percentage of lending within assessment area(s).

§ ____.26([a]►b◄)(2)—1: *Must a small institution have a majority of its lending in its assessment area(s) to receive a satisfactory performance rating?*

A1. No. The percentage of loans and, as appropriate, other lending-related activities located in the [bank's] ►institution's◄ assessment area(s) is but one of the performance criteria upon which small institutions are evaluated. If the percentage of loans and other lending related activities in an institution's assessment area(s) is less than a majority, then the institution does not meet the standards for satisfactory performance only under this criterion. The effect on the overall performance rating of the institution, however, is considered in light of the performance context, including information regarding economic conditions[,]►;◄ loan demand[,]►;◄ the institution's size, financial condition [and] ►,◄ business strategies, and branching network ►;◄ and other aspects of the institution's lending record.

§ ____.26([a] ►b◄)(3) & (4) Distribution of lending within assessment area(s) by borrower income and geographic location.

§ ____.26([a] ►b◄)(3) & (4)—1: *How will a small institution's performance be assessed under these lending distribution criteria?*

A1. Distribution of loans, like other small institution performance criteria, is considered in light of the performance context. For example, a small institution is not required to lend evenly throughout its assessment area(s) or in any particular geography. However, in order to meet the standards for satisfactory performance under this criterion, conspicuous gaps in a small institution's loan distribution must be adequately explained by performance context factors such as lending opportunities in the institution's assessment area(s), the institution's product offerings and business strategy, and institutional capacity and constraints. In addition, it may be impracticable to review the geographic distribution of the lending of an institution with ►very◄ few demographically distinct geographies within an assessment area. If sufficient information on the income levels of individual borrowers or the revenues or sizes of business borrowers is not available, examiners may use[proxies such as] loan size ►as a proxy◄ for estimating borrower characteristics, where appropriate.

►*§ ____.26(c) Intermediate small institution community development test.*◄

§ ____.26(c)—1: *How will the community development test be applied flexibly for intermediate small [banks] ►institutions◄ ?*[5]

A1: Generally, intermediate small [banks] ►institutions◄ engage in a combination of community development loans, qualified investments, and community development services. [A bank] ►An institution◄ may not simply ignore one or more of these categories of community development, nor do the regulations prescribe a required threshold for community development loans, qualified investments, and community development services. Instead, based on the [bank's] ►institution's◄ assessment of community development needs in its assessment area(s), it may engage in different categories of community development activities that are responsive to those needs and consistent with the [bank's] ►institution's◄ capacity.

An intermediate small [bank] ►institution◄ has the flexibility to allocate its resources among community development loans, qualified investments, and community development services in amounts that it reasonably determines are most responsive to community development needs and opportunities. Appropriate levels of each of these activities would depend on the capacity and business strategy of the [bank] ►institution ◄, community needs, and number and types of opportunities for community development.

►*§ ____.26(c)(3) Community development services.*◄

§ ____.26(c)(3)—1: *What will examiners consider when evaluating the provision of community development services by an intermediate small [bank]►institution◄?*[6]

A1: Examiners will consider not only the types of services provided to benefit low- and moderate-income individuals, such as low-cost [bank] checking accounts and low-cost remittance services, but also the provision and availability of services to low- and moderate-income individuals, including through branches and other facilities located in low- and moderate-income areas. Generally, the presence of branches located in low- and moderate-income geographies will help to demonstrate the availability of banking services to low- and moderate-income individuals.

►*§ ____.26(c)(4) Responsiveness to community development needs*◄

§ ____.26(c)(4)–1: *When evaluating an intermediate small [bank's]►institution's◄community development record, what will examiners consider when reviewing the responsiveness of community development lending, qualified investments, and community development services to the community development needs of the area?*[7]

A1: When evaluating an intermediate small [bank's]►institution's◄ community development record, examiners will consider not only quantitative measures of performance, such as the number and amount of community development loans, qualified investments, and community development services, but also qualitative aspects of performance. In particular, examiners will evaluate the responsiveness of the [bank's]►institution's◄ community development activities in light of the [bank's]►institution's◄ capacity, business strategy, the needs of the community, and the number and types of opportunities for each type of community development activity (its performance context). Examiners also will consider the results of any assessment by the institution of community development needs, and how the [bank's]►institution's◄ activities respond to those needs.

An evaluation of the degree of responsiveness considers the following factors: the volume, mix, and qualitative aspects of community development loans, qualified investments, and community development services. Consideration of the qualitative aspects of performance recognizes that community development activities sometimes require special expertise or effort on the part of the institution or provide a benefit to the community that would not otherwise be made available. (However, ''innovativeness'' and ''complexity,'' factors examiners consider when evaluating a large

[5] The inserts and deletions are shown as compared to the current Q&A for the OCC, Board, and FDIC. There currently is no comparable Q&A for OTS.

[6] The inserts and deletions are shown as compared to the current Q&A for the OCC, Board, and FDIC. There currently is no comparable Q&A for OTS.

[7] The inserts and deletions are shown as compared to the current Q&A for the OCC, Board, and FDIC. There currently is no comparable Q&A for OTS.

[bank]►institution◄ under the lending, investment, and service tests, are not criteria in the intermediate small [banks']►institutions'◄ community development test.) In some cases, a smaller loan may have more qualitative benefit to a community than a larger loan. Activities are considered particularly responsive to community development needs if they benefit low- and moderate-income individuals in low- or moderate-income geographies, designated disaster areas, or distressed or underserved nonmetropolitan middle-income geographies. Activities are also considered particularly responsive to community development needs if they benefit low- or moderate-income geographies.

§____.26([b]►d◄) Performance rating.

§____.26([b]►d◄)—1: *How can a small institution►that is not an intermediate small institution◄achieve an outstanding performance rating?*

A1. A small institution►that is not an intermediate small institution◄that meets each of the standards in the lending test for a ''satisfactory'' rating and exceeds some or all of those standards may warrant an ''outstanding'' performance rating. In assessing performance at the ''outstanding'' level, the agencies consider the extent to which the institution exceeds each of the performance standards and, at the institution's option, its performance in making qualified investments and providing services that enhance credit availability in its assessment area(s). In some cases, a small institution may qualify for an ''outstanding'' performance rating solely on the basis of its lending activities, but only if its performance materially exceeds the standards for a ''satisfactory'' rating, particularly with respect to the penetration of borrowers at all income levels and the dispersion of loans throughout the geographies in its assessment area(s) that display income variation. An institution with a high loan-to-deposit ratio and a high percentage of loans in its assessment area(s), but with only a reasonable penetration of borrowers at all income levels or a reasonable dispersion of loans throughout geographies of differing income levels in its assessment area(s), generally will not be rated ''outstanding'' based only on its lending performance. However, the institution's performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s) may augment the institution's satisfactory rating to the extent that it may be rated outstanding.

§____.26([b]►d◄)—2: *Will a small institution's qualified investments, community development loans, and community development services be considered if they do not directly benefit its assessment area(s)?*

A2. Yes. These activities are eligible for consideration if they benefit a broader statewide or regional area that includes a small institution s assessment area(s), as discussed more fully in►Q&As◄ §[§]____.12([i]►h◄)[& 563e.12(h)]—6►and §____.12(h)—7◄.

§____.27 Strategic plan.

§____.27(c) Plans in general.

§____.27(c)—1: *To what extent will the agencies provide guidance to an institution during the development of its strategic plan?*

A1. An institution will have an opportunity to consult with and provide information to the agencies on a proposed strategic plan. Through this process, an institution is provided guidance on procedures and on the information necessary to ensure a complete submission. For example, the agencies will provide guidance on whether the level of detail as set out in the proposed plan would be sufficient to permit agency evaluation of the plan. However, the agencies' guidance during plan development and, particularly, prior to the public comment period, will not include commenting on the merits of a proposed strategic plan or on the adequacy of measurable goals.

§____.27(c)–2: *How will a joint strategic plan be reviewed if the affiliates have different primary Federal supervisors?*

A2. The agencies will coordinate review of and action on the joint plan. Each agency will evaluate the measurable goals for those affiliates for which it is the primary regulator.

§____.27(f) Plan content.

§____.27(f)(1) Measurable goals.

§____.27(f)(1)—1: *How should ►annual◄[''] measurable goals[''] be specified in a strategic plan?*

A1. [Measurable]►Annual measurable◄goals (e.g., number of loans, dollar amount, geographic location of activity, and benefit to low- and moderate-income areas or individuals) must be stated with sufficient specificity to permit the public and the agencies to quantify what performance will be expected. However, institutions are provided flexibility in specifying goals. For example, an institution may provide ranges of lending amounts in different categories of loans. Measurable goals may also be linked to funding requirements of certain public programs or indexed to other external factors as long as these mechanisms provide a quantifiable standard.

§ ____.27(g) Plan approval.

§ ____.27(g)(2) Public participation.

§ ____.27(g)(2)—1: *How will the public receive notice of a proposed strategic plan?*

A1. An institution submitting a strategic plan for approval by the agencies is required to solicit public comment on the plan for a period of thirty (30) days after publishing notice of the plan at least once in a newspaper of general circulation. The notice should be sufficiently prominent to attract public attention and should make clear that public comment is desired. An institution may, in addition, provide notice to the public in any other manner it chooses.

§ ____.28 Assigned ratings.

§ ____.28—1: *Are innovative lending practices, innovative or complex qualified investments, and innovative community development services required for a ''satisfactory'' or ''outstanding'' CRA rating?*

A1. No. ►The performance criterion of innovativeness applies only under the lending, investment, and service tests applicable to large institutions and the community development test applicable to wholesale and limited purpose institutions.◄ Moreover, ►even under these tests,◄ the lack of innovative lending practices, innovative or complex qualified investments, or innovative community development services alone will not result in a ''needs to improve'' CRA rating. However, ►under these tests,◄ the use of innovative lending practices, innovative or complex qualified investments, and innovative community development services may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance rating. ►See also Q&A § ____.26(c)(4)—1 for a discussion about responsiveness to community development needs under the community development test applicable to intermediate small institutions. ◄

[§ ____.28—2: *How is performance under the quantitative and qualitative*

performance criteria weighed when examiners assign a CRA rating?[8]

A2. The lending, investment, and service tests each contain a number of performance criteria designed to measure whether an institution is effectively helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, in a safe and sound manner. Some of these performance criteria are quantitative, such as number and amount, and others, such as the use of innovative or flexible lending practices, the innovativeness or complexity of qualified investments, and the innovativeness and responsiveness of community development services, are qualitative. The performance criteria that deal with these qualitative aspects of performance recognize that these loans, qualified investments, and community development services sometimes require special expertise and effort on the part of the institution and provide a benefit to the community that would not otherwise be possible. As such, the agencies consider the qualitative aspects of an institution's activities when measuring the benefits received by a community. An institution's performance under these qualitative criteria may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance and rating.]

§ ____.28(a) Ratings in general.

§ ____.28(a)—1: *How are institutions with domestic branches in more than one state assigned a rating?*

A1. The evaluation of an institution that maintains domestic branches in more than one state (''multistate institution'') will include a written evaluation and rating of its CRA record of performance as a whole and in each state in which it has a domestic branch. The written evaluation will contain a separate presentation on a multistate institution's performance for each metropolitan statistical area and the nonmetropolitan area within each state, if it maintains one or more domestic branch offices in these areas. This separate presentation will contain conclusions, supported by facts and data, on performance under the performance tests and standards in the regulation. The evaluation of a multistate institution that maintains a domestic branch in two or more states in a multistate metropolitan area will include a written evaluation (containing the same information described above) and rating of its CRA record of performance in the multistate metropolitan area. In such cases, the statewide evaluation and rating will be adjusted to reflect performance in the portion of the state not within the multistate metropolitan statistical area.

§ ____.28(a)—2: *How are institutions that operate within only a single state assigned a rating?*

A2. An institution that operates within only a single state (''single-state institution'') will be assigned a rating of its CRA record based on its performance within that state. In assigning this rating, the agencies will separately present a single-state institution's performance for each metropolitan area in which the institution maintains one or more domestic branch offices. This separate presentation will contain conclusions, supported by facts and data, on the single-state institution's performance under the performance tests and standards in the regulation.

§ ____.28(a)—3: *How do the agencies weight performance under the lending, investment, and service [test] ►tests◄ for large retail institutions?*

A3. A rating of ''outstanding,'' ''high satisfactory,'' ''low satisfactory,'' ''needs to improve,'' or ''substantial noncompliance,'' based on a judgment supported by facts and data, will be assigned under each performance test. Points will then be assigned to each rating as described in the first matrix set forth below. A large retail institution's overall rating under the lending, investment and service tests will then be calculated in accordance with the second matrix set forth below, which incorporates the rating principles in the regulation.

POINTS ASSIGNED FOR PERFORMANCE UNDER LENDING, INVESTMENT AND SERVICE TESTS

	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

COMPOSITE RATING POINT REQUIREMENTS

[Add points from three tests]

Rating	Total Points
Outstanding	20 or over.
Satisfactory	11 through 19.
Needs to Improve	5 through 10.
Substantial Noncompliance	0 through 4.

Note: There is one exception to the Composite Rating matrix. An institution may not receive a rating of ''satisfactory'' unless it receives at least ''low satisfactory'' on the lending test. Therefore, the total points are capped at three times the lending test score.

►*§ ____.28(b) Lending, investment, and service test ratings*◄

►§ ____.28(b)—1: *How is performance under the quantitative and qualitative performance criteria weighed when examiners assign a CRA rating?*

A2. The lending, investment, and service tests each contain a number of performance criteria designed to measure whether an institution is effectively helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, in a safe and sound manner. Some of these performance criteria are quantitative, such as number and amount, and others, such as the use of innovative or flexible lending practices, the innovativeness or complexity of qualified investments, and the innovativeness and responsiveness of community development services, are qualitative. The performance criteria that deal with these qualitative aspects of performance recognize that these loans, qualified investments, and community development services sometimes require special expertise and effort on the part of the institution and provide a benefit to the community that would not otherwise be possible. As such, the agencies consider the qualitative aspects of an institution's activities when

[8] Note that this Q&A would be moved to become Q&A § ____.28(b)—1, not deleted.

measuring the benefits received by a community. An institution's performance under these qualitative criteria may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance and rating.◀

§ ____.28(c) Effect of evidence of discriminatory or other illegal credit practices

§ ____.28(c)—1: *What is meant by ''discriminatory or other illegal credit practices''?*

A1. An institution engages in discriminatory credit practices if it discourages or discriminates against credit applicants or borrowers on a prohibited basis, in violation, for example, of the Fair Housing Act or the Equal Credit Opportunity Act (as implemented by Regulation B). Examples of other illegal credit practices inconsistent with helping to meet community credit needs include violations of:

- The Truth in Lending Act regarding rescission of certain mortgage transactions and regarding disclosures and certain loan term restrictions in connection with credit transactions that are subject to the Home Ownership and Equity Protection Act;
- The Real Estate Settlement Procedures Act regarding the giving and accepting of referral fees, unearned fees or kickbacks in connection with certain mortgage transactions; and
- The Federal Trade Commission Act regarding unfair or deceptive acts or practices. Examiners will determine the effect of evidence of illegal credit practices as set forth in examination procedures and § ____.28(c) of the regulation.

Violations of other provisions of the consumer protection laws generally will not adversely affect an institution's CRA rating, but may warrant the inclusion of comments in an institution's performance evaluation. These comments may address the institution's policies, procedures, training programs, and internal assessment efforts.

§ ____.29 Effect of CRA performance on applications.

§ ____.29(a) CRA performance.

§ ____.29(a)—1: *What weight is given to an institution's CRA performance examination in reviewing an application?*

A1. In [cases]▶reviewing applications◀ in which CRA performance is a relevant factor, information from a CRA[performance] examination of the institution is a particularly important consideration[in the application process because it represents]▶. The examination is◀ a detailed evaluation of the institution's CRA performance by its Federal supervisory agency. In this light, an examination is an important, and often controlling, factor in the consideration of an institution's record. In some cases, however, the examination may not be recent▶,◀ or a specific issue raised in the application process, such as progress in addressing weaknesses noted by examiners, progress in implementing commitments previously made to the reviewing agency, or a supported allegation from a commenter, is relevant to CRA performance under the regulation and was not addressed in the examination. In these circumstances, the applicant should present sufficient information to supplement its record of performance and to respond to the substantive issues raised in the application proceeding.

§ ____.29(a)—2: *What consideration is given to an institution's commitments for future action in reviewing an application by those agencies that consider such commitments?*

A2. Commitments for future action are not viewed as part of the CRA record of performance. In general, institutions cannot use commitments made in the applications process to overcome a seriously deficient record of CRA performance. However, commitments for improvements in an institution's performance may be appropriate to address specific weaknesses in an otherwise satisfactory record or to address CRA performance when a financially troubled institution is being acquired.

§ ____.29(b) Interested parties.

§ ____.29(b)—1: *What consideration is given to comments from interested parties in reviewing an application?*

A1. Materials relating to CRA performance received during the [applications]▶application◀ process can provide valuable information. Written comments, which may express either support for or opposition to the application, are made a part of the record in accordance with the agencies' procedures, and are carefully considered in making the agencies' [decision]▶decisions◀. Comments should be supported by facts about the applicant's performance and should be as specific as possible in explaining the basis for supporting or opposing the application. These comments must be submitted within the time limits provided under the agencies' procedures.

§ ____.29(b)—2: *Is an institution required to enter into agreements with private parties?*

A2. No. Although communications between an institution and members of its community may provide a valuable method for the institution to assess how best to address the credit needs of the community, the CRA does not require an institution to enter into agreements with private parties. [These agreements are not monitored or enforced by the agencies.]▶The agencies do not monitor compliance with nor enforce these agreements.◀

§ ____.41 Assessment area delineation.

§ ____.41(a) In general.

§ ____.41(a)—1: *How do the agencies evaluate ''assessment areas'' under the [revised] CRA regulations[compared to how they evaluated ''local communities'' that institutions delineated under the original CRA regulations]?*

A1. The[revised] rule focuses on the distribution and level of an institution's lending, investments, and services rather than on how and why an institution delineated its[''local community'' or] assessment area(s) in a particular manner. Therefore, the agencies will not evaluate an institution's delineation of its assessment area(s) as a separate performance criterion[as they did under the original regulation]. Rather, the agencies will only review whether the assessment area delineated by the institution complies with the limitations set forth in the regulations at § ____.41(e).

§ ____.41(a)—2: *If an institution elects to have the agencies consider affiliate lending, will this decision affect the institution's assessment area(s)?*

A2. If an institution elects to have the lending activities of its affiliates considered in the evaluation of the institution's lending, the geographies in which the affiliate lends do not affect the institution's delineation of assessment area(s).

§ ____.41(a)—3: *Can a financial institution identify a specific ▶ racial or◀ ethnic group rather than a geographic area as its assessment area?*

A3. No, assessment areas must be based on geography. ▶The only exception to the requirement to delineate an assessment area based on geography is that an institution, the business of which predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area, may delineate its entire deposit customer base as its assessment area.◀

§ ____.41(c) Geographic area(s) for institutions other than wholesale or limited purpose institutions.

§ ____.41(c)(1) Generally consist of one or more MSAs or metropolitan divisions or one or more contiguous political subdivisions.

§ ____.41(c)(1)—1: *Besides cities, towns, and counties, what other units of local government are political subdivisions for CRA purposes?*

A1. Townships and Indian reservations are political subdivisions for CRA purposes. Institutions should be aware that the boundaries of townships and Indian reservations may not be consistent with the boundaries of the census tracts [or block numbering areas] (''geographies'') in the area. In these cases, institutions must ensure that their assessment area(s) consists only of whole geographies by adding any portions of the geographies that lie outside the political subdivision to the delineated assessment area(s).

§ ____.41(c)(1)—2: *Are wards, school districts, voting districts, and water districts political subdivisions for CRA purposes?*

A2. No. However, an institution that determines that it predominantly serves an area that is smaller than a city, town►,◄ or other political subdivision may delineate as its assessment area the larger political subdivision and then, in accordance with ►12 CFR◄ [§] ____.41(d), adjust the boundaries of the assessment area to include only the portion of the political subdivision that it reasonably can be expected to serve. The smaller area that the institution delineates must consist of entire geographies, may not reflect illegal discrimination, and may not arbitrarily exclude low- or moderate-income geographies.

§ ____.41(d) Adjustments to geographic area(s).

§ ____.41(d)—1: *When may an institution adjust the boundaries of an assessment area to include only a portion of a political subdivision?*

A1. Institutions must include whole geographies (i.e., census tracts[or block numbering areas]) in their assessment areas and generally should include entire political subdivisions. Because census tracts [and block numbering areas] are the common geographic areas used consistently nationwide for data collection, the agencies require that assessment areas be made up of whole geographies. If including an entire political subdivision would create an area that is larger than the area the institution can reasonably be expected to serve, an institution may, but is not required to, adjust the boundaries of its assessment area to include only portions of the political subdivision. For example, this adjustment is appropriate if the assessment area would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers (such as a river, mountain, or major highway system). When adjusting the boundaries of their assessment areas, institutions must not arbitrarily exclude low- or moderate-income geographies or set boundaries that reflect illegal discrimination.

§ ____.41(e) Limitations on delineation of an assessment area.

§ ____.41(e)(3) May not arbitrarily exclude low- or moderate-income geographies.

§ ____.41(e)(3)—1: *How will examiners determine whether an institution has arbitrarily excluded low- or moderate-income geographies?*

A1. Examiners will make this determination on a case-by-case basis after considering the facts relevant to the institution's assessment area delineation. Information that examiners will consider may include:

- Income levels in the institution's assessment area(s) and surrounding geographies;
- Locations of branches and deposit-taking ATMs;
- Loan distribution in the institution's assessment area(s) and surrounding geographies;
- The institution's size;
- The institution's financial condition; and
- The business strategy, corporate structure and product offerings of the institution.

§ ____.41(e)(4) May not extend substantially beyond [a CMSA]►an MSA◄ boundary or beyond a state boundary unless located in a multistate MSA.

§ ____.41(e)(4)—1: *What are the maximum limits on the size of an assessment area?*

A1. An institution [shall]►may◄ not delineate an assessment area extending substantially across the boundaries of [a consolidated metropolitan statistical area (CMSA) or the boundaries of an MSA, if the MSA is not located in a CMSA.]►an MSA unless the MSA is in a combined statistical area (CSA)). Although more than one MSA in a CSA may be delineated as a single assessment area, an institution's CRA performance in individual MSAs in those assessment areas will be evaluated using separate median family incomes and other relevant information at the MSA level rather than at the CSA level.◄

[Similarly, an]►An◄ assessment area► also◄ may not extend substantially across state boundaries unless the assessment area is located in a multistate MSA. An institution may not delineate a whole state as its assessment area unless the entire state is contained within [a CMSA]►an MSA◄ . These limitations apply to wholesale and limited purpose institutions as well as other institutions.

An institution [shall]►must◄ delineate separate assessment areas for the areas inside and outside [a CMSA (or MSA if the MSA is not located in a CMSA)]►an MSA◄ if the area served by the institution's branches outside the [CMSA (or MSA)]►MSA◄ extends substantially beyond the [CMSA (or MSA)]►MSA◄ boundary. Similarly, the institution [shall]►must◄ delineate separate assessment areas for the areas inside and outside of a state if the institution's branches extend substantially beyond the boundary of one state (unless the assessment area is located in a multistate MSA). In addition, the institution'should also delineate separate assessment areas if it has branches in areas within the same state that are widely separate and not at all contiguous. For example, an institution that has its main office in New York City and a branch in Buffalo, New York, and each office serves only the immediate areas around it, should delineate two separate assessment areas.

§ ____.41(e)(4)—2: [*Can*]►*May*◄ *an institution delineate one assessment area that consists of an MSA and two large counties that abut the MSA but are not adjacent to each other?*

A2. As a general rule, an institution's assessment area should not extend substantially beyond the boundary of an MSA [if the MSA is not located in a CMSA]. Therefore, the MSA would be a separate assessment area, and because the two abutting counties are not adjacent to each other and, in this example, extend substantially beyond the boundary of the MSA, the institution would delineate each county as a separate assessment area[(, so]►, assuming branches or deposit-taking ATMs are located in each county and the MSA. So◄ , in this example, there would be three assessment areas[)]. [However, if the MSA and the two counties were in the same CMSA, then the institution could delineate only one assessment area including them all.]►However, if the MSA and the two counties were in the same CSA, then the institution could delineate only one assessment area including them all. But, the institution's CRA performance in the

MSAs and the non-MSA counties in that assessment area would be evaluated using separate median family incomes and other relevant information at the MSA and state, non-MSA level, rather than at the CSA level.◄

§ ____.42 Data collection, reporting, and disclosure.

§ ____.42—1: *When must an institution collect and report data under the CRA regulations?*

A1. All institutions except small institutions are subject to data collection and reporting requirements. ►(''Small institution'' is defined in the agencies' CRA regulations at § ____.12(u).) Examples describing the data collection requirements of institutions, in particular those that have just surpassed the asset-size threshold of a small institution, may be found on the FFIEC Web site at *http://www.ffiec.gov/cra.*◄[A small institution is an institution that, as of December 31 of *either* of the prior two calendar years, had total assets of less than $1 billion (as adjusted).

For example (assuming no adjustment to the $1 billion small bank asset level):

Date	Institution's asset size (in dollars)	Data collection required for following calendar year?
12/31/05	990 million	No.
12/31/06	1.1 billion	No.
12/31/07	980 million	No.
12/31/08	1.1 billion	No.
12/31/09	1.2 billion	Yes, beginning 1/01/10.]

All institutions that are subject to the data collection and reporting requirements must report the data for a calendar year by March 1 of the subsequent year. [In the example, above, the institution would report the data collected for calendar year 2010 by March 1, 2011.]

The Board of Governors of the Federal Reserve System [is handling the processing of] ► processes ◄ the reports for all of the primary regulators. [The reports should be submitted in a prescribed electronic format on a timely basis. The mailing address for submitting these reports is: *Attention:* CRA Processing, Board of Governors of the Federal Reserve System, 1709 New York Avenue, NW., 5th Floor, Washington, DC 20006].

► Data may be submitted on diskette, CD–ROM, or via Internet e-mail. CRA respondents are encouraged to send their data via the Internet. E-mail a properly encrypted CRA file (using the FFIEC software only Internet e-mail export feature) to the following e-mail address: *crasub@frb.gov.* Please mail diskette or CD–ROM submissions to: Board of Governors of the Federal Reserve System, Attention: CRA Processing, 20th & Constitution Avenue, NW., MS N502, Washington, DC 20551–0001. ◄

§ __.42—2: *Should an institution develop its own program for data collection, or will the regulators require a certain format?*

A2. An institution may use the free software that is provided by the FFIEC to reporting institutions for data collection and reporting or develop its own program. Those institutions that develop their own programs [must follow the precise format for the new CRA data collection and reporting rules. This format may be obtained by contacting the CRA Assistance Line at (202) 872–7584.] ► may create a data submission using the File Specifications and Edit Validation Rules that have been set forth to assist with electronic data submissions. For information about specific electronic formatting procedures, contact the CRA Assistance Line at (202) 872–7584 or click on ''How to File'' at *http://www.ffiec.gov/cra.* ◄

§ __.42—3: *How should an institution report data on lines of credit?*

A3. Institutions must collect and report data on lines of credit in the same way that they provide data on loan originations. Lines of credit are considered originated at the time the line is approved or increased; and an increase is considered a new origination. Generally, the full amount of the credit line is the amount that is considered originated. In the case of an increase to an existing line, the amount of the increase is the amount that is considered originated and that amount should be reported. However, consistent with the Call Report and TFR instructions, institutions would not report an increase to a small business or small farm line of credit if the increase would cause the total line of credit to exceed $1 million, in the case of a small business line, or $500,000, in the case of a small farm line. Of course, institutions may provide information about such line increases to examiners as other loan data.

§ __.42—4: *Should renewals of lines of credit be collected and/or reported?*

A4. Renewals of lines of credit for small business, small farm[or] ► , ◄ consumer ►, or community development ◄ purposes should be collected and reported, if applicable, in the same manner as renewals of small business or small farm loans. *See* ► Q&A ◄ § ____.42(a)—5. Institutions that are HMDA reporters continue to collect and report home equity lines of credit at their option in accordance with the requirements of 12 CFR part 203.

§ __.42—5: *When should merging institutions collect data?*

A5. Three scenarios of data collection responsibilities for the calendar year of a merger and subsequent data reporting responsibilities are described below.

- Two institutions are exempt from CRA collection and reporting requirements because of asset size. The institutions merge. No data collection is required for the year in which the merger takes place, regardless of the resulting asset size. Data collection would begin after two consecutive years in which the combined institution had year-end assets [of at least $250 million or was part of a holding company that had year-end banking and thrift assets of at least $1 billion] ► at least equal to the small institution asset-size threshold amount described in 12 CFR ____.12(u)(1).◄
- Institution A, an institution required to collect and report the data, and Institution B, an exempt institution, merge. Institution A is the surviving institution. For the year of the merger, data collection is required for Institution A's transactions. Data collection is optional for the transactions of the previously exempt institution. For the following year, all transactions of the surviving institution must be collected and reported.
- Two institutions that each are required to collect and report the data merge. Data collection is required for the entire year of the merger and for subsequent years so long as the surviving institution is not exempt. The

surviving institution may file either a consolidated submission or separate submissions for the year of the merger but must file a consolidated report for subsequent years.

§ __.42—6: *Can small institutions get a copy of the data collection software even though they are not required to collect or report data?*

A6. Yes. Any institution that is interested in receiving a copy of the software [may send a written request to: *Attn.:* CRA Processing, Board of Governors of the Federal Reserve System, 1709 New York Ave, NW., 5th Floor, Washington, DC 20006. They] ► may download it from the FFIEC Web site at *http://www.ffiec.gov/cra.* For assistance, institutions ◄ may [also] call the CRA Assistance Line at (202) 872–7584 or send [Internet] ► an ◄ e-mail to *CRAHELP@FRB.GOV.*

§ __.42—7: *If a small institution is designated a wholesale or limited purpose institution, must it collect data that it would not otherwise be required to collect because it is a small institution?*

A7. No. However, small institutions ► that are designated as wholesale or limited purpose institutions ◄ must be prepared to identify those loans, investments, and services to be evaluated under the community development test.

§ __.42(a) Loan information required to be collected and maintained.

§ __.42(a)—1: *Must institutions collect and report data on all commercial loans [under]* ► *of* ◄ *$1 million* ► *or less* ◄ *at origination?*

A1. No. Institutions that are not exempt from data collection and reporting are required to collect and report only those commercial loans that they capture in the Call Report, Schedule RC–C, Part II, and in the TFR, Schedule SB. Small business loans are defined as those whose original amounts are $1 million or less *and* that were reported as either ''Loans secured by nonfarm or nonresidential real estate'' or ''Commercial and Industrial loans'' in Part I of the Call Report or TFR.

§ __.42(a)— 2: *For loans defined as small business loans, what information should be collected and maintained?*

A2. Institutions that are not exempt from data collection and reporting are required to collect and maintain ► , ◄ in a standardized, machine ► — ◄ readable format, information on each small business loan originated or purchased for each calendar year:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- The loan amount at origination;
- The loan location; and
- An indicator whether the loan was to a business with gross annual revenues of $1 million or less.

The location of the loan must be maintained by census tract [or block numbering area]. In addition, supplemental information contained in the file specifications includes a date associated with the origination or purchase and whether a loan was originated or purchased by an affiliate. The same requirements apply to small farm loans.

§ ____.42(a)—3: *Will farm loans need to be segregated from business loans?*

A3. Yes.

§ ____.42(a)—4: *Should institutions collect and report data on all agricultural loans [under]* ►*of*◄ *$500,000*► *or less*◄ *at origination?*

A4. Institutions are to report those farm loans that they capture in the Call Report, Schedule RC–C, Part II and Schedule SB of the TFR. Small farm loans are defined as those whose original amounts are $500,000 or less *and* were reported as either ''Loans to finance agricultural production and other loans to farmers'' or ''Loans secured by farmland'' in Part I of the Call Report [and] ►or◄ TFR.

§ ____.42(a)–5: *Should institutions collect and report data about small business and small farm loans that are refinanced or renewed?*

A5. An institution should collect information about small business and small farm loans that it refinances or renews as loan originations. (A *refinancing* generally occurs when the existing loan obligation or note is satisfied and a new note is written, while a *renewal* refers to an extension of the term of a loan. However, for purposes of small business and small farm CRA data collection and reporting, it is [no longer] ►not◄ necessary to distinguish between the two.) When reporting small business and small farm data, however, an institution may only report one origination (including a renewal or refinancing treated as an origination) per loan per year, unless an increase in the loan amount is granted.► However, a demand loan that is merely reviewed annually is not reported as a renewal because the term of the loan has not been extended.◄

If an institution increases the amount of a small business or small farm loan when it extends the term of the loan, it should always report the amount of the increase as a small business or small farm loan origination. The institution should report only the amount of the increase if the original or remaining amount of the loan has already been reported one time that year. For example, a financial institution makes a term loan for $25,000; principal payments have resulted in a present outstanding balance of $15,000. In the next year, the customer requests an additional $5,000, which is approved, and a new note is written for $20,000. In this example, the institution should report both the $5,000 increase and the renewal or refinancing of the $15,000 as originations for that year. These two originations may be reported together as a single origination of $20,000.

§ ____.42(a)—6: *Does a loan to the ''fishing industry'' come under the definition of a small farm loan?*

A6. Yes. Instructions for Part I of the Call Report and Schedule SB of the TFR include loans ''made for the purpose of financing fisheries and forestries, including loans to commercial fishermen'' as a component of the definition for ''Loans to finance agricultural production and other loans to farmers.'' Part II of Schedule RC–C of the Call Report and Schedule SB of the TFR, which serve as the basis of the definition for small business and small farm loans in the [revised] regulation, capture both ''Loans to finance agricultural production and other loans to farmers'' and ''Loans secured by farmland.''

§ ____.42(a)—7: *How should an institution report a home equity line of credit, part of which is for home improvement purposes[, but the predominant]*► *and*◄ *part of which is for small business purposes?*

A7. [The]► When an institution originates a home equity line of credit that is for both home improvement and small business purposes, the◄ institution has the option of reporting the portion of the home equity line that is for home improvement purposes► as a home improvement loan◄ under HMDA. [That]► Examiners would consider that◄ portion of the [loan]► line◄ [would be considered]when [examiners]► they◄ evaluate► the institution's◄ home mortgage lending. ► When an institution refinances a home equity line of credit into another home equity line of credit, HMDA reporting continues to be optional. If the institution opts to report the refinanced line, the entire amount of the line would be reported as a refinancing and examiners will consider the entire refinanced line when they evaluate the institution's home mortgage lending.◄

[If]► If an institution that has originated a home equity line of credit for both home improvement and small business purposes (or if an institution that has refinanced such a line into another line) chooses not to report a

home improvement loan (or a refinancing) under HMDA, and if◀ the line meets the regulatory definition of a ''community development loan,'' the institution should collect and report information on the entire line as a community development loan. If the line does not qualify as a community development loan, the institution has the option of collecting and maintaining (but not reporting) the entire line of credit as ''Other Secured Lines/Loans for Purposes of Small Business.''

§ ____.42(a)—8: *When collecting small business and small farm data for CRA purposes, may an institution collect and report information about loans to small businesses and small farms located outside the United States?*

A8. At an institution's option, it may collect data about small business and small farm loans located outside the United States; however, it cannot report this data because the CRA data collection software will not accept data concerning loan locations outside the United States.

§ ____.42(a)—9: *Is an institution that has no small farm or small business loans required to report under CRA?*

A9. Each institution subject to data reporting requirements must, at a minimum, submit a transmittal sheet, definition of its assessment area(s), and a record of its community development loans. If the institution does not have community development loans to report, the record should be sent with ''0'' in the community development loan composite data fields. An institution that has not purchased or originated any small business or small farm loans during the reporting period would not submit the composite loan records for small business or small farm loans.

§ ____.42(a)—10: *How should an institution collect and report the location of a loan made to a small business or farm if the borrower provides an address that consists of a post office box number or a rural route and box number?*

A10. Prudent banking practices▶ and Bank Secrecy Act regulations◀ dictate that [an institution]▶institutions◀ know the location of [its]▶their◀ customers and loan collateral.▶ Further, Bank Secrecy Act regulations specifically state that a post office box is not an acceptable address.◀ Therefore, institutions typically will know the actual location of their borrowers or loan collateral beyond an address consisting only of a post office box.

Many borrowers have street addresses in addition to[post office box numbers or] rural route and box numbers. Institutions should ask their borrowers to provide the street address of the main business facility or farm or the location where the loan proceeds otherwise will be applied. Moreover, in many cases in which the borrower s address consists only of a rural route number[or post office box], the institution knows the location (i.e., the census tract[or block numbering area]) of the borrower or loan collateral. Once the institution has this information available, it should assign [a]▶the◀ census tract[or block numbering area] to that location (geocode) and report that information as required under the regulation.

[For loans originated or purchased in 1998 or later]▶However◀ , if [the]▶an◀ institution cannot determine [the]▶a rural◀ borrower's street address, and does not know the census tract[or block numbering area], the institution should report the borrower's state, county, MSA▶ or metropolitan division◀ , if applicable, and ''NA,'' for ''not available,'' in lieu of a census tract[or block numbering area] code.

§ ____.42(a)(2) Loan amount at origination.

§ ____.42(a)(2)—1: *When an institution purchases a small business or small farm loan,▶ in whole or in part,◀ which amount should the institution collect and report—the original amount of the loan or the amount at purchase?*

A1. When collecting and reporting information on purchased small business and small farm loans, including loan participations, an institution collects and reports the amount of the loan at origination, not at the time of purchase. This is consistent with the Call Report s and TFR's use of the ''original amount of the loan'' to determine whether a loan should be reported as a ''loan to a small business'' or a ''loan to a small farm'' and in which loan size category a loan should be reported. When assessing the volume of small business and small farm loan purchases for purposes of evaluating lending test performance under CRA, however, examiners will evaluate an institution s activity based on the amounts at purchase.

§ ____.42(a)(2)—2: *How should an institution collect data about multiple loan originations to the same business?*

A2. If an institution makes multiple originations to the same business, the loans should be collected and reported as separate originations rather than combined and reported as they are on the Call Report or TFR, which reflect loans outstanding, rather than originations. However, if institutions make multiple originations to the same business solely to inflate artificially the number or volume of loans evaluated for CRA lending performance, the agencies may combine these loans for purposes of evaluation under the CRA.

§ ____.42(a)(2)—3: *How should an institution collect data pertaining to credit cards issued to small businesses?*

A3. If an institution agrees to issue credit cards to a [business']▶ business's◀ employees, all of the credit card lines opened on a particular date for that single business should be reported as one small business loan origination rather than reporting each individual credit card line, assuming the criteria in the ''small business loan'' definition in the regulation are met. The credit card program's ''amount at origination'' is the sum of all of the employee/business credit cards' credit limits opened on a particular date. If subsequently issued credit cards increase the small business credit line, the added amount is reported as a new origination.

§ ____.42(a)(3) The loan location.

§ ____.42(a)(3)—1: *Which location should an institution record if a small business loan's proceeds are used in a variety of locations?*

A1. The institution should record the loan location by either the location of the▶ small◀ business▶ borrower's◀ headquarters or the location where the greatest portion of the proceeds are applied, as indicated by the borrower.

§ ____.42(a)(4) Indicator of gross annual revenue.

§ ____.42(a)(4)—1: *When indicating whether a small business borrower had gross annual revenues of $1 million or less, upon what revenues should an institution rely?*

A1. Generally, an institution should rely on the revenues that it considered in making its credit decision. For example, in the case of affiliated businesses, such as a parent corporation and its subsidiary, if the institution considered the revenues of the entity's parent or a subsidiary corporation of the parent as well, then the institution would aggregate the revenues of both corporations to determine whether the revenues are $1 million or less. Alternatively, if the institution considered the revenues of only the entity to which the loan is actually extended, the institution should rely solely upon whether gross annual revenues are above or below $1 million for that entity. However, if the institution considered and relied on revenues or income of a cosigner or guarantor that is not an affiliate of the

borrower, such as a sole proprietor, the institution should not adjust the borrower s revenues for reporting purposes.

§ ____.42(a)(4)—2: *If an institution that is not exempt from data collection and reporting does not request or consider revenue information to make the credit decision regarding a small business or small farm loan, must the institution collect revenue information in connection with that loan?*

A2. No. In those instances, the institution should enter the code indicating ''revenues not known'' on the individual loan portion of the data collection software or on an internally developed system. Loans for which the institution did not collect revenue information may not be included in the loans to businesses and farms with gross annual revenues of $1 million or less when reporting this data.

§ ____.42(a)(4)—3: *What gross revenue should an institution use in determining the gross annual revenue of a start-up business?*

A3. The institution should use the actual gross annual revenue to date (including $0 if the new business has had no revenue to date). Although a start-up business will provide the institution with pro forma projected revenue figures, these figures may not accurately reflect actual gross revenue► and, therefore, should not be used◄.

§ ____.42(a)(4)—4: *When [collecting and reporting]► indicating◄ the gross annual revenue of small business or small farm borrowers, do institutions [collect and report]► rely on◄ the gross annual revenue or the adjusted gross annual revenue of [its]► their◄ borrowers?*

A4. Institutions [collect and report]► rely on◄ the gross annual revenue, rather than the adjusted gross annual revenue, of their small business or► small◄ farm borrowers► when indicating the revenue of small business or small farm borrowers◄. The purpose of this data collection is to enable examiners and the public to judge whether the institution is lending to small businesses and ►small◄ farms or whether it is only making small loans to larger businesses and farms.

The regulation does not require institutions to request or consider revenue information when making a loan; however, if institutions do gather this information from their borrowers, the agencies expect them to collect and [report] ►rely upon◄ the borrowers' gross annual revenue for purposes of CRA. The CRA regulations similarly do not require institutions to verify revenue amounts; thus, institutions may rely on the gross annual revenue amount provided by borrowers in the ordinary course of business. If an institution does not collect gross annual revenue information for its small business and small farm borrowers, the institution [would not indicate on the CRA data collection software that the gross annual revenues of the borrower are $1 million or less]► should enter the code ''revenues not known''◄. (*See* ►Q&A◄ § ____.42(a)(4)—2.)

§ ____.42(b) Loan information required to be reported.

§ ____.42(b)(1) Small business and small farm loan data.

§ ____.42(b)(1)—1: *For small business and small farm loan information that is collected and maintained, what data should be reported?*

A1. Each institution that is not exempt from data collection and reporting is required to report in machine-readable form annually by March 1 the following information, aggregated for each census tract[or block numbering area] in which the institution originated or purchased at least one small business or small farm loan during the prior year:

- The number and amount of loans originated or purchased with original amounts of $100,000 or less;
- The number and amount of loans originated or purchased with original amounts of more than $100,000 but less than or equal to $250,000;
- The number and amount of loans originated or purchased with original amounts of more than $250,000 but not more than $1 million, as to small business loans, or $500,000, as to small farm loans; and
- To the extent that information is available, the number and amount of loans to businesses and farms with gross annual revenues of $1 million or less (using the revenues the institution considered in making its credit decision).

§ ____.42(b)(2) Community development loan data.

§ ____.42(b)(2)—1: *What information about community development loans must institutions report?*

A1. Institutions subject to data reporting requirements must report the aggregate number and amount of community development loans originated and purchased during the prior calendar year.

§ ____.42(b)(2)—2: *If a loan meets the definition of a home mortgage, small business, or small farm loan AND qualifies as a community development loan, where should it be reported? Can FHA, VA and SBA loans be reported as community development loans?*

A2. Except for multifamily affordable housing loans, which may be reported by retail institutions both under HMDA as home mortgage loans and as community development loans, in order to avoid double counting, retail institutions must report loans that meet the [definitions] ►definition◄ of [home mortgage,] ►''home mortgage loan,''◄ [small business,] ►''small business loan,''◄ or ►''◄small farm [loans] ►loan''◄ only in those respective categories even if they also meet the definition of ►''◄community development [loans.] ►loan.''◄ As a practical matter, this is not a disadvantage for [retail] institutions ►evaluated under the lending, investment, and service tests◄ because any affordable housing mortgage, small business, small farm, or consumer loan that would otherwise meet the definition of [a] ►''◄community development loan►''◄ will be considered elsewhere in the lending test. Any of these types of loans that occur outside the institution's assessment area can receive consideration under the borrower characteristic criteria of the lending test. *See* ►Q&A◄ § ____.22(b)(2) & (3)—4.

Limited purpose and wholesale institutions ►that meet the size threshold for reporting purposes◄ also must report loans that meet the definitions of home mortgage, small business, or small farm loans in those respective categories[; however, they]►. However, these institutions◄ must also report any loans from those categories that meet the regulatory definition of ''community development [loans] ►loan◄'' as community development loans. There is no double counting because wholesale and limited purpose institutions are not subject to the lending test and, therefore, are not evaluated on their level and distribution of home mortgage, small business, small farm ►,◄ and consumer loans.

§ ____.42(b)(2)—3: *When the primary purpose of a loan is to finance an affordable housing project for low- or moderate-income individuals, but, for example, only 40 percent of the units in question will actually be occupied by individuals or families with low or moderate incomes, should the entire loan amount be reported as a community development loan?*

A3. Yes. As long as the primary purpose of the loan is a community development purpose, the full amount of the institution's loan should be included in its reporting of aggregate amounts of community development lending. However, as noted in ►Q&A◄ § ____.22(b)(4)—1, examiners may make qualitative distinctions among

community development loans on the basis of the extent to which the loan advances the community development purpose.

►§ ____.42(b)(2)—4: *When an institution purchases a participation in a community development loan, which amount should the institution report—the entire amount of the credit originated by the lead lender or the amount of the participation purchased?*

A4. The institution reports only the amount of the participation purchased as a community development loan. However, the institution uses the entire amount of the credit originated by the lead lender to determine whether the original credit meets the definition of a ''loan to a small business,'' ''loan to a small farm,'' or ''community development loan.'' For example, if an institution purchases a $400,000 participation in a business credit that has a community development purpose, and the entire amount of the credit originated by the lead lender is over $1 million, the institution would report $400,000 as a community development loan.◄

►§ ____.42(b)(2)—5: *Should institutions collect and report data about community development loans that are refinanced or renewed?*

A5. Yes. Institutions should collect information about community development loans that they refinance or renew as loan originations. Community development loan refinancings and renewals are subject to the reporting limitations that apply to refinancings and renewals of small business and small farm loans. *See* Q&A § ____.42(a)—5.◄

§ ____.42(b)(3) Home mortgage loans.

§ ____.42(b)(3)—1: *Must institutions that are not required to collect home mortgage loan data by the HMDA collect home mortgage loan data for purposes of the CRA?*

A1. No. If an institution is not required to collect home mortgage loan data by the HMDA, the institution need not collect home mortgage loan data under the CRA. Examiners will sample these loans to evaluate the institution's home mortgage lending. If an institution wants to ensure that examiners consider all of its home mortgage loans, the institution may collect and maintain data on these loans.

§ ____.42(c) Optional data collection and maintenance.

§ ____.42(c)(1) Consumer loans.

§ ____.42(c)(1)—1: *What are the data requirements regarding consumer loans?*

A1. There are no data reporting requirements for consumer loans. Institutions may, however, opt to collect and maintain data on consumer loans. If an institution chooses to collect information on consumer loans, it may collect data for one or more of the following categories of consumer loans: motor vehicle, credit card, home equity, other secured, and other unsecured. If an institution collects data for loans in a certain category, it must collect data for all loans originated or purchased within that category. The institution must maintain these data separately for each category for which it chooses to collect data. The data collected and maintained should include for each loan:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- The loan amount at origination or purchase;
- The loan location; and
- The gross annual income of the borrower that the institution considered in making its credit decision.

Generally, guidance given with respect to data collection of small business and small farm loans, including, for example, guidance regarding collecting loan location data, and whether to collect data in connection with refinanced or renewed loans, will also apply to consumer loans.

§ ____.42(c)(1)(iv) Income of borrower.

§ ____.42(c)(1)(iv)—1: *If an institution does not consider income when making an underwriting decision in connection with a consumer loan, must it collect income information?*

A1. No. Further, if the institution routinely collects, but does not verify, a borrower's income when making a credit decision, it need not verify the income for purposes of data maintenance.

§ ____.42(c)(1)(iv)—2: *May an institution list ''0'' in the income field on consumer loans made to employees when collecting data for CRA purposes as the institution would be permitted to do under HMDA?*

A2. Yes.

§ ____.42(c)(1)(iv)—3: *When collecting the gross annual income of consumer borrowers, do institutions collect the gross annual income or the adjusted gross annual income of the borrowers?*

A3. Institutions collect the gross annual income, rather than the adjusted gross annual income, of consumer borrowers. The purpose of income data collection in connection with consumer loans is to enable examiners to determine the distribution, particularly in the institution's assessment area(s), of the institution's consumer loans, based on borrower characteristics, including the number and amount of consumer loans to low-, moderate-, middle-, and upper-income borrowers, as determined on the basis of gross annual income.

The regulation does not require institutions to request or consider income information when making a loan; however, if institutions do gather this information from their borrowers, the agencies expect them to collect the borrowers gross annual income for purposes of CRA. The CRA regulations similarly do not require institutions to verify income amounts; thus, institutions may rely on the gross annual income amount provided by borrowers in the ordinary course of business.

[§]§ ____.42(c)(1)(iv)–4: *Whose income does an institution collect when a consumer loan is made to more than one borrower?*

A4. An institution that chooses to collect and maintain information on consumer loans collects the gross annual income of all primary obligors for consumer loans, to the extent that the institution considered the income of the obligors when making the decision to extend credit. Primary obligors include co-applicants and co-borrowers, including co-signers. An institution does not, however, collect the income of guarantors on consumer loans, because guarantors are only secondarily liable for the debt.

§ ____.42(c)(2) Other loan data.

§ ____.42(c)(2)–1: *Schedule RC–C, Part II of the Call Report does not allow banks to report loans for commercial and industrial purposes that are secured by residential real estate, unless the security interest in the nonfarm residential real estate is taken only as an abundance of caution.* (See ►*Q&A*◄ *[§]§ ____.12([u]* ►*v*◄*) [& 563e.12(t)]–3.) Loans extended to small businesses with gross annual revenues of $1 million or less may, however, be secured by residential real estate. May a bank collect this information to supplement its small business lending data at the time of examination?*

A1. Yes. If these loans promote community development, as defined in the regulation, the bank should collect and report information about the loans as community development loans. Otherwise, *at the bank's option,* it may collect and maintain data concerning loans, purchases, and lines of credit extended to small businesses and secured by nonfarm residential real estate for consideration in the CRA

evaluation of its small business lending. A bank may collect this information as ''Other Secured Lines/Loans for Purposes of Small Business'' in the individual loan data. This information should be maintained at the bank but should *not* be submitted for central reporting purposes.

§____.42(c)(2)–2: *Must an institution collect data on loan commitments and letters of credit?*

A2. No. Institutions are not required to collect data on loan commitments and letters of credit. Institutions may, however, provide for examiner consideration information on letters of credit and commitments.

§____.42(c)(2)–3: *Are commercial and consumer leases considered loans for purposes of CRA data collection?*

A3. Commercial and consumer leases are not considered small business or small farm loans or consumer loans for purposes of the data collection requirements in 12 CFR [§]____.42(a) & (c)(1). However, if an institution wishes to collect and maintain data about leases, the institution may provide this data to examiners as ''other loan data'' under 12 CFR [§]____.42(c)(2) for consideration under the lending test.

§____.42(d) Data on affiliate lending.

§____.42(d)–1: *If an institution elects to have an affiliate's home mortgage lending considered in its CRA evaluation, what data must the institution make available to examiners?*

A1. If the affiliate is a HMDA reporter, the institution must identify those loans reported by its affiliate under 12 CFR part 203 (Regulation C, implementing HMDA). At its option, the institution may [either] provide examiners with ►either◄ the affiliate's entire HMDA Disclosure Statement or just those portions covering the loans in its assessment area(s) that it is electing to consider. If the affiliate is not required by HMDA to report home mortgage loans, the institution must provide sufficient data concerning the affiliate's home mortgage loans for the examiners to apply the performance tests.

§____.43 Content and availability of public file.

§____.43(a) Information available to the public.

§____.43(a)(1) Public comments related to [a bank's] ►an institution's◄ CRA performance.

§____.43(a)(1)–1: *What happens to comments received by the agencies?*

A1. Comments received by a Federal financial supervisory agency will be on file at the agency for use by examiners. Those comments are also available to the public unless they are exempt from disclosure under the Freedom of Information Act.

§____.43(a)(1)—2: *Is an institution required to respond to public comments?*

A2. No. All institutions should review comments and complaints carefully to determine whether any response or other action is warranted. A small institution subject to the small institution performance standards is specifically evaluated on its record of taking action, if warranted, in response to written complaints about its performance in helping to meet the credit needs in its assessment area(s) (►12 CFR◄ [§] ____.26([a]►b◄)(5)). For all institutions, responding to comments may help to foster a dialogue with members of the community or to present relevant information to an institution's Federal financial supervisory agency. If an institution responds in writing to a letter in the public file, the response must also be placed in that file, unless the response reflects adversely on any person or placing it in the public file violates a law.

►§____.43(a)(2) CRA performance evaluation.◄

§____.43(a)([1]►2◄)—[3]►1◄: *May an institution include a response to its CRA [Performance Evaluation] ►performance evaluation◄ in its public file?*

A[3]►1◄. Yes. However, the format and content of the evaluation, as transmitted by the supervisory agency, may not be altered or abridged in any manner. In addition, an institution that received a less than satisfactory rating during its most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. ►*See* 12 CFR____.43(b)(5).◄ The institution must update the description on a quarterly basis.

§____.43(b) Additional information available to the public.

§____.43(b)(1) Institutions other than small institutions.

§____.43(b)(1)—1: *Must an institution that elects to have affiliate lending considered include data on this lending in its public file?*

A1. Yes. The lending data to be contained in an institution's public file covers the lending of the institution's affiliates, as well as of the institution itself, considered in the assessment of the institution's CRA performance. An institution that has elected to have mortgage loans of an affiliate considered must include either the affiliate's HMDA Disclosure Statements for the two prior years or the parts of the Disclosure Statements that relate to the institution's assessment area(s), at the institution's option.

§____.43(b)(1)—2: *May an institution retain [the compact disc provided by the Federal Financial Institution Examination Council that contains] its CRA [Disclosure Statement] disclosure statement ►in electronic format◄ in its public file, rather than printing a hard copy of the CRA [Disclosure Statement] ►disclosure statement◄ for retention in its public file?*

A2. Yes, if the institution can readily print out [from the compact disc (or a duplicate of the compact disc)] its CRA [Disclosure Statement for]►disclosure statement from an electronic medium (e.g., CD, DVD, or Internet website) when◄ a consumer [when the public file is requested] ►requests the public file◄. If the request is at a branch other than the main office or the one designated branch in each state that holds the complete public file, the [bank] ►institution◄ should provide the CRA [Disclosure Statement] ►disclosure statement◄ in a paper copy, or in another format acceptable to the requestor, within 5 calendar days, as required by ►12 CFR◄ [§]____.43(c)(2)(ii).

§____.43(c) Location of public information.

§____.43(c)—1: *What is an institution's ''main office''?*

A1. An institution's main office is the main, home, or principal office as designated in its charter.

§____.43(c)— 2: *May an institution maintain a copy of its public file on an intranet or the Internet?*

A2. Yes, an institution may keep all or part of its public file on an intranet or the Internet, provided that the institution maintains all of the information, either in paper or electronic form, that is required in §____.43 of the regulations. An institution that opts to keep part or all of its public file on an intranet or the Internet must follow the rules in ►12 CFR◄[§]____.43(c)(1) and (2) as to what information is required to be kept at a main office and at a branch. The institution also must ensure that the information required to be maintained at a main office and branch, if kept electronically, can be readily downloaded and printed for any member of the public who requests a hard copy of the information.

§____.44 Public notice by institutions.

§____.44–1: *Are there any placement or size requirements for an institution's public notice?*

A1. The notice must be placed in the institution's public lobby, but the size and placement may vary. The notice should be placed in a location and be of a sufficient size that customers can easily see and read it.

§____.45—Publication of planned examination schedule.

§____.45–1: *Where will the agencies publish the planned examination schedule for the upcoming calendar quarter?*

A1. The agencies may use the **Federal Register**, a press release, the Internet, or other existing agency publications for disseminating the list of the institutions scheduled [to] for CRA examinations during the upcoming calendar quarter. Interested parties should contact the appropriate Federal financial supervisory agency for information on how the agency is publishing the planned examination schedule.

§____.45–2: *Is inclusion on the list of institutions that are scheduled to undergo CRA examinations in the next calendar quarter determinative of whether an institution will be examined in that quarter?*

A2. No. The agencies attempt to determine as accurately as possible which institutions will be examined during the upcoming calendar quarter. However, whether an institution's name appears on the published list does not conclusively determine whether the institution will be examined during that quarter. The agencies may need to defer a planned examination or conduct an unforeseen examination because of scheduling difficulties or other circumstances.

Appendix A to Part____—Ratings

APPENDIX A to Part____—1: *Must an institution's performance fit each aspect of a particular rating profile in order to receive that rating?*

A1. No. Exceptionally strong performance in some aspects of a particular rating profile may compensate for weak performance in others. For example, a retail institution ►other than an intermediate small institution◄ that uses non-branch delivery systems to obtain deposits and to deliver loans may have almost all of its loans outside the institution's assessment area. Assume that an examiner, after consideration of performance context and other applicable regulatory criteria, concludes that the institution has weak performance under the lending [test] criteria applicable to lending activity, geographic distribution, and borrower characteristics within the assessment area. The institution may compensate for such weak performance by exceptionally strong performance in community development lending in its assessment area or a broader statewide or regional area that includes its assessment area.

Appendix B to Part____—CRA Notice

APPENDIX B to Part____—1: *What agency information should be added to the CRA notice form?*

A1. The following information should be added to the form:

OCC-supervised institutions only: [The] ►For community banks, the◄ address of the deputy comptroller of the district in which the institution is located should be inserted in the appropriate blank. These addresses can be found at [12 CFR 4.5(a).] ►*http://www.occ.gov.* For banks supervised under the large bank program, insert ''Large Bank Supervision, 250 E Street, SW., Washington, DC 20219–0001.'' For banks supervised under the mid-size/credit card bank program, insert ''Mid-Size and Credit Card Bank Supervision, 250 E Street, SW., Washington, DC 20219–0001.''◄

OCC-, FDIC-, and Board-supervised institutions: Officer in Charge of Supervision is the title of the responsible official at the appropriate Federal Reserve Bank.

[Appendix A—Regional Offices of the Bureau of the Census] is deleted in its entirety.

End of text of the Interagency Questions and Answers

Dated: June 26, 2007.

John C. Dugan,

Comptroller of the Currency.

Dated: June 26, 2007.

By order of the Board of Governors of the Federal Reserve System.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 26th day of June, 2007.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: June 26, 2007.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. 07–3223 Filed 7–10–07; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

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Wednesday,
July 11, 2007

Part IV

Securities and Exchange Commission

17 CFR Parts 210, 230, 239, and 249

Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance With International Financial Reporting Standards Without Reconciliation to U.S. GAAP; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 230, 239 and 249

[Release Nos. 33–8818; 34–55998; International Series Release No. 1302; File No. S7–13–07]

RIN 3235–AJ90

Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance With International Financial Reporting Standards Without Reconciliation to U.S. GAAP

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing to accept from foreign private issuers their financial statements prepared in accordance with International Financial Reporting Standards (''IFRS'') as published by the International Accounting Standards Board (''IASB'') without reconciliation to generally accepted accounting principles (''GAAP'') as used in the United States. To implement this, we propose amendments to Form 20–F and conforming changes to Regulation S–X to accept financial statements prepared in accordance with the English language version of IFRS as published by the IASB without reconciliation to U.S. GAAP when contained in the filings of foreign private issuers with the Commission.

We also are proposing conforming amendments to other regulations, forms and rules under the Securities Act and the Exchange Act. Current requirements regarding the reconciliation to U.S. GAAP will not change for a foreign private issuer that uses a basis of accounting other than the English language version of IFRS as published by the IASB.

DATES: Comments should be received on or before September 24, 2007.

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

Electronic Comments

- Use the Commission's *Internet comment form* (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–13–07 on the subject line; or
- Use the Federal Rulemaking ePortal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–13–07. The file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed/shtml*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Questions about this release should be directed to Michael D. Coco, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 551–3450, or to Katrina A. Kimpel, Professional Accounting Fellow, Office of the Chief Accountant, at (202) 551–5300, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed amendments to Form 20–F [1] under the Securities Exchange Act of 1934 (the ''Exchange Act''),[2] Rules 3–10 and 4–01 of Regulation S–X,[3] Forms F–4 and S–4 under the Securities Act,[4] and Rule 701 under the Securities Act.[5]

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[1] 17 CFR 249.220f.

[2] 15 U.S.C. 78a *et seq*. Form 20–F is the combined registration statement and annual report form for foreign private issuers under the Exchange Act. It also sets forth disclosure requirements for registration statements filed by foreign private issuers under the Securities Act of 1933 (the ''Securities Act''). 15 U.S.C. 77a *et seq*.

The term ''foreign private issuer'' is defined in Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)]. A foreign private issuer means any foreign issuer other than a foreign government except an issuer that meets the following conditions: (1) More than 50 percent of the issuer's outstanding voting securities are directly or indirectly held of record by residents of the United States; and (2) any of the following: (i) The majority of the executive officers or directors are United States citizens or residents; (ii) more than 50 percent of the assets of the issuer are located in the United States; or (iii) the business of the issuer is administered principally in the United States.

[3] 17 CFR 210.3–10 and 17 CFR 210.4–01. Regulation S–X sets forth the form and content of requirements for financial statements.

[4] 17 CFR 239.34 and 17 CFR 239.13.

[5] 17 CFR 230.701.

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I. Overview and History

Foreign private issuers that register securities with the SEC, and that report on a periodic basis thereafter under Section 13(a) or 15(d) of the Exchange Act,[6] are currently required to present audited statements of income, financial position, changes in shareholders' equity and cash flows for each of the past three financial years,[7] prepared on a consistent basis of accounting.[8] All foreign private issuers are currently required to reconcile to U.S. GAAP the financial statements that they file with the Commission if the financial statements are prepared using any basis of accounting other than U.S. GAAP.[9]

The Commission is proposing for comment revisions to Form 20–F and Regulation S–X under which it would accept financial statements of foreign private issuers that are prepared on the basis of the English language version of IFRS as published by the IASB without a reconciliation to U.S. GAAP.[10] The revisions would allow a foreign private issuer to file financial statements prepared in accordance with IFRS as published by the IASB without reconciliation to U.S. GAAP. We are not proposing to change existing reconciliation requirements for foreign private issuers that file their financial statements under other sets of accounting standards, or that are not in full compliance with IFRS as published by the IASB.

A. History of the U.S. GAAP Reconciliation Requirement

In a reconciliation, a foreign private issuer that files its financial statements prepared in accordance with a basis of accounting other than U.S. GAAP must identify and quantify the material differences from the requirements of U.S. GAAP and Regulation S–X. The reconciliation to U.S. GAAP may be presented pursuant to either Item 17 or Item 18 of Form 20–F. Under Item 17, an issuer is required to provide a narrative description of differences and a quantitative reconciliation of specific financial statement line items from non-U.S. GAAP to U.S. GAAP, but without all U.S. GAAP and Regulation S–X disclosures. An issuer may use Item 17 when filing its financial statements in an Exchange Act registration statement or annual report filed on Form 20–F, or as part of a Securities Act registration statement for investment grade, non-convertible securities or certain rights offerings. Under Item 18, an issuer is required to provide the reconciling information specified in Item 17 as well as all disclosures required by Regulation S–X and U.S. GAAP. An issuer must comply with Item 18 when filing financial statements in a Securities Act registration statement for offerings of equity, convertible and other securities.

The Commission first addressed discrepancies in financial information provided under a foreign basis of accounting and U.S. GAAP through amendments to Forms 20 and 20–K adopted in 1967.[11] Although a reconciliation to U.S. GAAP was not explicitly required, the amended instructions to Form 20 required that ''every issuer registering securities on this form shall file as a part of its registration statement the financial statements, schedules and accountants' certificates which would be required to be filed if the registration statement were filed on Form 10.[12] Any material variation in accounting principles or practices from the form and content of financial statements prescribed in Regulation S–X shall be disclosed and, to the extent practicable, the effect of each such variation given.'' [13] The financial statement instructions for the annual report on Form 20–K contained a similar requirement.[14]

In 1979, the Commission adopted significant amendments to the disclosure requirements applicable to foreign private issuers.[15] These amendments were based on the Commission's belief that ''providing more meaningful disclosure to investors

[6] 15 U.S.C. 78m(a) or 78o(d). Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 781] to file with the Commission such annual reports and such other reports as the Commission may prescribe. Section 15(d) of the Exchange Act requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act to file such supplementary and periodic information, documents and reports as may be required pursuant to Section 13 in respect of a security registered pursuant to Section 12, unless the duty to file under Section 15(d) has been suspended for any financial year.

[7] Consistent with Form 20–F, IFRS and general usage outside the United States, we use the term ''financial year'' to refer to a fiscal year. See Instruction 2 to Item 3 of Form 20–F. Foreign private issuers that are first-time adopters of IFRS published by the IASB are permitted to provide financial statements for the most recent two financial years. *See* General Instruction G for Form 20–F.

[8] *See* Item 8.A.2 of Form 20–F. Instructions to this item permit a foreign private issuer to omit a balance sheet for the earliest of the three years if that balance sheet is not required by a foreign jurisdiction.

[9] *See* Items 17 and 18 of Form 20–F; *see also* Article 4 of Regulation S–X.

[10] All references in this release to IFRS as published by the IASB refer to the English language version of IFRS. The IASB approves the English language text of any IFRS standard, although the International Accounting Standards Committee Foundation (''IASC Foundation'') may issue translations into other languages. *See* ''International Financial Reporting Standards (IFRSs), including International Accounting Standards (IASs) and Interpretations as at 1 January 2005,'' International Accounting Standards Board Preface to IFRS, at 27.

[11] *See* Securities Exchange Act Release Nos. 8067 and 8068 (April 28, 1967). Form 20 was the registration statement under Section 12 of the Securities Act and Form 20–K was the annual report form for foreign private issuers.

[12] Form 10 is the registration statement under Section 12 of the Exchange Act for domestic issuers.

[13] Although the Commission adopted Regulation S–X in 1940 as an instruction booklet to be followed in the preparation of financial statements to be included in filings, application of the Regulation did not extend to foreign private issuers.

[14] Prior to 1967, foreign private issuers were required only to present financial statements consisting of a balance sheet as of the close of the most recent fiscal year and a profit and loss statement for the fiscal year preceding the date of the balance sheet. The financial statements were not required to be certified.

[15] Securities Exchange Act Release No. 34–16371 (November 29, 1979).

in foreign securities not only would promote the protection of investors but may encourage the free flow of capital between nations and tend to reduce any competitive disadvantage with which United States issuers must contend vis-a-vis foreign issuers of securities.'' [16]

The Commission adopted the current reconciliation requirements in 1982 when adopting new Securities Act registration statements for foreign private issuers as part of its comprehensive efforts to develop an integrated disclosure system.[17] Prior to 1982, offering documents of foreign private issuers contained a full reconciliation, while annual reports required only a narrative description of differences between a foreign basis of accounting and U.S. GAAP.[18]

The Commission's approach has developed in the context of integrated disclosure. In designing the integrated disclosure regime for foreign private issuers, the Commission endeavored to ''design a system that parallels the system for domestic issuers but also takes into account the different circumstances of foreign registrants.'' [19]

Given the dual considerations of investor protection and even-handedness towards foreign private issuers, the Commission has framed its consideration of the reconciliation requirement as a balancing of two policy concerns: Investors' need for the same type of basic information when making an investment decision regardless of whether the issuer is foreign or domestic, and the public interest served by an opportunity to invest in a variety of securities, including foreign securities.[20] Investors' need for the same type of basic information implies that foreign and domestic registrants should be subject to the same disclosure requirements. However, the burden on foreign issuers of meeting the identical disclosure standards as domestic issuers might discourage them from offering their securities on the U.S. market. If foreign issuers chose not to offer their securities in the United States, it would deprive U.S. investors of investment opportunities and potentially compel them to purchase foreign securities on foreign markets, where disclosure may be less than that required in filings with the Commission.[21]

B. The International Accounting Standards Board and IFRS

The IASB is a stand-alone, privately funded accounting standard-setting body established to develop global standards for financial reporting.[22] It is the successor to the International Accounting Standards Committee (''IASC''), which was created in 1973 to develop International Accounting Standards (''IAS''). Based in London, the IASB assumed accounting standard-setting responsibilities from the IASC in 2001.[23] Since that time, the standards that the IASB develops and approves have been known as IFRS.[24]

The IASB is overseen by the IASC Foundation, a stand-alone organization responsible for, among other things, the activities of the IASB.[25] The 22 trustees of the IASC Foundation appoint IASB members, oversee its activities, and raise necessary funding for the IASB, the IASC Foundation, the International Financial Reporting Interpretations Committee (''IFRIC''), and the Standards Advisory Council (''SAC'').[26]

The IASC Foundation Trustees select members of the IASB to comprise ''within that group, the best available combination of technical skills and background experience of relevant international business and market conditions in order to contribute to the development of high-quality, global accounting standards.'' [27] The fourteen members of the IASB, twelve full-time and two part-time, serve a five-year term subject to one re-appointment. They are required to sever all employment relationships and positions that may give rise to economic incentives which might compromise a member's independent judgment in setting accounting standards. The current IASB members come from nine countries and have a variety of backgrounds. In selecting IASB members, the IASC Foundation Trustees ensure that the IASB is not dominated by any particular constituency. Member selection is not based on geographic representation.

To date, the IASC Foundation has financed IASB operations largely through voluntary contributions from companies, accounting firms, international organizations and central banks. Original commitments were made for the period 2001–2005 and have been extended for an additional two years through 2007. In June 2006, the IASC Foundation Trustees agreed on four elements that should govern the establishment of a funding approach that would enable the IASC Foundation to remain a stand-alone, private sector organization with the necessary resources to conduct its work in a timely fashion.[28] The Trustees continue

[16] Securities Exchange Act Release No. 34–14128 (November 2, 1977).

[17] Securities Act Release No. 33–6437 (November 19, 1982).

[18] Until 1980 the only guidance with respect to accounting principles and financial statements of foreign issuers were form-based requirements and the continued applicability of Accounting Series Release 4, which, since 1935, required only that the accounting principles used by foreign private issuers have authoritative support. In 1980, the Commission amended Regulation S–X adding language to Rule 4–01 to require foreign issuers' financial statements prepared in accordance with a comprehensive basis of accounting other than U.S. GAAP to be reconciled to U.S. GAAP.

[19] Securities Act Release No. 33–6360 (November 20, 1981) (the ''1981 Proposing Release'').

[20] *Id.*

[21] *Id.*

[22] For more information on the structure and operation of the IASB, *see http://www.iasb.org/Home.htm.*

[23] This was the culmination of a reorganization in 2000 based on the recommendations to the IASC Board contained in a 1999 report by the IASC's Strategic Working Party entitled ''Recommendations on Shaping the IASC for the Future.'' (Full text available at *http://www.iasplus.com/restruct/1999swpfinal.pdf*). From 1973 until that restructuring, the entity for setting International Accounting Standards had been known as the IASC. The IASC issued 41 standards on major topical areas through December 2000, which are entitled International Accounting Standards. The predecessor standard-setting board was known as the IASC Board.

[24] The IASB continues to recognize the IAS issued by the IASC, as modified or superseded by the IASB. Those IAS now form part of the body of IFRS. See IAS 1, paragraph 11. Standards that are newly developed by the IASB or are extensive revisions of earlier IAS are entitled International Financial Reporting Standards.

In general usage, and in this release, the term IFRS will be used to encompass both IAS and IFRS. The term IFRS is used to refer both to the body of IASB pronouncements generally and to individual standards and interpretations applicable in specific circumstances. For purposes of this release, financial statements ''prepared in accordance with IFRS'' refer to financial statements that an issuer can unreservedly and explicitly state are in compliance with IFRS as published by the IASB and that are not subject to any qualification relating to the application of IFRS as published by the IASB.

[25] The IASC Foundation is comprised of twenty-two individuals each serving a term of three years subject to one re-appointment. Its staff works directly with the IASB and project resource groups, conducts research, participates in roundtable meetings, analyzes public comments, and prepares recommendations and drafts for consideration by the IASB.

[26] IFRIC interprets IFRS and reviews accounting issues that are likely to receive divergent or unacceptable treatment in the absence of authoritative guidance, with a view to reaching consensus on the appropriate accounting treatment. The IFRIC is comprised of twelve voting members, appointed by the IASC Foundation Trustees for renewable terms of three years. IFRIC Interpretations are ratified by the IASB prior to becoming effective.

The SAC supports the IASB and provides a forum where the IASB consults individuals and representatives of organizations affected by its work that are committed to the development of high-quality IFRS. The Commission is an observer of the SAC.

[27] IASC Foundation Constitution, Paragraph 20; *see http://www.iasb.org/About+Us/About+IASB/About+IASB.htm.*

[28] The Trustees determined that ''characteristics of the new scheme for 2008 would be:

• Broad-based: Fewer than 200 companies and organizations participate in the current financing system. A sustainable long-term financing system must expand the base of support to include major participants in the world's capital markets,

to make progress in obtaining stable funding that satisfies those elements.

The IASB has stated that it is committed to ''developing, in the public interest, a single set of high-quality, understandable and enforceable global accounting standards that require transparent and comparable information in general purpose financial statements.'' [29] In addition, the IASC Foundation has committed to the continued development of IFRS to achieve high-quality solutions through the convergence of national accounting standards.

The use of IFRS is increasingly widespread throughout the world. Almost 100 countries now require or allow the use of IFRS, and many other countries are replacing their national standards with IFRS. The European Union (''EU''), for example, has, under a regulation adopted in 2002, required companies incorporated in one of its Member States and whose securities are listed on an EU regulated market to report their consolidated financial statements using endorsed IFRS beginning with the 2005 financial year.[30] It has been estimated that these requirements affect approximately 7,000 companies in the EU.[31] In addition to issuers in the 27 EU Member States, these IFRS requirements also apply in the three European Economic Area countries of Iceland, Lichtenstein and Norway.[32] Other countries, including Australia and New Zealand, have adopted similar requirements mandating the use of IFRS by public companies.[33] More countries have plans to adopt IFRS as their national accounting standards in the future, including Canada[34] and Israel.[35]

C. The Financial Accounting Standards Board

The FASB is the independent, private-sector body whose pronouncements establishing and amending accounting principles the Commission has, since 1973, recognized as ''authoritative'' and ''generally accepted'' for purposes of the federal securities laws, absent any contrary determination by the Commission.[36] The FASB is overseen by the Financial Accounting Foundation (''FAF''), which is responsible for funding the activities of the FASB and selecting the seven full-time FASB members.[37] The FAF is an independent, non-profit organization that is run by a sixteen-member Board of Trustees. The FASB has oversight of the Emerging Issues Task Force, which is the interpretative entity of U.S. GAAP. The FASB also is supported by the Financial Accounting Standards Advisory Council, which is responsible for consulting with the FASB as to technical issues on the FASB's agenda and project priorities.

Consistent with the FASB's objective to increase international comparability and the quality of standards used in the United States, the FASB participates in international accounting standard setter activities. This objective is consistent with the FASB's obligation to its domestic constituents, who benefit from comparability of information across national borders. The FASB pursues this objective in cooperation with the IASB, as discussed in more detail below, and with national accounting standard setters.

The Commission oversees the activities of the FASB as part of its responsibilities under the securities laws. While the Commission consistently has looked to the private sector to set accounting standards, the securities laws provide the Commission with the authority to set accounting standards for public companies and other entities that file financial statements with the Commission.[38] As part of its oversight responsibilities, the Commission provides views regarding the selection of FASB members, and, in certain circumstances, refers issues relating to accounting standards to the FASB or one of its affiliated organizations. The Commission and its staff do not, however, prohibit the FASB from addressing topics of its choosing and do not dictate the outcome of specific FASB projects, so long as the FASB's conclusions are in the interest of investor protection.[39]

D. The Commission's Past Consideration of a Single Set of Globally Accepted Accounting Standards and Facilitation of the Use of IFRS by Registrants

The Commission has long advocated reducing disparity between the accounting and disclosure practices of the United States and other countries as a means to facilitate cross-border capital formation while ensuring adequate disclosure for the protection of investors and the promotion of fair, orderly and efficient markets. The Commission also has encouraged the efforts of standard setters and other market participants to do the same. In a 1981 release proposing revisions to Form 20–F, the Commission expressed its support for the work of the IASC in formulating guidelines and

including official institutions, in order to ensure diversification of sources.

• Compelling: Any system must carry with it enough pressure to make free riding very difficult. This could be accomplished through a variety of means, including official support from the relevant regulatory authorities and formal approval by the collecting organizations.

• Open-ended: The financial commitments should be open-ended and not contingent on any particular action that would infringe on the independence of the IASC Foundation and the International Accounting Standards Board.

• Country-specific: The funding burden should be shared by the major economies of the world on a proportionate basis, using Gross Domestic Product as the determining factor of measurement. Each country should meet its designated target in a manner consistent with the principles above.''

See http://www.iasb.org/About+Us/About+the+Foundation/Future+Funding.htm.

[29] *See www.iasb.org/About+Us/About+IASB/About+IASB.htm. See also* the IASCF Foundation Constitution.

[30] Regulation (EC) No. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, Official Journal L. 243, 11/09/2002 P. 0001–0004 (the ''EU Regulation''). EU regulations have the force of law within EU Member States without further implementing legislation at the national level.

[31] Committee of European Securities Regulators (''CESR''), ''European Regulation on the Application of IFRS in 2005: Recommendation for Additional Guidance Regarding the Transition to IFRS,'' (December 2003).

[32] The current EU Member States are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden, and the United Kingdom.

[33] Some countries, such as Australia, have adopted IFRS by incorporating them into their national standards.

[34] *See ''Implementation Plan for Incorporating International Financial Reporting Standards into Canadian GAAP,''* available at *http://www.acsbcanada.org/client_asset/document/3/2/7/3/5/document_8B452E12-FAF5-7113-C4CB8F89B38BC6F8.pdf?sfgdata=4.*

[35] *See* Israel Accounting Standard No. 29 ''Adoption of International Financial Reporting Standards,'' stipulating that Israeli public companies that prepare their primary financial statements in accordance with Israeli GAAP are obliged to adopt IFRS unreservedly for years starting on January 1, 2008. *See also http://www.iasplus.com/country/israel.htm.*

[36] *See* ''Statement of Policy on the Establishment and Improvement of Accounting Principles and Standards,'' Accounting Series Release No. 150 (December 20, 1973) (expressing the Commission's intent to continue to look to the private sector for leadership in establishing and improving accounting principles and standards through the FASB) and ''Policy Statement: Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter,'' Release No. 33–8221 (April 25, 2003) (the ''2003 Policy Statement''). More information about the FASB is available on their Web site at *http://www.fasb.org.*

[37] *See http://www.fasb.org/facts/bd_members.shtml.*

[38] This authority was reaffirmed in the Sarbanes-Oxley Act, Section 108(c) of which states, ''Nothing in this Act, including this section * * * shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.''

[39] *See* the 2003 Policy Statement.

international disclosure standards.[40] As part of a 1988 Policy Statement, the Commission explicitly supported the establishment of mutually acceptable international accounting standards as a critical goal to reduce regulatory impediments that result from disparate national accounting standards without compromising investor protection.[41] Accordingly, it urged ''securities regulators and members of the accounting profession throughout the world [to] continue efforts to revise and adjust international accounting standards with the aim of increasing comparability and reducing cost'' and reaffirmed its commitment to working with securities regulators around the world to achieve the goal of an efficient international securities market system.[42]

In encouraging the acceptance of mutually agreeable global accounting principles and reducing regulatory burdens while protecting investors, the Commission has recognized that information required by an international accounting standard may be adequate for investors even if that information is not the same as information required under U.S. GAAP. One example of this approach is the 1994 amendment to Form 20–F to accept without reconciliation to U.S. GAAP a cash flow statement prepared in accordance with IAS No. 7, ''Cash Flow Statements,'' which the IASC amended in 1992. In proposing that amendment, the Commission noted that ''while there are differences between a cash flow statement prepared in accordance with IAS 7 and one prepared in accordance with U.S. GAAP. * * * the Commission believes statements prepared in accordance with IAS 7 should provide an investor with adequate information regarding cash flows without the need for additional information or modification.'' [43] In adopting this and other revisions to Item 17 of Form 20–F, the Commission expressed its belief that streamlined reconciliation requirements will facilitate foreign companies' entry into the United States public securities markets in a manner consistent with investor protection.[44]

The Commission more closely examined efforts to develop high-quality, comprehensive global accounting standards in its 1997 report undertaken at the direction of Congress.[45] In that study, the Commission noted that for issuers wishing to raise capital in more than one country, compliance with differing accounting requirements to be used in the preparation of financial statements increased compliance costs and created inefficiencies. As a step towards addressing these concerns and to increase the access of U.S. investors to foreign investments in the U.S. public capital market, the Commission encouraged the IASC's efforts to develop a core set of accounting standards that could serve as a framework for financial reporting in cross-border offerings, and indicated an intent to remain active in the development of those standards. In that report, the Commission indicated that its evaluation of IASC core standards would involve an assessment of whether they constituted a comprehensive body of transparent, high-quality standards that could be rigorously interpreted and applied.[46]

In February 2000, the Commission issued a Concept Release on International Accounting Standards, seeking public comment on the elements necessary to encourage convergence towards a high quality global financial reporting framework while upholding the quality of financial reporting domestically.[47] In that release, the Commission described high-quality standards as consisting of a ''comprehensive set of neutral principles that require consistent, comparable, relevant and reliable information that is useful for investors, lenders and creditors, and others who make capital allocation decisions.'' [48] The Commission also expressed the view that high-quality accounting standards ''must be supported by an infrastructure that ensures that the standards are rigorously interpreted and applied.'' [49] The release sought comments as to the conditions under which the Commission should accept financial statements of foreign private issuers that are prepared using IFRS, and considered the issue of the U.S. GAAP reconciliation of IFRS financial statements. The Commission has continued to monitor international developments in the subject areas that are discussed in the release.

In 2003, the Commission staff prepared a study on the adoption of a principles-based accounting system, as mandated by Congress in the Sarbanes-Oxley Act.[50] The conclusion of that study was that an optimal approach to accounting standard-setting would be based on a consistently applied conceptual framework and clearly stated objectives rather than solely on either rules or principles, one benefit of which would be the facilitation of greater convergence between U.S. GAAP and international standards. By taking an objectives-based approach to convergence, the study noted, standard setters would be able to arrive at an agreement on a principle more quickly than would be possible for a detailed rule. The staff's report to Congress interpreted convergence as a ''process of continuing discovery and opportunity to learn by both U.S. and international standard setters,'' the benefits of which include greater comparability and improved capital formation globally.[51]

In February 2006, Chairman Cox reaffirmed his commitment to the ''Roadmap'' that was first described by a former Chief Accountant of the Commission in April 2005.[52] The Roadmap sets forth the goal of achieving one set of high-quality, globally accepted accounting standards and suggested several considerations that could affect the achievement of that goal.

The Commission also has taken steps to facilitate the use of IFRS by registrants. When the European Union adopted a regulation in 2002 to require the use of IFRS by all European issuers with publicly traded securities beginning with their 2005 financial year, the Commission adopted an accommodation to allow first-time adopters of IFRS to file two years rather than three years of financial statements in their Commission filings.[53] In so doing, the Commission sought to facilitate the transition to IFRS of the

[40] *See* the 1981 Proposing Release.

[41] *See* Release No. 33–6807 (November 14, 1988) (the ''1998 Policy Statement'').

[42] *Id.*

[43] The Commission proposed these amendments in Release No. 33–7029 (November 3, 1993) and adopted them in Release No. 33–7053 (April 19, 1994) (the ''1994 Adopting Release''). Other examples in which the Commission amended its requirements for financial statements of foreign issuers to permit the use of certain IASC standards without reconciliation to U.S. GAAP are described in the SEC Concept Release ''International Accounting Standards,'' Release No. 33–7801 (February 16, 2000) (the ''2000 Concept Release'').

[44] *See* the 1994 Adopting Release.

[45] Pursuant to Section 509(5) of the National Securities Markets Improvement Act of 1996, ''Report on Promoting Global Preeminance of American Securities Markets'' (October 1997).

[46] *Id.*

[47] *See* Concept Release No. 34–42430 ''International Accounting Standards'' (February 16, 2000).

[48] *Id.*

[49] *Id.*

[50] Study Pursuant to Section 108(d) of the Sarbanes-Oxley Act of 2002 on the Adoption by the United States Financial Reporting System of a Principles-Based Accounting System (July 25, 2003).

[51] *Id.*

[52] SEC Press Release No. 2006–17, Accounting Standards: SEC Chairman Cox and EU Commissioner McCreevy Affirm Commitment to Elimination of the Need for Reconciliation Requirements (Feb. 8, 2006).

[53] Release No. 33–8567 (April 12, 2005).

foreign registrants that were using it for the first time. The Commission recognized that this accommodation would reduce costs to foreign issuers and encourage their continued participation in the U.S. public capital market, which would benefit investors by increasing investment possibilities and furthering the efficient allocation of capital. Acknowledging the significant efforts expended by many foreign private issuers in their transition to IFRS, the Commission also extended compliance dates for management's report on internal control over financial reporting.[54]

E. FASB and IASB Efforts to Develop a Work Plan To Achieve High Quality, Compatible Accounting Standards

In October 2002, the FASB and the IASB announced the issuance of a memorandum of understanding, called the Norwalk Agreement, which marked a significant step towards formalizing their commitment to the convergence of U.S. and international accounting standards. The two bodies acknowledged their joint commitment to the development, ''as soon as practicable,'' of high quality, compatible accounting standards that could be used for both domestic and cross-border financial reporting. At that time, the FASB and the IASB pledged to use their best efforts to make their existing financial reporting standards fully compatible as soon as is practicable and to co-ordinate their future work programs to ensure that once achieved, compatibility is maintained. In a 2006 Memorandum of Understanding, the FASB and the IASB indicated that a common set of high quality global standards remains the long-term strategic priority of both the FASB and the IASB and set out a work plan covering the next two years for convergence with specific long- and short-term projects.[55]

II. Acceptance of IFRS Financial Statements From Foreign Private Issuers Without a U.S. GAAP Reconciliation as a Step Towards a Single Set of Globally Accepted Accounting Standards

The Commission has encouraged movement towards a single set of high-quality globally accepted accounting standards as an important goal both for the protection of investors and the efficiency of capital markets.[56] The work towards acceptance of financial statements from foreign private issuers prepared in accordance with IFRS as published by the IASB without reconciliation to U.S. GAAP seeks to foster the continued movement to a single set of high-quality, globally accepted accounting standards. As a long-term objective, the use of a common set of high-quality standards for the preparation of financial statements will help investors to understand investment opportunities more clearly and with greater comparability than if they had to gain familiarity with a multiplicity of national accounting standards.

A. A Robust Process for Convergence

Continued progress towards convergence between U.S. GAAP and IFRS as published by the IASB is one consideration in the elimination of the U.S. GAAP reconciliation. As noted in this release, both the IASB and the FASB have established processes for selecting board members and developing standards to support the development by each board of high-quality accounting standards. Additionally, the FASB and the IASB have established a work plan that seeks the convergence of U.S. GAAP and IFRS. In so doing, both bodies have pledged to use their best efforts to make existing standards fully compatible as soon as practicable, and to coordinate their future work programs to ensure that compatibility, once achieved, is maintained.[57] This work is expected to continue for many years, and both bodies have expressed a commitment to it. We fully support continued progress on convergence towards the optimal standard, whether that standard may be based on U.S. GAAP, IFRS, or a jointly developed new approach.

As part of this commitment, both the IASB and the FASB are working together on several major projects, and have coordinated agendas so that major projects that one board takes up may also be taken up by the other board.[58] Also, both boards have been working on ''short-term convergence,'' under which convergence will occur quickly in certain areas. This process allows for incremental improvements and the opportunity to eliminate differences without rethinking an issue entirely. If the IASB and the FASB conclude that neither of their models in a particular area is sufficient, they consider a broader standard-setting project.

We do not believe that a particular degree of convergence should be a prerequisite for our acceptance of financial statements prepared under IFRS as published by the IASB without reconciliation. Our proposal to do so is based on, among other considerations, the robustness of a process that lends itself to continued progress of the IASB and the FASB towards convergence over time through, among other things, the joint development of future standards. As noted elsewhere, we recognize that there remain specific accounting subjects and other matters in IFRS that have not been fully addressed. There is a risk that constituents of the two boards may not continue to support convergence if IFRS financial statements are accepted by the Commission without reconciliation to U.S. GAAP. The future work of the IASB and the FASB may result in standards that are significantly different or that are not timely in their development. Nonetheless, we believe that if robust processes for the joint development of high quality standards by the IASB and the FASB are in place, we need not delay considering the acceptance of financial statements that comply with IFRS as published by the IASB without reconciliation to U.S. GAAP.

We will continue to consider the convergence process and the continued progress of the IASB and the FASB in their work plan. We also will consider whether interested parties will continue to have an incentive to support this convergence work should the Commission accept IFRS financial statements from foreign private issuers without reconciliation to U.S. GAAP.

Questions

1. Do investors, issuers and other commenters agree that IFRS are widely used and have been issued through a robust process by a stand-alone standard setter, resulting in high-quality accounting standards?

2. Should convergence between U.S. GAAP and IFRS as published by the IASB be a consideration in our acceptance in foreign private issuer filings of financial statements prepared in accordance with IFRS as published by the IASB without a U.S. GAAP reconciliation? If so, has such convergence been adequate? What are commenters' views on the processes of the IASB and the FASB for convergence? Are investors and other market participants comfortable with the convergence to date, and the ongoing process for convergence? How will this global process, and,

[54] Release No. 33–8545 (March 2, 2005).

[55] ''A Roadmap for Convergence between IFRS and U.S. GAAP—2006–2008,'' Memorandum of Understanding between the FASB and the IASB, February 27, 2006 (the ''2006 Memorandum of Understanding'').

[56] *See* the 1988 Policy Statement.

[57] *See* the 2006 Memorandum of Understanding.

[58] The joint projects of the FASB and IASB constitute part of the IASB's broader goal to work with national standard setters to develop high quality solutions.

particularly, the work of the IASB and FASB, be impacted, if at all, if we accept financial statements prepared in accordance with IFRS as published by the IASB without a U.S. GAAP reconciliation? Should our amended rules contemplate that the IASB and the FASB may in the future publish substantially different final accounting standards, principles or approaches in certain areas?

B. Consistent and Faithful Application of IFRS

The consistent and faithful application of IFRS as published by the IASB is an important consideration both to accepting financial statements prepared on that basis without a U.S. GAAP reconciliation and to demonstrating that IFRS as published by the IASB represent a single set of high-quality accounting standards, and not a multiplicity of standards under the same name. Over the years, the Commission staff has acquired a broad understanding of the standards comprising IFRS. For over ten years, a limited number of foreign private issuers have included in their filings under the Securities Act and the Exchange Act financial statements prepared in accordance with IAS or IFRS, and over the past year, many more companies have done so. These filings have been subject to the staff's review process, through which the staff has gained experience with the standards.

1. Staff Review of IFRS Financial Statements Filed in 2006

Over the course of 2006, many foreign private issuers filed annual reports on Form 20–F that contained IFRS financial statements following their switch to IFRS for the 2005 financial year. The Commission staff has conducted reviews of those IFRS financial statements as part of its function of reviewing the periodic reports of publicly registered companies, consistent with its normal practice in reviewing filings from U.S. companies and from foreign issuers with financial statements other than those prepared in accordance with IFRS reconciled to U.S. GAAP.[59] These ongoing reviews are an important part of the Commission's effort to gain familiarity with IFRS. In conducting its reviews of IFRS financial statements, the staff made a number of comments regarding the application of IFRS, which have been brought to the attention of issuers through the comment process.[60] Consistent with practice in the staff review program, many issuers indicated that they will address the matters that the staff has raised in future filings, most commonly through improved presentations or enhanced disclosures. The staff has been, and, following the issuance of this Proposing Release, will continue to consider whether issuers address those matters adequately in their Forms 20–F for the 2006 financial year which will help inform the Commission's view as to the quality of the application of IFRS in practice. The staff will continue its regular review function with regard to issuer and auditor practice in applying IFRS. Information obtained from this work will assist in our evaluation of the quality of the application of IFRS in practice.

At present, in filings with the Commission, IFRS (either as published by the IASB or a jurisdictional variation) is used principally by issuers from Europe and Australia. The number of companies from these areas that are registered under the Exchange Act has decreased over the last several years.[61] Thus, although our staff has reviewed the annual reports of first-time adopters of IFRS, its level of experience is not as great as with U.S. GAAP. In addition, the staff has not undertaken any review of financial statements prepared in accordance with IFRS by foreign companies that are not registered under the Exchange Act. Therefore, the staff's review of IFRS financial statements is limited to a small portion of the total universe of companies that use IFRS.

We recognize the first-year effort undertaken by preparers, auditors, and others in changing the basis of accounting to IFRS. Our staff will continue to identify the areas for improvement to IFRS filers in order to promote increased disclosure and clearer presentation in subsequent financial statements filed with the Commission.

2. Market Participants' Views Regarding IFRS Application in Practice

Market participants from whom the Commission has heard at a March 2007 roundtable held by the Commission staff have indicated their support for the use of IFRS by foreign issuers. Although we have heard from a limited group of representatives from the investor community, those participants, which included representatives of mutual funds, pension funds, rating agencies and other institutional investors, expressed their acceptance of IFRS financial statements for foreign private issuers.[62]

Based on information that we have gathered through the Roundtable and from other commenters, we believe that the auditor community has embraced IFRS as a workable set of standards that can generally be applied across industries and countries. The global auditing profession has been able to audit and report on many thousands of financial statements prepared using either IFRS as published by the IASB or a jurisdictional variation of IFRS.

Some foreign regulators have published reports relating to the implementation of IFRS in their country. For example, the U.K. Financial Reporting Review Panel and the Autorité des Marchés Financiers (the ''AMF'') of France have both published such reports making observations on IFRS as applied in their jurisdictions.[63]

Although a small number of companies have prepared IFRS financial statements for several years, it was not until the first half of 2006 that a large number of companies published audited annual IFRS financial statements for the first time. Also, as discussed below, audit firms have not been required to opine on IFRS as published by the IASB but have limited their opinions to jurisdictional variations of IFRS, consistent with a company's basis of presentation. In light of this wide-scale use of IFRS being less than two years old, the degree of experience, familiarity and understanding among companies, audit firms, investors, analysts, brokers, regulators, and others is continuing to develop. As experience with IFRS continues to grow, the Commission will monitor for any possible flaws in the standards and any issues associated

[59] Section 408 of the Sarbanes-Oxley Act of 2002 mandates that the Commission shall review disclosures made by reporting companies on a regular and systematic basis.

[60] Staff comment letters are available, 45 days or longer after completion of the staff review, through the SEC Web site at *http://www.sec.gov. See* SEC Press Release dated June 24, 2004.

[61] The number of registered companies from Europe and Australia has declined from over 400 at the end of 2002 to less than 250 at the end of 2006. Not all companies from these jurisdictions switched to IFRS for their filings in 2006. The number of foreign private issuers that filed annual reports on Form 20–F that contained IFRS financial statements during 2006 was less than 200.

[62] Information regarding the Roundtable held on March 6, 2007, including a transcript, is available on the SEC Web site at *http://www.sec.gov/spotlight/ifrsroadmap.htm.*

[63] For the report of the U.K Financial Reporting Review Panel, *see* ''Preliminary Report: IFRS Implementation'' available at *http://www.frc.org.uk/images/uploaded/ documents/IFRS%20Implementation%20-%20preliminary.pdf.* For the report of the AMF, *see* ''Recommendations on accounting information reported in financial statements for 2006,'' dated December 19, 2006, available at *http://www.amf-france.org/documents/general/7565_1.pdf.*

with the faithful and consistent application of those standards.

3. Processes and Infrastructure To Promote Consistent and Faithful Application of IFRS

As discussed in Part I.B. above, the IASB has stated it is committed to developing a single set of high-quality, understandable and enforceable global accounting standards. In working towards this goal, both the IASB and IFRIC have demonstrated their commitment to resolving significant accounting issues as expediently as possible. However, developing high-quality standards and issuing high-quality interpretations of IFRS may take some time.

A question arises as to what should be done, if anything, in circumstances where neither the IASB nor IFRIC has addressed a particular accounting issue that causes significant difficulties in practice. A securities regulator or its staff, including the Commission, may find it necessary as an interim measure to state a view on such an accounting issue.[64] If it were to do so, the regulator subsequently could consider referring the accounting issue to the IASB or the IFRIC for resolution of the issue for all constituencies. Any view expressed by the regulator may be rescinded upon the IASB or the IFRIC establishing authoritative literature addressing the issue. The Commission and the staff would not expect to issue guidance that is inconsistent with IFRS as published by the IASB, the interpretations provided by IFRIC, or the definitions, recognition criteria and measurement concepts in the IASB's *Framework.*

Regulators have put in place infrastructure to identify and address the inconsistent and inaccurate application of IFRS globally. This infrastructure will foster the consistent and faithful application of IFRS around the world. The International Organization of Securities Commissions (''IOSCO''), in which the Commission participates, continues to support the implementation and consistent application of IFRS in the global financial markets. In January 2007, IOSCO's database for cataloguing IFRS interpretations and sharing decisions on application by regulators around the world became operational.[65]

Further, the Commission and the European Commission (the ''EC'') have agreed that regulators should endeavor to avoid conflicting conclusions regarding the application and enforcement of IFRS. To this end, the Commission and CESR, which the EC has charged with evaluating the implementation of IFRS in the EU, published a work plan in August 2006.[66] That work plan covers information-sharing regarding IFRS implementation in regular meetings of the Commission staff and CESR-Fin, the group within CESR focused on financial reporting. The SEC–CESR work plan also contemplates the confidential exchange of issuer-specific information between CESR members and the Commission, with implementing protocols. In addition, CESR has established among its members a forum and a confidential database for participants to exchange views and share experiences with IFRS.[67]

Having noted the areas for improvement identified in the Commission staff's review to date of the application of IFRS in filings with the Commission, as well as the potential for other areas requiring standard-setting action, we believe that the approach proposed by the Commission and the information-sharing infrastructure which the international regulatory community is building should contribute to increasing consistency and faithfulness in the application of IFRS across jurisdictions.

Questions

3. Is there sufficient comparability among companies using IFRS as published by the IASB to allow investors and others to use and understand the financial statements of foreign private issuers prepared in accordance with IFRS as published by the IASB without a U.S. GAAP reconciliation?

4. Do you agree that the information-sharing infrastructure being built in which the Commission participates through both multilateral and bilateral platforms will lead to an improved ability to identify and address inconsistent and inaccurate applications of IFRS? Why or why not?

5. What are commenters' views on the faithful application and consistent application of IFRS by foreign companies that are registered under the Exchange Act and those that are not so registered?

6. Should the timing of our acceptance of IFRS as published by the IASB without a U.S. GAAP reconciliation depend upon foreign issuers, audit firms and other constituencies having more experience with preparing IFRS financial statements?

7. Should the timing of any adoption of these proposed rules be affected by the number of foreign companies registered under the Exchange Act that use IFRS?

C. The IASB as Standard Setter

Our consideration of acceptance of financial statements prepared using IFRS as published by the IASB is also premised on the IASB's sustainability, governance and continued operation in a stand-alone manner as a standard setter, which is a factor in the development of a set of high-quality globally accepted accounting standards. As described in more detail in Part I.B., oversight by the IASC Foundation Trustees through the governance reforms that have been implemented, as well as the due process mechanisms established for the consideration and adoption of new IFRSs, contribute to the IASB's role as a standard setter dedicated to developing accounting standards in the public interest. The IASB is free to choose and conduct projects necessary to promote convergence and develop high-quality standards. The IASB solicits views and seeks input from the public throughout the standard-setting process from selecting items for its agenda to developing and publishing an exposure draft and issuing a final standard. The IASB's meetings are open to public observers and summaries of comments received on discussion papers and exposure drafts are made public on the IASB Web site.[68] This transparent process enables the IASB to obtain relevant views from interested parties, and at the same time to conclude final standards based on its own deliberations, and without undue external pressure.

Since the late 1980s, the Commission staff has participated in the development of IAS and IFRS primarily through IOSCO, taking an active role in the standard-setting process undertaken by the IASC and the IASB. In this regard, the Commission staff has reviewed and contributed to comments on many exposure drafts of standards published by the IASC and the IASB.

[64] This is not new, as securities regulators have long been involved in resolving issues related to national accounting standards.

[65] See IOSCO's press release regarding its IFRS database at *http://www.iosco.org/news/pdf/IOSCONEWS92.pdf.*

[66] The press release announcing the SEC–CESR work plan, and the text of the work plan, are available at *http://www.sec.gov/news/press/2006/2006-130.htm.*

[67] *See* CESR Press Release 07–163 (April 2007), available at *http://www.cesr-eu.org/index.php?page=groups&mac=0&id=13.*

[68] See the IASC Foundation Due Process Handbook for the IASB approved by the Trustees March 2006. For additional information, *see http://www.iasb.org/NR/rdonlyres/7D97095E-96FD-4F1F-B7F2-366527CB4FA7/0/DueProcessHandbook.pdf.*

Additionally, the Commission staff as an IOSCO representative serves as a non-voting observer at IFRIC meetings. The Commission also is an observer of the IASB Standards Advisory Council.[69]

Questions

8. The IASB *Framework* establishes channels for the communication of regulators' and others' views in the IFRS standard-setting and interpretive processes. How should the Commission and its staff further support the IFRS standard-setting and interpretive processes?

9. How should the Commission consider the implication of its role with regard to the IASB, which is different and less direct than our oversight role with the FASB?

D. Summary

Fostering the use of a single set of high-quality, globally accepted accounting principles, would, in our view, serve to protect investors and promote capital formation by enhancing comparability across companies and increasing access to foreign issuer investment opportunities for investors in the U.S. public capital markets while reducing regulatory burdens and costs for issuers. As noted earlier, the Commission has for over 20 years sought to promote the development of a global, high-quality set of accounting principles. The acceptance of financial statements prepared in accordance with IFRS as published by the IASB without a U.S. GAAP reconciliation will further promote this goal. By such acceptance, the Commission will demonstrate its commitment to both investors and to the global capital markets.

Achieving a single set of globally accepted accounting standards will require the contributions of many parties, including standard setters, regulators, auditors, issuers, and investors themselves. The IASB and the FASB have established procedures for their ongoing joint efforts to achieve convergence. The infrastructure is being developed to lead to the consistent and faithful application of IFRS by issuers. We will continue to evaluate the progress towards convergence, the application of IFRS, and the work of the IASB.

We believe it is an appropriate time to propose and solicit comment on acceptance, in the filings of foreign private issuers, of financial statements prepared in accordance with IFRS as published by the IASB without reconciliation to U.S. GAAP.

Questions

10. The Commission has gathered certain information from representatives of issuers, investors, underwriters, exchanges and other market participants at its public roundtable on IFRS. We are interested in receiving information from a broader audience. Is the development of a single set of high-quality globally accepted standards important to investors? To what degree are investors and other market participants able to understand and use financial statements prepared in accordance with IFRS as published by the IASB without a U.S. GAAP reconciliation? We also encourage commenters to discuss ways in which the Commission may be able to assist investors and other market participants in improving their ability to understand and use financial statements prepared in accordance with IFRS. How familiar are investors with financial statements prepared in accordance with IFRS as published by the IASB? Will the ability of an investor to understand and use financial statements that comply with IFRS as published by the IASB vary with the size and nature of the investor, the value of the investment, the market capitalization of the issuer, the industry to which the issuer in question belongs, the trading volume of its securities, the foreign markets on which those securities are traded and the regulation to which they may be subjected, or any other factors? If so, should any removal of the reconciliation requirement be sensitive to one or more of these matters, and, if so, how?

III. Discussion of the Proposed Amendments To Allow the Use of IFRS Financial Statements Without Reconciliation to U.S. GAAP

A. Eligibility Requirements

The proposed amendments to allow a foreign private issuer to file financial statements without reconciliation to U.S. GAAP as currently required under Item 17 or 18 of Form 20–F, as appropriate, would apply only to a foreign private issuer that files its financial statements in full compliance with the English language version of IFRS as published by the IASB.[70] The proposed amendments will apply to an eligible issuer regardless of whether it complies with IFRS as published by the IASB voluntarily or in accordance with any requirements of its home country regulator or an exchange on which its securities are listed.

Under the proposals, in order to be eligible to omit the reconciliation, an issuer would be required, in a prominent footnote to its financial statements, to state unreservedly and explicitly that its financial statements are in compliance with IFRS as published by the IASB.[71] In addition, in its report, the independent auditor must opine similarly on whether those financial statements comply with IFRS as published by the IASB.[72]

The proposed amendments would not be available to an issuer that files financial statements that include deviations from IFRS as published by the IASB. A foreign private issuer that does not state unreservedly and explicitly that its financial statements are in compliance with IFRS as published by the IASB, or for which the auditor's report contains any qualification relating to the application of IFRS as published by the IASB, would continue to be required to provide the U.S. GAAP reconciliation under current rules. Similarly, an issuer that files its financial statements using a set of generally accepted accounting principles of another jurisdiction also would continue to reconcile to U.S. GAAP as under current rules when preparing its financial statements for inclusion in a registration statement or annual report.[73]

The proposed amendments will not apply to issuers using a jurisdictional or other variation of IFRS. It would be acceptable for an issuer to state compliance with both IFRS as published by the IASB and a jurisdictional variation of IFRS, and an audit firm to opine that financial statements comply with IFRS as published by the IASB and a jurisdictional variation of IFRS, so long as the statement relating to the former was unreserved and explicit.

In their filings with the SEC, the majority of foreign private issuers that have referenced IFRS have stated that their financial statements are in compliance with IFRS as published by the IASB (in addition to stating compliance with a jurisdictional variation of IFRS). In contrast, few audit reports contained an opinion on IFRS as

[69] *See http://www.iasb.org/About+Us/About+SAC/SAC+Members.htm.*

[70] These proposed amendments would not encompass use, if finalized, of the IASB's proposed IFRS for Small and Medium-sized Entities.

[71] This statement is consistent with the language requirements of IAS 1 ''Presentation of Financial Statements,'' paragraph 14.

[72] This language could be provided in addition to any representation about compliance with standards required by the home country.

[73] An issuer that is eligible to rely on the proposed rules, if adopted, would be permitted to continue to reconcile its IFRS financial statements to U.S. GAAP. An issuer that elects to do so would follow all current requirements with regard to the preparation of that U.S. GAAP reconciliation contained in Item 17 or 18 of Form 20–F, as applicable.

published by the IASB (in addition to opining on a jurisdictional variation of IFRS).

We believe that the benefits of moving towards a single set of globally accepted standards as a long-term objective, including increased transparency and comparability of financial statements, are attainable only if IFRS represents a single set of high-quality accounting standards and not a multiplicity of divergent standards using the same name. Thus, we believe that it is appropriate to condition our acceptance of IFRS without reconciliation on the financial statements being in full compliance with IFRS as published by the IASB.

Our acceptance of a set of financial statements without reconciliation to U.S. GAAP would mark a significant change in our requirements. We are proposing that the amendments apply if an issuer follows the approved English language version of the standards to assist U.S. investors to understand IFRS, to assist in achieving comparability and consistency across jurisdictions, and, as a practical matter, because the Commission's work is conducted in English.

Questions

11. Without a reconciliation, will investors be able to understand and use financial statements prepared using IFRS as published by the IASB in their evaluation of the financial condition and performance of a foreign private issuer? How useful is the reconciliation to U.S. GAAP from IFRS as published by the IASB as a basis of comparison between companies using different bases of accounting? Is there an alternative way to elicit important information without a reconciliation?

12. In addition to reconciling certain specific financial statement line items, issuers presenting an Item 18 reconciliation provide additional information in accordance with U.S. GAAP. What uses do investors and other market participants make of these additional disclosures?

13. Should we put any limitations on the eligibility of a foreign private issuer that uses IFRS as published by the IASB to file financial statements without a U.S. GAAP reconciliation? If so, what type of limitations? For example, should the option of allowing IFRS financial statements without reconciliation be phased in? If so, what should be the criteria for the phase-in? Should only foreign private issuers that are well-known seasoned issuers, or large accelerated filers, or accelerated filers,[74] and that file IFRS financial statements be permitted to omit the U.S. GAAP reconciliation?

14. At the March 2007 Roundtable on IFRS, some investor representatives commented that IFRS financial statements would be more useful if issuers filed their Form 20–F annual reports earlier than the existing six-month deadline. We are considering shortening the deadline for annual reports on Form 20–F. Should the filing deadline for annual reports on Form 20–F be accelerated to five, four or three months, or another date, after the end of the financial year? Should the deadline for Form 20–F be the same as the deadline for an issuer's annual report in its home market? Should we adopt the same deadlines as for annual reports on Form 10–K? Why or why not? Would the appropriateness of a shorter deadline for a Form 20–F annual report depend on whether U.S. GAAP information is included? If a shorter deadline is appropriate for foreign private issuers that would not provide a U.S. GAAP reconciliation under the proposed amendments, should other foreign private issuers also have a shorter deadline? Should it depend on the public float of the issuer?

15. Although reconciliation to U.S. GAAP of interim periods is not ordinarily required under the Exchange Act, foreign private issuers that conduct continuous offerings on a shelf registration statement under the Securities Act may face black-out periods that prevent them from accessing the U.S. public capital market at various times during the year if their interim financial information is not reconciled. Even if commenters believe we should continue the U.S. GAAP reconciliation requirement for annual reports that include IFRS financial statements, to address this issue should we at least eliminate the need for the U.S. GAAP reconciliation requirement with respect to required interim period financial statements prepared using IFRS as published by the IASB for use in continuous offerings?[75] Should we extend this approach to all required interim financial statements?

16. Is there any reason why an issuer should not be able to unreservedly and explicitly state its compliance with IFRS as published by the IASB? Is there any reason why an audit firm should not be able to unreservedly and explicitly opine that the financial statements comply with IFRS as published by the IASB? What factors may have resulted in issuers and, in particular, auditors refraining from expressing compliance with IFRS as published by the IASB?

17. If the proposed amendments are adopted, should eligible issuers be able to file financial statements prepared using IFRS as published by the IASB without a U.S. GAAP reconciliation for their first filing containing audited annual financial statements? If the amendments are adopted, what factors should we consider in deciding when issuers can use them? For example, should we consider factors such as the issuer's public float (either in the United States or worldwide), whether the issuer has issued only public debt, or the nature of the filing to which the amendments would be applied? Will investors be prepared to analyze and interpret IFRS financial statements without the reconciliation by 2009? If not, what further steps, including investor education, may be necessary?

B. U.S. GAAP Reconciliation

1. General

The basic requirements for financial statements filed by foreign private issuers are described in Items 17 and 18 of Form 20–F. Under Item 17(c), a foreign private issuer currently has two options: Either to prepare its financial statements and schedules according to U.S. GAAP; or, alternatively, to prepare them under the generally accepted accounting principles of another jurisdiction with a reconciliation of specific line items to U.S. GAAP as enumerated under Item 17(c)(2). This reconciliation includes a narrative discussion of reconciling differences,[76] a reconciliation of net income for each year and any interim periods presented,[77] a reconciliation of major balance sheet captions for each year and any interim periods,[78] and a reconciliation of cash flows for each year and any interim periods.[79] We are proposing to revise Item 17(c)(2) so that reconciliation will no longer be required from issuers using IFRS as published by the IASB.[80]

[74] The terms ''accelerated filer'' and ''large accelerated filer'' are defined in Rule 12b–2 under the Exchange Act [17 CFR 240.12b–2]. ''Well-known seasoned issuer'' is defined in Rule 405 under the Securities Act [17 CFR 230.405].

[75] *See* Item 8.A.4 of Form 20–F, which requires interim period financial statements in certain circumstances.

[76] *See* Item 17(c)(1) of Form 20–F.

[77] *See* Item 17(c)(2)(i) of Form 20–F.

[78] *See* Item 17(c)(2)(ii) of Form 20–F.

[79] *See* Item 17(c)(2)(iii) of Form 20–F, containing the exception relating to IAS 7 ''Cash Flow Statements.''

[80] We are not proposing to amend Item 17(b), which we do not read as imposing U.S. GAAP requirements on financial statements prepared using IFRS as published by the IASB.

As discussed in Section III.D., portions of Regulation S–X that do not relate to the form and content of an issuer's financial statements, including, for example, auditor qualification and report requirements and financial statement requirements for entities other than the issuer, would still continue to apply to foreign private issuers that prepare their financial statements using IFRS as published by the IASB without a U.S. GAAP reconciliation.

Several sub-paragraphs of Item 17(c)(2) relate to reconciling disclosure required of issuers that rely on certain IAS. The partial accommodations contained in these sub-paragraphs were available to issuers using home country GAAP or IFRS. They are rarely relied upon in practice and appear no longer needed by issuers that use IFRS as published by the IASB.[81] We are therefore proposing to eliminate these sub-paragraphs for purposes of all foreign private issuer filings. Specifically, we are proposing to delete Items 17(c)(2)(iv)(B) and (C), which relate to reconciling disclosures to be provided by issuers that rely on IAS 21 ''The Effects of Changes in Foreign Exchange Rates.'' We also are proposing to delete Item 17(c)(2)(viii) relating to reconciling disclosures to be provided by issuers using IAS 22 ''Business Combinations,'' with respect to the period of amortization of goodwill and negative goodwill, as IAS 22 has been superseded by IFRS 3 ''Business Combinations'' and may no longer be used by an issuer preparing financial statements under IFRS. For this reason, we also are proposing to eliminate the related Instruction 6 to Item 17. However, we are retaining the IAS 7 ''Cash Flow Statements'' accommodation contained in Item 17(c)(2)(iii).

Item 17(c)(2)(vii) relates to disclosures that issuers using proportionate consolidation may omit from their U.S. GAAP reconciliation. We are not proposing any revision to this paragraph, which continues to apply to issuers using home country GAAP (if permitted by that GAAP). An issuer using IFRS as published by the IASB would satisfy the requirements of this paragraph by providing IAS 31 ''Interests in Joint Ventures'' disclosures.

A U.S. GAAP reconciliation under Item 18 builds on the information content of Item 17. In addition to providing reconciling information for the line items specified in Item 17(c), Item 18(b) requires that an issuer also provide in its financial statements all information required by U.S. GAAP and Regulation S–X.[82] The proposed elimination of the reconciliation requirement for IFRS financial statements also applies in situations in which the issuer currently would be required to prepare a reconciliation under Item 18. Accordingly, we propose revising Item 18(b) to indicate that disclosures required by U.S. GAAP and Regulation S–X would not be required if a registrant files its financial statements using IFRS as published by the IASB.

Questions

18. Do we need to make any other changes to Items 17 or 18 or elsewhere to implement fully the proposed elimination of the reconciliation requirement for issuers using IFRS as published by the IASB?

19. Is any revision necessary to clarify that the provisions relating to issuers that use proportionate consolidation contained in Item 17(c)(2)(vii) would not apply to IFRS financial statements that are not reconciled to U.S. GAAP under the proposed amendments? If so, what changes would be appropriate?

20. Is the IAS 21 accommodation still useful for non-IFRS issuers? Is it clear that an issuer using IFRS would not need to provide disclosure under Item 17(c)(2)(iv)? If not, what changes would be necessary to make it clear?

2. Interim Period Financial Statements

Under the proposal, foreign private issuers that are eligible to omit the U.S. GAAP reconciliation in their audited annual financial statements would likewise be able to omit a reconciliation from their unaudited interim period financial statements. To the extent a foreign private issuer is required to provide interim period financial statements, the financial statements would have to be prepared in accordance with IFRS as published by the IASB.[83]

Questions

21. Would issuers have any difficulty in preparing interim period financial statements that are in accordance with IFRS as published by the IASB?

22. Do foreign private issuers that have changed to IFRS generally prepare interim financial statements that are in accordance with IFRS, and do they make express statements to that effect?

a. Financial Information in Securities Act Registration Statements and Prospectuses and Initial Exchange Act Registration Statements Used Less Than Nine Months After the Financial Year End

In registration statements and prospectuses under the Securities Act and initial registration statements under the Exchange Act, if the document is dated less than nine months after the end of the last audited financial year, foreign private issuers are not required to include interim period financial information. However, if a foreign private issuer has published interim period financial information, Item 8.A.5 of Form 20–F requires these registration statements and prospectuses to include that information.[84] The intent of this requirement is to make information available in U.S. offering documents as current as information that is available elsewhere.

The instructions to Item 8.A.5 require that an issuer providing interim financial information describe any material variations between the accounting principles, practices and methods used and U.S. GAAP, and quantify any material variations that are not already quantified in the financial statements. We are adding an instruction to Item 8.A.5 of Form 20–F with regard to interim period financial information that is made public by a foreign private issuer to clarify that interim period information does not need to be reconciled to U.S. GAAP when the interim information is prepared in accordance with IFRS as published by the IASB.

[81] As noted above, the IASB has incorporated IAS developed by the IASC into IFRS. In addition, the sub-paragraphs were added at a time when IFRS was undergoing substantial development and it was appropriate to permit compliance with selected international standards. Such partial compliance with IFRS is not consistent with these proposals, which are based on full compliance with IFRS as published by the IASB.

[82] U.S. GAAP and Regulation S–X information need not be provided for a period in which net income has not been reconciled to U.S. GAAP, or for financial statements for an entity or subsidiary covered by Rules 3–05 or 3–09 of Regulation S–X.

[83] The discussion in this section relates solely to registration statements and prospectuses under the Securities Act and initial registration statements under the Exchange Act. There are currently no requirements under our rules relating to the form or content requirements of a foreign private issuer's reports on Form 6–K under the Exchange Act. *See* Form 6–K [17 CFR 249.306].

[84] Under Item 512(a)(4) of Regulation S–K [17 CFR 22.512(a)(4)], a foreign private issuer that registers securities on a shelf registration statement basis is required to undertake to include any financial statements required by Item 8.A of Form 20–F at the start of any delayed offering or throughout a continuous offering.

b. Financial Statements in Securities Act Registration Statements and Prospectuses and Initial Exchange Act Registration Statements Used More Than Nine Months after the Financial Year End

In registration statements and prospectuses under the Securities Act and initial registration statements under the Exchange Act, if the document is dated more than nine months after the end of the last audited financial year, foreign private issuers must provide consolidated interim period financial statements covering at least the first six months of the financial year and the comparative period for the prior financial year.[85] These unaudited interim period financial statements must be prepared using the same basis of accounting as the audited financial statements contained or incorporated by reference in the document and include or incorporate by reference a reconciliation to U.S. GAAP.[86] The instruction that we are proposing to add to Item 8.A.5 would clarify that an issuer does not need to provide that reconciliation if it prepares its interim financial statements using IFRS as published by the IASB.

Under the proposed rules, although an eligible issuer may provide IFRS financial statements for an interim period without reconciliation, that issuer would continue to be required to comply with Article 10 of Regulation S–X with regard to financial statements for interim periods, when that information is required under Item 8.A.5 of Form 20–F. There are several differences between IAS 34 ''Interim Financial Reporting,'' which prescribes the minimum content of an interim financial report and the principles for recognition and measurement in financial statements presented for an interim period, and Article 10 of Regulation S–X. First, because IAS 34 permits more condensed balance sheet, income statement and cash flow information detail than does Article 10, financial statements prepared under IAS 34 can be limited to major headings and subtotals. Second, unlike IAS 34, Article 10 contains an explicit statement that interim disclosures must be sufficient to make interim period information presented not misleading. Third, Article 10 requires contingent liability disclosures even if no change has occurred since the year end, whereas IAS 34 requires disclosure of any changes in contingent liabilities since the year end. Fourth, Article 10 requires footnote disclosure of summarized data for equity investees that is not required under IAS 34.

Questions

23. How significant are the differences between IAS 34 and Article 10? Is the information required by IAS 34 adequate for investors? If not, what would be the best approach to bridge any discrepancy between IAS 34 and Article 10? Should issuers be required to comply with Article 10 if their interim period financial statements comply with IAS 34? Should we consider any revision to existing rules as they apply to an issuer that would not be required to provide a U.S. GAAP reconciliation under the proposed rules?

3. IFRS Treatment of Certain Areas

As noted, IFRS as published by the IASB constitute a comprehensive basis of accounting that may be used by foreign private issuers in the preparation of their financial statements that are contained in Commission filings. There are certain limited areas in which the IASB has yet to develop standards or in which IFRS permits disparate options. These areas are not new, and existed at the time the IASB and the FASB were developing their 2006–2008 work plan.[87] However, based on our staff's review of IFRS filings with the Commission to date, we have a number of observations regarding the application in practice in these areas, in which we also ask for public feedback.

a. Accounting for Insurance Contracts and Extractive Activities

There are two industry areas that have been identified by the IASB as lacking standards: Insurance contracts and extractive activities.

IFRS 4 ''Insurance Contracts'' provides limited guidance on the accounting to be followed by companies that issue insurance contracts or hold reinsurance contracts. Except in some areas, IFRS 4 permits a company to continue to apply its pre-existing home country accounting principles for insurance contracts. Insurance company accounting and practices vary greatly throughout the world in areas such as revenue recognition, claim expense recognition, policy benefit recognition, and policy acquisition costs, resulting in substantial variation in reporting practices.

The IASB has noted that it is in the process of developing a standard for insurance contracts because ''there was no IFRS on insurance contracts, and insurance contracts were excluded from the scope of existing IFRSs that would have been relevant (e.g., IFRSs on provisions, financial instruments, intangible assets); and accounting practices for insurance contracts were diverse, and also often differed from practices in other sectors.'' [88]

IFRS 6 ''Exploration for and Evaluation of Mineral Resources'' provides limited guidance with respect to the accounting for exploration and evaluation activities undertaken by oil and gas and mining companies. Except in certain areas, companies are permitted to look to other sources for guidance. Items not addressed by IFRS 6 include, for example, thresholds for capitalizing or expensing a variety of costs, and the manner in which capitalized costs are subsequently depreciated or amortized.

The IASB adopted IFRS 6 in December 2004 as a first step in light of the need to develop a standard in time for it to be applied by companies that were adopting IFRS in 2005.[89] The IASB acknowledged that its complete consultation in this area could not be completed in that time frame, and that developing a global consensus on a rigorous and comprehensive approach would require extensive consultation.

On both of these projects, the IASB continues to make progress towards developing standards under IFRS. Nonetheless, we do not believe that the lack of comprehensive standards in IFRS in these areas alone should delay our consideration of fully accepting IFRS as published by the IASB without a U.S. GAAP reconciliation.

b. Accounting Treatment for Common Control Mergers, Recapitalization Transactions, Reorganizations, Acquisitions of Minority Shares Not Resulting in a Change of Control, and Similar Transactions

There are certain areas, for example, accounting treatment for common control mergers, recapitalizations, reorganizations, acquisitions of minority interests, and similar transactions, for which IFRS does not have a specific standard or interpretation. When a standard or interpretation of IFRS does not address a matter, IAS 8 ''Accounting Policies, Changes in Accounting Estimates and Errors,'' provides guidance, including looking to the most recent pronouncements of other standard-setting bodies. With a lack of

[85] *See* Item 8.A.5 of Form 20–F and Item 512(a)(4) of Regulation S–K.

[86] *See* Items 17(c) and 18 of Form 20–F.

[87] *See* ''SEC Welcomes Plans of U.S., International Standard Setters for Convergence of Accounting Systems,'' SEC Press Release dated February 27, 2007.

[88] Excerpt from the IASB Web site at *http://www.iasb.org/Current+Projects/IASB+Projects/Insurance+Contracts/Insurance+Contracts.htm*.

[89] *See* IASB Press Release dated December 9, 2004.

specific guidance, companies can look to various (and differing) recognition, measurement and presentation practices, including their home country accounting principles, in establishing their accounting policies.[90] IFRS, however, does not require the disclosure of the impact if an alternative accounting treatment had been used.

The IASB and the FASB have a joint project underway entitled ''Business Combinations: Applying the Acquisition Method.'' [91] This project is the second phase of an overall project on business combinations. In this phase of the business combinations project, the IASB and the FASB are reconsidering their existing guidance for applying the purchase method of accounting for business combinations (now called the acquisition method). This project will converge numerous areas of application and reduce alternative treatments but will not address all of the transactions discussed above. Final standards by the IASB and the FASB are expected to be issued in the third quarter of 2007.

c. Income Statements and Per Share Amounts

IFRS does not provide specific conventions as to the format or content of the income statement.[92] In addition, IFRS permits a company to present on the face of its income statement or elsewhere in its financial statements any measure on a per share basis so long as the figure is reconciled to a line item on the income statement.[93] Companies preparing IFRS financial statements are thus permitted to use numerous different income statement formats and to characterize subtotals and amounts using multiple and varied caption headings. In addition, companies using IFRS are permitted to present on the income statement and in footnotes measures that would be otherwise considered non-GAAP measures that would not be permitted under our rules.[94]

The IASB and FASB have a joint project underway entitled ''Financial Statement Presentation'' to establish a common, high-quality standard for the presentation of information in the financial statements, including the classification and display of line items and the aggregation of line items into subtotals and totals. A discussion paper which addresses the more fundamental issues related to the presentation of information on the face of the financial statements is expected to be published in the fourth quarter of 2007.

Questions

24. Are there accounting subject matter areas that should be addressed by the IASB before we should accept IFRS financial statements without a U.S. GAAP reconciliation?

25. Can investors understand and use financial statements prepared using IFRS as published by the IASB in those specific areas or other areas that IFRS does not address? If IFRS do not require comparability between companies in these areas, how should we address those areas, if at all? Would it be appropriate for the Commission to require other disclosures in these areas not inconsistent with IFRS published by the IASB?

C. Accounting and Disclosure Issues

1. Selected Financial Data

Under Item 3.A of Form 20–F, issuers must provide five years of selected financial data. As part of this proposal to accept financial statements prepared using IFRS as published by the IASB without reconciliation to U.S. GAAP, we are proposing to revise the instruction to Item 3.A to clarify that selected financial data based on the U.S. GAAP reconciliation is required only if the issuer prepares its primary financial statements using a basis of accounting other than IFRS as published by the IASB.

Question

26. Should issuers that are permitted to omit a U.S. GAAP reconciliation for their current financial year or current interim period be required to disclose in their selected financial data previously published information based on the U.S. GAAP reconciliation with respect to previous financial years or interim periods?

2. Other Form 20–F Disclosure

a. Reference to U.S. GAAP Pronouncements in Form 20–F

Several non-financial statement disclosure items of Form 20–F make reference to specific U.S. GAAP pronouncements, including Financial Accounting Standards (''FASs'') and interpretations of the FASB. For example, issuers are required to provide disclosure of off-balance sheet arrangements under Item 5 (''Operating and Financial Review and Prospects''), which expressly refers to FASB Interpretations No. 45 ''Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others,'' and No. 46 ''Consolidation of Variable Interest Entities.'' [95] Also, Item 11 of Form 20–F (''Quantitative and Qualitative Disclosures About Market Risk'') sets out the requirements for certain summary disclosures about market risk which refer to FAS 52 ''Foreign Currency Translation,'' FAS 5 ''Accounting for Contingencies,'' as well as to other FASs.

An IFRS filer that would not be required to provide a U.S. GAAP reconciliation under the proposed amendments would continue to be required to respond to those items of Form 20–F that make reference to FASs, FASB interpretations, or other specific pronouncements of U.S. GAAP for definitional purposes. In providing that disclosure, however, the issuer should apply the corresponding IFRS notion of the principles embodied in the referenced U.S. GAAP pronouncement.

In order to convey this view, we are proposing to add an instruction to Item 5 and Item 11 indicating that issuers preparing their financial statements in accordance with IFRS as published by the IASB should, in responding to paragraphs of those items that refer to specific pronouncements of U.S. GAAP, look to the appropriate corresponding standards and interpretations of IFRS that contain similar definitions. If information called for by the non-financial statement requirements of Form 20–F duplicates information that is contained in the IFRS financial statements, an issuer need not repeat such information but may cross-reference to the appropriate footnote in the audited financial statements.

b. Disclosure From Oil and Gas Companies Under FAS 69

Pursuant to either earlier Commission rules or more recent FASB standards, public companies with significant oil and gas activities have been required to disclose reserve and other information relating to those activities. In November 1982, the FASB adopted FAS 69 ''Disclosures about Oil and Gas Producing Activities,'' which establishes a comprehensive set of disclosures for oil and gas producing activities. Under this standard, public companies with such significant

[90] IAS 1 requires an entity to disclose the measurement basis used in preparing financial statements and the other accounting policies used that are relevant to an understanding of the financial statements.

[91] For more information on this joint project, *see http://www.fasb.org/project/bc_acquisition_method.shtml* and *http://www.iasb.org/Current+Projects/IASB+Projects/Business+Combinations/Business+Combinations+II.htm.*

[92] IAS 1 provides guidance regarding minimum required line items and provides examples to which issuers may refer.

[93] *See* IAS 33 ''Earnings per Share.''

[94] *See* Item 10(e) of Regulation S–K [17 C.F.R. 229.20(E)].

[95] *See* Item 5.E of Form 20–F.

activities are required to disclose unaudited supplementary information relating to proved oil and gas reserves, and capitalized costs relating to oil and gas producing activities. As a result of the FASB's adoption of FAS 69, the Commission at first suspended the effectiveness of a rule under Regulation S–X calling for substantially similar information,[96] and then deleted the rule altogether.[97] The Commission noted that, in light of the FASB standard, its own earlier rule requiring this disclosure was no longer necessary.

We are proposing to amend Item 18 of Form 20–F to expressly require that any company that provides disclosure under FAS 69 continue to provide the information called for under that statement even though the company is preparing financial statements in accordance with IFRS as published by the IASB without a reconciliation to U.S. GAAP. The nature of the information provided under FAS 69 is not in the nature of a U.S. GAAP reconciliation but rather is supplementary information included as an unaudited footnote to the audited financial statements. We believe that FAS 69 requires the disclosure of important information that is useful to investors and that would not otherwise be required to be disclosed under IFRS.

c. Market Risk Disclosure and the Safe Harbor Provisions

Pursuant to Item 11 of Form 20–F, foreign private issuers are required to provide disclosure of qualitative and quantitative information about market risk inherent in derivative financial instruments, other financial instruments, and derivative commodity instruments. This information, which is not included as part of the financial statements in a filing, is expressly subject to the safe harbor provided under Section 27A of the Securities Act[98] and Section 21E of the Exchange Act[99] to the extent it constitutes ''forward looking statements.''[100]

IFRS 7 ''Financial Instruments: Disclosure'' as recently amended, requires market risk disclosure that is similar to that required under Item 11.[101] In this respect, the sensitivity analysis provided under IFRS will be based on forward-looking information. This information will appear in the footnotes to audited IFRS financial statements.

Section 27A of the Securities Act and Section 21E of the Exchange Act expressly exclude from the safe harbor any information ''included in a financial statement prepared in accordance with generally accepted accounting principles.''[102] The safe harbor may not be available to the forward looking information included in IFRS financial statements. When we adopted the market risk disclosure requirements, the Commission considered whether the market risk disclosure could be included in a registrant's financial statements and, if so, whether the safe harbor should apply to that disclosure. The Commission decided to require that the information required under Item 11 be disclosed outside the financial statements.[103]

The apparent non-availability of the safe harbor provisions to information included in financial statements, including information called for by IFRS 7, is separate and distinct from our proposed acceptance of IFRS as published by the IASB without a U.S. GAAP reconciliation. Regardless of whether we eliminate the U.S. GAAP reconciliation for IFRS filers, the financial statements filed by a registrant must comply fully with a comprehensive body of accounting principles, which includes IFRS 7 for those companies that use IFRS.

Questions

27. With regard to references to U.S. GAAP in non-financial statement disclosure requirements, should we amend the references to U.S. GAAP pronouncements that are made in Form 20–F to also reference appropriate IFRS guidance, and, if so, what should the references refer to? Would issuers be able to apply the proposed broad approach to U.S. GAAP pronouncements and would this approach elicit appropriate information for investors? Should we retain the U.S. GAAP references for definitional purposes?

28. Should foreign private issuers that prepare financial statements in accordance with IFRS as published by the IASB be required to continue to comply with the disclosure requirements of FAS 69? What alternatives may be available to elicit the same or substantially the same disclosure?

29. Should the Commission address the implications of forward-looking disclosure contained in a footnote to the financial statements in accordance with IFRS 7? For example, would some kind of safe harbor provision or other relief or statement be appropriate?

3. Other Considerations Relating to IFRS and U.S. GAAP Guidance

The Commission recognizes that an issuer that would not be required to reconcile its IFRS financial statements to U.S. GAAP may nevertheless pursuant to the application of IAS 8 look for guidance from Commission sources other than rules and regulations, including Accounting Series Releases (''ASRs'') and Financial Reporting Releases (''FRRs'').[104] In addition, such an issuer may look to the guidance that the Commission staff provides in Staff Accounting Bulletins (''SABs''), and, if the company is engaged in certain lines of business, various Industry Guides.[105] No changes to such guidance are planned. We believe that a company that would no longer be required to reconcile its IFRS financial statements to U.S. GAAP under the proposed amendments, and its auditor, would continue to be required to follow any Commission guidance that relates to auditing issues.[106] An issuer using IFRS as published by the IASB, although not required to follow U.S. GAAP guidance,

[96] The requirement was found in former Rule 4–10(k) of Regulation S–X. The application of this rule was suspended in Release 33–6444 (December 15, 1982).

[97] Release 33–6818 (February 17, 1989) proposed the deletion which was adopted in Release 33–6959 (September 17, 1992).

[98] 15 U.S.C. 77z–2.

[99] 15 U.S.C. 78u–5.

[100] *See* Release 33–7386 (Jan. 31, 1997) for the release adopting the derivatives disclosure requirement and the related express safe harbor.

[101] IFRS 7 will require this information beginning with the 2007 financial year.

[102] *See* Securities Act Section 27A(b)(2)(A) and Exchange Act Section 21E(b)(2)(A).

[103] U.S. companies are subject to the same disclosure requirement. *See* Item 305 of Regulation S–K [17 CFR 229.3–05].

[104] FRRs contain the Commission's views and interpretations relating to financial reporting. Prior to 1982, the Commission published its views and interpretations relating to financial reporting in Accounting Series Releases (ASRs). In FRR 1, Adoption of the Financial Reporting Release Series and Codification of Currently Relevant ASRs, the Commission codified certain previously issued ASRs on financial reporting matters.

[105] Staff Accounting Bulletins reflect the Commission staff's views regarding accounting-related disclosure practices. They represent interpretations and policies followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the federal securities laws. Industry Guides serve as expressions of the policies and practices of the Division of Corporation Finance. They are of assistance to issuers, their counsel and others preparing registration statements and reports, as well as to the Commission's staff. SABs and Industry Guides are not rules, regulations, or statements of the Commission. They have not been issued pursuant to notice and comment rulemaking, and the Commission has neither approved nor disapproved these interpretations.

[106] In addition, foreign private issuers are required to have audits conducted in accordance with the Standards of the PCAOB (U.S.)/U.S. Generally Accepted Audit Standards regardless of the comprehensive basis of accounting they use to prepare their financial statements.

may find reference to FRRs, ASRs, SABs, and Industry Guides and other forms of U.S. GAAP guidance useful in the application of IAS 8.[107]

Questions

30. Are there issues on which further guidance for IFRS users that do not reconcile to U.S. GAAP would be necessary and appropriate? Should issuers and auditors consider guidance related to materiality and quantification of financial misstatements?

4. First Time Adopters of IFRS

In 2005 the Commission adopted amendments to Form 20–F to permit foreign private issuers, for their first year of reporting under IFRS as adopted by the IASB, to file two years rather than three years of statements of income, changes in shareholders' equity and cash flows prepared in accordance with IFRS, with appropriate related disclosure.[108] These amendments are contained in General Instruction G to Form 20–F. The proposed amendments do not affect the applicability of General Instruction G to issuers that are first-time adopters of IFRS. If adopted, however, the proposed amendments to eliminate the U.S. GAAP reconciliation will apply to eligible issuers that also may be eligible to rely on General Instruction G, which currently contains a number of references to a reconciliation to U.S. GAAP from IFRS. We therefore are proposing to amend General Instruction G to ensure consistency with the proposed elimination of the U.S. GAAP reconciliation requirement for users of IFRS as published by the IASB.

Paragraph (d) of General Instruction G, ''Information on the Company,'' currently refers to the basis of accounting that an issuer uses to prepare ''*the* U.S. GAAP reconciliation.'' As the U.S. GAAP reconciliation would no longer be required of an issuer to which General Instruction G applies, we propose to change to reference to ''a U.S. GAAP reconciliation.'' This change is intended to eliminate any potential inference that the U.S. GAAP reconciliation would still be required, and to clarify that the body of accounting principles referenced in the paragraph does not refer to a basis that the issuer used to prepare financial statements for which a U.S. GAAP reconciliation was required. Paragraph (e) of General Instruction G directs an issuer to refer to the U.S. GAAP reconciliation for the years for which financial statements were prepared in accordance with IFRS and to discuss any differences between IFRS and U.S. GAAP not otherwise discussed in the reconciliation that the issuer believes are necessary for an understanding of the financial statements. Because an issuer would no longer be required to prepare a reconciliation to U.S. GAAP under the proposed rules, we are proposing to eliminate the reference to the reconciliation in this instruction.

Paragraph (f) of General Instruction G stipulates the financial information that a first-time IFRS user must provide in a registration statement filed during the year in which it makes the change, including interim information. Sub-paragraphs (f)(2)(B)(i), (ii) and (iii) set forth three options by which the requirements of Item 8.A.5 for interim financial statements may be satisfied.[109] The first option allows for three years of financial statements prepared in accordance with Previous GAAP (as defined in Form 20–F) and reconciled to U.S. GAAP. As the proposed amendments would continue to require a reconciliation to U.S. GAAP from financial statements prepared using any basis of accounting other than IFRS as published by the IASB, we are not proposing to amend this requirement. The second option allows for two financial years of audited financial statements and interim financial statements prepared in accordance with IFRS as published by the IASB and reconciled to U.S. GAAP as required by Item 17(c) or 18. Consistent with the proposed amendments to Items 17 and 18, we also are proposing to eliminate the reconciliation requirement from this option. Under the third option, a first-time IFRS adopter may provide three years of audited financial statements prepared in accordance with the issuer's Previous GAAP, reconciled to U.S. GAAP, and two years of interim financial statements prepared in accordance with IFRS and reconciled to U.S. GAAP. We are not proposing to amend this option, which was provided as a bridge between an issuer's Previous GAAP and IFRS. Because an issuer eligible to rely on that option would not yet have provided audited IFRS financial statements in a filing with the Commission, we believe it is appropriate to continue to require the U.S. GAAP reconciliation of the interim financial statements prepared under IFRS.

Paragraph (h) of General Instruction G currently requires that financial statements prepared in accordance with IFRS for the most recent two financial years be reconciled to U.S. GAAP under Item 17 or 18. Because first-time filers of financial statements using IFRS as published by the IASB are a subset of the IFRS filers that would be subject to the amendments we are proposing in this release, we also propose to eliminate that requirement from General Instruction G(h) in a manner consistent with the other proposed revisions to Form 20–F. As a conforming amendment we also are proposing to revise Instruction 2.b of General Instruction G(h) to specify that disclosure on operating and financial review and prospects provided in response to Item 5 of Form 20–F need not refer to a reconciliation to U.S. GAAP. That revision is intended to eliminate ambiguity as to whether the disclosure should refer to any U.S. GAAP reconciling information prepared for previous years.

Currently, the accommodation to first-time adopters of IFRS contained in General Instruction G expires after the first financial year starting on or after January 1, 2007. That timing was intended to comport with the requirements of the EU Regulation relating to the transition to IFRS of European companies, although the accommodation is available to an eligible first-time adopter of IFRS issuer from any jurisdiction. The Commission is aware that several countries will be changing their national accounting standards to IFRS, and is therefore proposing to extend the accommodation contained in General Instruction G to Form 20–F for five years, to cover financial statements for the 2012 financial year or earlier that are included in annual reports or registration statements.

Paragraph (i) of General Instruction G contains a special instruction that requires European issuers that prepare their financial statements using IFRS as adopted by the EU to reconcile their financial statements to IFRS as published by the IASB. A U.S. GAAP reconciliation also is required. This paragraph presently applies only to issuers incorporated in an EU Member State, and would cease to be applicable after the 2007 financial year, at which time the mandatory switch to IFRS under the EU Regulation will be complete. Because the provisions would no longer be applicable after that time, we are considering whether or not to

[107] Under IAS 8, in the absence of an IFRS standard or interpretation that specifically applies to a transaction or event, management should use its judgment in developing and applying a relevant and reliable accounting policy and look to other pronouncements in applying that judgment.

[108] *See* the 2005 Adopting Release.

[109] Item 8.A.5 of Form 20–F describes the financial information for interim periods to be included in a registration statement.

delete General Instruction G(i) as part of this rulemaking.

Questions

31. If a first-time IFRS adopter provides, in a registration statement filed during the year in which it changes to IFRS, three years of annual financial statements under a Previous GAAP and two years of interim financial statements prepared under IFRS as published by the IASB, should we continue to require that the interim financial statements be reconciled to U.S. GAAP?

32. Would a U.S. GAAP reconciliation be a useful bridge from Previous GAAP financial statements to annual financial statements prepared under IFRS as published by the IASB that are not reconciled to U.S. GAAP?

33. Should the Commission extend the duration of the accommodation contained in General Instruction G for a period longer or shorter than the proposed five years? Would seven years, ten years or an indefinite period be appropriate? If so, why?

34. Should any extension of the accommodation to first-time adopters be tied in any way to U.S. GAAP reconciliation? If so, how?

5. Check Boxes on the Cover Page of Form 20–F

Currently, an issuer filing a registration statement or annual report on Form 20–F is required to identify, on the cover page of its filing, whether it prepares its financial statements in accordance with Item 17 or 18. The purpose of this information is to allow the reader to identify at a glance the type of U.S. GAAP reconciliation that the filing contains. If the proposed amendments are adopted, the reconciliation requirements contained in Items 17 and 18 will not apply to a Form 20–F filer that files its financial statements using IFRS as published by the IASB. To eliminate possible confusion as to the information that an issuer would provide on the cover page of Form 20–F in response to the current check box, we are proposing to add a check box in which a Form 20–F filer would indicate whether the financial statements included in the filing have been prepared using U.S. GAAP, IFRS as published by the IASB, or another basis of accounting. If, in response to this check box, an issuer has indicated that it uses a basis of accounting other than U.S. GAAP or IFRS as published by the IASB, the issuer would then indicate in response to a subsequent check box whether it follows Item 17 or 18.

It is often difficult for the staff to communicate with foreign private issuers or their counsel, who may be located overseas. As a means of facilitating communication with foreign private issuers by the Commission staff, we also are proposing to revise the cover page of Form 20–F to require that issuers provide contact information for a person to whom enquiries may be directed.[110] This information would include the name of an individual at the company or its legal counsel and the telephone, e-mail, and/or facsimile number, or other means by which that person can be contacted. Information provided on the Form 20–F in response to the proposed check boxes and the company contact information will constitute required disclosure that is subject to all applicable federal securities laws.

D. Regulation S–X

Regulation S–X contains, among other things, the form and content requirements for financial statements included in filings made with the Commission. It also includes many provisions that do not relate to U.S. GAAP, for example, requirements for auditor qualifications and reports. If the proposed rules are adopted, Regulation S–X, other than its form and content requirements, will continue to apply to the filings of all foreign private issuers, including those who file financial statements prepared using IFRS as published by the IASB without reconciliation to U.S. GAAP.

1. Application of the Proposed Amendments to Rules 3–05, 3–09, and 3–16

Under Rules 3–05, 3–09 and 3–16 of Regulation S–X, an issuer, in certain circumstances, must include the financial statements of another entity in its filings.[111] Although we are not proposing any specific amendments to those sections as part of this rulemaking initiative, the amendments that we are proposing in this release will apply equally in the application of Rules 3–05, 3–09 and 3–16.

a. Significance Testing

Under Rules 3–05, 3–09 and 3–16, an issuer is required to include the financial statements of another entity if the entity meets certain significance tests.[112] Requirements for significance testing are governed by the financial statements of the issuer. Generally, if a foreign private issuer prepares its own financial statements using IFRS as published by the IASB, that issuer would perform the significance tests under Rules 3–05, 3–09 and 3–16 using IFRS as published by the IASB, regardless of the basis of accounting used by the other entity. If the significance thresholds under Rule 3–05, 3–09 or 3–16 are met, then the issuer must provide on a separate basis audited annual financial statements of the subject entity.

b. Separate Historical Financial Statements of Another Entity Provided Under Rules 3–05 or 3–09

Generally, the historical financial statement requirements for a foreign acquired business or investee under Rules 3–05 or 3–09 are governed by the status of that entity, and the burden of reconciling the financial statements of a non-issuer entity would be no higher than if it were the issuer. In applying the proposed amendments, if the entity's audited financial statements are in accordance with IFRS as published by the IASB, those financial statements would not be required to be reconciled to U.S. GAAP. For example, under Rule 3–05 both foreign private issuers and U.S. companies that acquire a ''significant'' foreign business would be permitted, under the proposed rules, to include the acquiree's financial statements prepared in accordance with IFRS as published by the IASB without reconciliation, U.S. GAAP, or another comprehensive basis of accounting reconciled to U.S. GAAP. The same would be true for the financial statements of a ''significant'' foreign investee under Rule 3–09.

An issuer that includes financial statements for a foreign entity under Rule 3–05 or Rule 3–09 currently is permitted to omit the reconciliation to U.S. GAAP for that entity, regardless of the comprehensive basis of accounting in which that entity's financial statements are presented, if the

[110] An example of this enquiry would be a staff comment letter. Identifying the person on the cover page would not make that person an agent for service of process.

[111] Rule 3–05 specifies the requirements for financial statements of businesses acquired or to be acquired. Rule 3–09 specifies the requirements for financial statements of unconsolidated majority-owned subsidiaries and 50 percent or less owned investments accounted for by the equity method. Both Rule 3–05 and 3–09 require financial statements when the applicable entity is significant to the issuer.

Rule 3–16 specifies the requirement for financial statements of affiliates whose securities collateralize an issue registered or being registered. The requirement to provide separate financial statements under Rule 3–16 is based upon whether or not the securities are a substantial portion (as defined) of the collateral for the class of securities registered or being registered.

[112] An entity is significant to the issuer if the issuer's investment in the entity exceeds 20% of the issuer's total assets, the entity's income (as defined) exceeds 20% of the issuer's corresponding income, or (for Rule 3–05 only) the entity's total assets exceed 20% of the issuer's total assets.

significance of that entity, as defined in Rule 1–02(w) of Regulation S–X, does not exceed 30 percent of the registrant.[113] Although we are not proposing to amend Rules 3–05 or 3–09, we are proposing to revise Items 17(c)(2)(v) and (vi) of Form 20–F to clarify, respectively, that an issuer that uses IFRS as published by the IASB to prepare the financial statements of the foreign entity under Rule 3–05 or 3–09 may omit the reconciling information specified under Item 17(c)(2)(i)–(iii) regardless of the significance of the entity.

2. Pro Forma Financial Statements Provided Under Article 11

Under Article 11 of Regulation S–X, issuers are required to prepare unaudited pro forma financial information that is intended to give effect as if a particular transaction, such as a significant recent or probable business combination, had occurred at the beginning of the financial period. Requirements for pro forma financial information under Article 11 continue to be governed by the financial statements of the issuer rather than of the acquiree or other entity, as the pro forma results must be presented using the same basis of accounting as the issuer. Similarly, these rules do not impose a higher presentation burden on pro forma financial information than would be imposed on the historical financial statements of the issuer. We are not proposing to amend Article 11, but the proposed amendments will apply in the application of Article 11. Accordingly, if the proposed amendments are adopted, a foreign private issuer using IFRS as published by the IASB as its basis of accounting would not be required to reconcile to U.S. GAAP its pro forma financial information. Therefore, an issuer using IFRS as published by the IASB would prepare the pro forma financial information by presenting its IFRS results and converting the financial statements of the business acquired (or to be acquired) into IFRS as published by the IASB.

3. Financial Statements Provided under Rule 3–10

Rule 3–10 of Regulation S–X specifies financial statement requirements for issuers of guaranteed securities and guarantors.[114] Generally, under this rule both the issuer of the guaranteed security and the guarantor must follow the financial statement requirements of a registrant. If both entities are reporting foreign private issuers filing on Form 20–F, we would accept the financial statements prepared in accordance with IFRS as published by the IASB without reconciliation from each one under the proposed rules.[115]

However, Rule 3–10 permits modified reporting by subsidiary issuers of guaranteed securities and subsidiary guarantors. Separate financial statements need not be filed for subsidiaries meeting the applicable conditions contained in Rules 3–10(b) through 3–10(f). Instead, condensed consolidating financial information is presented in the parent company's reports in an additional audited footnote to the financial statements. In applying modified reporting under Rule 3–10, however, the reconciliation requirement would be based on the consolidated financial statements of the parent company, as under current rules. A parent issuer or guarantor that presents consolidated financial statements under IFRS as published by the IASB would present the condensed consolidating financial information on the basis of IFRS as published by the IASB, without reconciliation to U.S. GAAP. We do not believe that any substantive revision to Rule 3–10 is necessary to implement the acceptance of financial statements prepared using IFRS as published by the IASB without reconciliation as proposed.

The instructions for preparation of condensed consolidating financial information required by certain paragraphs of Rule 3–10 contain a reference to a reconciliation of the condensed consolidating financial information to U.S. GAAP. As a conforming amendment, we are proposing to revise this reference to clarify that we would accept the condensed consolidating financial information without a U.S. GAAP reconciliation if it is prepared using IFRS as published by the IASB.

4. Conforming Amendment to Rule 4–01

Rule 4–01 of Regulation S–X sets out the general requirements for financial statements included in Commission filings and requires that foreign private issuers include an Item 18 reconciliation if they use a basis of accounting other than U.S. GAAP, except as otherwise stated in the applicable form.[116] In order to implement fully the proposed acceptance of financial statements prepared using IFRS as published by the IASB and to avoid ambiguity for issuers, we propose to revise Rule 4–01 to clarify that financial statements of foreign private issuers may be prepared using IFRS as published by the IASB without reconciliation to U.S. GAAP.

Questions

35. Are the proposed changes to Rules 3–10 and 4–01 sufficient to avoid any ambiguity about our acceptance of IFRS financial statements without reconciliation? If not, what other revisions would be necessary?

36. Are there other rules in Regulation S–X that should be specifically amended to permit the filing of financial statements prepared in accordance with IFRS as published by the IASB without a reconciliation to U.S. GAAP? If so, how would the application of those rules be unclear if there were no changes to those rules, and what changes would be suggested in order to make them clear?

37. Is the application of the proposed rules to the preparation of financial statements provided under Rules 3–05, 3–09, 3–10 and 3–16 sufficiently clear? If not, what areas need to be clarified? Are any further changes needed for issuers that prepare their financial statements using IFRS as published by the IASB?

E. Application of the Proposed Amendments to Other Forms, Rules and Schedules

1. Conforming Amendments to Securities Act Forms F–4 and S–4

In addition to being the combined registration statement and annual report for foreign private issuers under the Exchange Act, Form 20–F also sets forth the disclosure requirements for registration statements filed by foreign private issuers under the Securities Act. Because the Securities Act registration statements applicable to foreign private issuers reference the disclosure and financial statement item requirements of Form 20–F, the proposed amendments to Form 20–F to eliminate the U.S. GAAP reconciliation requirement for IFRS issuers also will serve to eliminate the reconciliation requirement from most Securities Act forms without direct revision of those forms. In order to implement fully our acceptance of financial statements prepared in accordance with IFRS as published by the IASB and to eliminate potential

[113] *See* Item 17(c)(2)(v) and (vi) of Form 20–F.

[114] A guarantee of a registered security is itself a security, so a guarantor of a registered security is itself considered an issuer of a security. *See* Securities Act Section 2(a)(1).

[115] In this situation, when an issuer of a guaranteed security and a guarantor each file complete audited financial statements, the separate financial statements of each entity also may be on a different basis of accounting and, if not prepared under U.S. GAAP or IFRS as published by the IASB, must be reconciled to U.S. GAAP.

[116] As noted above, Item 17 reconciliation is permitted in various circumstances.

ambiguity, we are proposing to make conforming amendments to references to the U.S. GAAP reconciliation contained in Securities Act Forms F–4 and S–4.

Form F–4, the registration statement for securities of foreign private issuers issued in certain business combinations, contains specific references to the U.S. GAAP reconciliation.[117] We are proposing to revise these references to the U.S. GAAP reconciliation contained in Items 10, 12 and 17 of this form to make them consistent with the proposed revisions to Item 17(c) and 18(b) of Form 20–F to indicate that the referenced U.S. GAAP reconciliation would apply only to financial statements prepared using a basis of accounting other than U.S. GAAP or IFRS as published by the IASB. Form S–4, the registration statement for securities of domestic issuers issued in business combination transactions, also contains reference to the U.S. GAAP reconciliation in the instruction to Item 17 which we propose to revise in the same manner.

2. Conforming Amendment to Rule 701

Rule 701 under the Securities Act provides an exemption from registration for offers and sales made under certain compensatory benefit plans. The rule is generally not available to an issuer that has a reporting obligation under the Exchange Act. An issuer that offers securities in reliance on Rule 701 does not file any information with the Commission, but is required to deliver to investors certain information, including financial statements, if more than $5 million in securities are sold over a 12-month period. For foreign private issuers relying on Rule 701, these financial statements must include a reconciliation under Item 17 of Form 20–F if they are not prepared in accordance with U.S. GAAP.

To implement the proposed rules fully, we believe that a foreign private issuer that conducts an offering under Rule 701 and that uses in its financial statements IFRS as published by the IASB should not be required to present a U.S. GAAP reconciliation. We propose to amend Rule 701 to clarify that a U.S. GAAP reconciliation will not be required in that circumstance.

3. Small Business Issuers

A Canadian foreign private issuer that qualifies as a small business issuer under Regulation S–B may elect to provide disclosure in its registration statements and annual reports, in compliance with forms based on Regulation S–B rather than on Form 20–F.[118] Regulation S–B describes the financial statement requirements for a small business issuer, which must be prepared in accordance with U.S. GAAP or, if filed by a foreign private issuer that also is a small business issuer, reconciled to U.S. GAAP in accordance with the requirements of Items 17 or 18 of Form 20–F, as appropriate.[119] At a recent meeting,[120] the Commission approved a proposal to integrate most of the substantive provisions of Regulation S–B into Regulation S–K and to eliminate current Regulation S–B as a separate disclosure system for smaller companies. If we do not adopt those proposals, we would consider making conforming changes to Regulation S–B and to small business forms to implement fully the amendments we are proposing in this release.

If the new small business rules are adopted as proposed, a foreign private issuer that also is eligible to rely on those rules would have a choice as to the accounting standards used to prepare its financial statements. If we adopt the proposed amendments, a small business issuer that files annual reports on Form 20–F or a Securities Act registration statement based on Form 20–F would be able to file financial statements prepared using U.S. GAAP, IFRS as published by the IASB without a U.S. GAAP reconciliation, or another comprehensive basis of accounting with a U.S. GAAP reconciliation. If that issuer chose to file annual reports on Form 10–K or a Securities Act form based on Regulation S–K, financial statements prepared using U.S. GAAP would be required.

Questions

38. Are the proposed changes in Forms F–4 and S–4, and in Rule 701, sufficient to avoid any ambiguity about our acceptance of IFRS financial statements without reconciliation? If not, how should we revise those forms or rule?

39. Under Part F/S of Form 1–A relating to offerings conducted under Regulation A, Canadian issuers may use unaudited financial statements that are reconciled to U.S. GAAP. Should we amend Form 1–A to permit the use by Canadian companies of financial statements prepared in accordance with IFRS as published by the IASB without a reconciliation? Does the fact that financial statements under Form 1–A are not required to be audited militate in favor of retaining a U.S. GAAP reconciliation whenever a Canadian issuer uses a GAAP other than U.S. GAAP?

40. Are there other rules or forms under the Securities Act that should be specifically amended to permit the filing of financial statements prepared in accordance with IFRS as published by the IASB without a reconciliation to U.S. GAAP? If so, how would the rules or forms be unclear if there were no changes to those forms, and what changes would be suggested in order to make them clear?

4. Schedule TO and Schedule 13E–3

Instruction 8 to Item 10 of Schedule TO, the tender offer statement under the Exchange Act,[121] contains a reference to reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F. Instruction 2 to Item 13 of Schedule 13E–3,[122] the transaction statement under Section 13(e) of the Exchange Act, also contains a reference to U.S. GAAP reconciliation under Item 17. Because reconciliation requirements for Schedule TO and Schedule 13E–3 are provided in Item 17 of 20–F, which we are proposing to amend, we do not believe any amendment to Schedule TO or Schedule 13E–3 is necessary to fully implement our proposed acceptance of financial statements prepared in accordance with IFRS as published by the IASB when contained without reconciliation to U.S. GAAP.

Question

41. Should Schedule TO and Schedule 13E–3 be specifically amended to permit the filing of financial statements prepared in accordance with IFRS as published by the IASB without a reconciliation to U.S. GAAP? If so, how would the rules or forms be unclear if there were no changes to those Schedules, and what changes would be suggested in order to make them clear?

F. Quality Control Issues

On April 16, 2003, the PCAOB adopted certain pre-existing standards

[117] *See* Form F–4, Items 10(c), 12(b) and 17(b).

[118] 17 CFR 228. A ''small business issuer'' is defined in Item 10 of Regulation S–B (17 CFR 228.10) as a company that (i) has revenues of less than $25,000,000, (ii) is a U.S. or Canadian issuer; and (iii) is not an investment company and is not an asset-backed issuer; and (iv) if a majority owned subsidiary, the parent corporation is also a small business issuer. An entity that meets all of these criteria is not a small business issuer if it has a public float (defined as the aggregate market value of the issuer's outstanding voting and non-voting common equity held by non-affiliates) of $25,000,000 or greater.

[119] *See* Notes 1 and 2 to Item 310 of Regulation S–B.

[120] The proposal that the Commission made in its meeting held May 23, 2007 is described at *http://www.sec.gov/news/press/2007/2007–102.htm.*

[121] 17 CFR 240.14d–100.

[122] 17 CFR 240.13e–100.

of the American Institute of Certified Public Accountants (''AICPA'') as interim standards to be used on an initial transition basis.[123] Among these interim standards was PCAOB Rule 3400T, Interim Quality Control Standards, which consist of the AICPA's Auditing Standard Board's Statements on Quality Control Standards and the AICPA SEC Practice Section's membership requirements, in each case as in existence on April 16, 2003 and to the extent not superseded or amended by the PCAOB.

One of these membership requirements related to compliance with Appendix K, which was applicable to member firms that were members of, correspondents with, or similarly associated with international firms or international associations of firms. Appendix K provides that member firms seek adoption of policies and procedures by their international organizations or individual foreign associated firms that address the review of SEC filings by persons knowledgeable in accounting, auditing and independence standards generally accepted in the United States. This requirement seeks to enhance the quality of SEC filings by SEC registrants whose financial statements are audited by foreign associated audit firms.[124]

We are not proposing amendments to our rules that relate to the continued need for compliance with PCAOB Auditing Standards, including Appendix K. However, we believe that commenters may wish to address this area in light of our proposed acceptance of IFRS as published by the IASB without a reconciliation to U.S. GAAP.

Questions

42. Without the reconciliation to U.S. GAAP, should we be concerned about member firm requirements to have persons knowledgeable in accounting, auditing and independence standards generally accepted in the United States review IFRS financial statements filed with the Commission? Are there alternative ways in which concerns may be addressed?

G. Application to Filings Under the Multijurisdictional Disclosure System

Certain Canadian foreign private issuers file registration statements and annual reports under the Multijurisdictional Disclosure System (''MJDS''), which permits eligible Canadian companies to use their disclosure documents prepared in accordance with Canadian requirements in filings with the Commission. Certain filings under the MJDS are not required to contain a reconciliation to U.S. GAAP.[125] However, a U.S. GAAP reconciliation is required in registration statements and annual reports on Form 40–F,[126] and registration statements on Form F–10,[127] each when used for common equity securities, securities convertible into common equity securities and other securities not rated investment grade.

At present, Canadian companies filing under the MJDS generally use either Canadian GAAP (with a U.S. GAAP reconciliation when called for) or U.S. GAAP in filings with the Commission. As discussed above, officials in Canada are considering permitting the use of IFRS as published by the IASB as the basis of accounting for all Canadian public companies. To implement the proposed rules fully, we believe that a Canadian company that uses the MJDS forms and that changes its basis of accounting to IFRS as published by the IASB should not be required to present a U.S. GAAP reconciliation. However, we do not believe any amendments to Forms 40–F and F–10 are necessary to accomplish this. Forms 40–F and F–10 already contain a cross-reference to the U.S. GAAP reconciliation requirement under Items 17 and 18 of Form 20–F, which will be amended as described above to allow the filing of IFRS financial statements without a U.S. GAAP reconciliation.

Questions

43. Should Form 40–F or F–10 be specifically amended to permit the filing of financial statements prepared in accordance with IFRS as published by the IASB without a reconciliation to U.S. GAAP? If so, how would the forms be unclear if there were no changes to those forms, and what changes would be suggested in order to make them clear?

IV. General Request for Comments

We request and encourage any interested persons to submit comments regarding:

- The proposed changes that are the subject of this release,
- Additional or different changes, or
- Other matters that may have an effect on the proposals contained in this release.

In addition to providing comments on these matters, we encourage interested parties to provide comment on broader matters related to the development of a single set of globally accepted accounting standards, for example:

44. If progress does not continue towards implementing a single set of high-quality globally accepted accounting standards, will investors and issuers be served by the absence of a U.S. GAAP reconciliation for financial statements prepared using IFRS as published by the IASB?

45. Where will the incentives for continued convergence lie for standard setters, issuers, investors and other users of financial statements if the reconciliation to U.S. GAAP is eliminated for issuers whose financial statements are prepared using IFRS as published by the IASB?

46. Are there additional interim measures, beyond the proposed elimination of the U.S. GAAP reconciliation from IFRS financial statements, that would advance the adoption of a single set of high-quality globally accepted accounting standards? If so, what are they? Who should undertake them?

We request comment from the point of view of registrants, investors, accountants, accounting standard setters, users of financial statements and other market participants. With regard to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

V. Paperwork Reduction Act

A. Background

The proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[128] We are submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[129] The titles for the affected collections of information are:

(1) ''Form 20–F'' (OMB Control No. 3235–0288);

(2) ''Form F–1'' (OMB Control No. 3235–0258);

[123] *See* ''Interim Standards'' at *http://www.pcaobus.org/Standards/Interim_Standards/index.aspx*.

[124] *See* Appendix K at *http://www.pcaob.org/Standards/Interim_Standards/Quality_Control_Standards/SECPS_1000.08_Appendicies_bookmarks.pdf#nameddest=k*.

[125] A U.S. GAAP reconciliation is not required under Form F–7 relating to rights offers, Forms F–8 and F–80 for exchange offers and business combinations, Form F–9 relating to investment grade securities, and Form 40–F when used as an annual report relating to an issuer's Section 15(d) reporting obligations for any of the these offerings or a Section 13(a) reporting obligation relating to investment grade securities.

[126] 17 CFR 249.240f.

[127] 17 CFR 239.40.

[128] 44 U.S.C. 3501 *et seq.*

[129] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

(3) ''Form F–4'' (OMB Control No. 3235–0325);

(4) ''Form S–4'' (OMB Control No. 3235–0324); and

(5) ''Rule 701'' (OMB Control No. 3235–0522).

These forms were adopted pursuant to the Exchange Act and the Securities Act and set forth the disclosure requirements for annual reports and registration statements filed by foreign private issuers. The hours and costs associated with preparing, filing and sending these forms constitute reporting and cost burdens imposed by each collection of 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 proposed amendments, if adopted, would allow a foreign private issuer that prepares its consolidated financial statements in accordance with IFRS as published by the IASB, and meets the other eligibility requirements, to file those financial statements in its registration statements and periodic reports filed with the Commission without reconciliation to U.S. GAAP. These amendments would be collections of information for purposes of the Paperwork Reduction Act. For purposes of this Paperwork Reduction Analysis, these proposed amendments, if adopted, would result in a decrease in the hour and cost burden calculations. We believe this proposed amendment would eliminate potential burdens and costs for foreign issuers that use IFRS. The disclosure will be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements would not be kept confidential.

For purposes of the Paperwork Reduction Act, we estimate that the incremental decrease in the paperwork burden for all foreign private issuers that use IFRS and issuers that acquire foreign private issuers that use IFRS would be approximately 3,861 hours of company time and approximately $4,600,720 for the services of outside professionals. We estimated the average number of hours each entity spends completing the forms and the average hourly rate for outside professionals. That estimate includes the time and the cost of in-house preparers, reviews by executive officers, in-house counsel, outside counsel, independent auditors and members of the audit committee.[130] Our estimates of the number of impacted foreign private issuers are based on the number of recent filings received from issuers that we believe may be immediately eligible to rely on the proposals, if adopted.

B. Burden and Cost Estimates Related to the Proposed Accommodation

1. Form 20–F

We estimate that currently foreign private issuers file 942 Form 20–Fs each year. We assume that 25% of the burden required to produce the Form 20–Fs is borne internally by foreign private issuers, resulting in 619,601 annual burden hours borne by foreign private issuers out of a total of 2,478,404 annual burden hours. Thus, we estimate that 2,631 total burden hours per response are currently required to prepare the Form 20–F. We further assume that 75% of the burden to produce the Form 20–Fs is carried by outside professionals retained by foreign private issuers at an average cost of $400 per hour, for a total cost of $743,520,600.

We estimate that approximately 110 companies that file Form 20–F will be currently impacted by the proposal.[131] We expect that, if adopted, the proposed amendment would cause those foreign private issuers to have fewer burden hours. We estimate that for each of the companies affected by the proposal, there would occur a decrease of 5% (131.55 hours) in the number of burden hours required to prepare their Form 20–F, for a total decrease of 14,471 hours. We expect that 25% of these decreased burden hours (3,618 hours) will be saved by foreign private issuers. We further expect that 75% of these decreased burden hours (10,853 hours) will be saved by outside firms, at an average cost of $400 per hour, for a total of $4,341,120 in decreased costs to the respondents of the information collection.

Thus, we estimate that the proposed amendment to Form 20–F would decrease the annual burden borne by foreign private issuers in the preparation of Form 20–F from 619,601 hours to 615,983 hours. We further estimate that the proposed amendment would decrease the total annual burden associated with Form 20–F preparation to 2,463,932 burden hours, which would decrease the average number of burden hours per response to 2,616. We further estimate that the proposed amendment would decrease the total annual costs attributed to the preparation of Form 20–F by outside firms to $739,179,600.

2. Form F–1

We estimate that currently foreign private issuers file 42 registration statements on Form F–1 each year. We assume that 25% of the burden required to produce a Form F–1 is borne by foreign private issuers, resulting in 18,999 annual burden hours incurred by foreign private issuers out of a total of 75,996 annual burden hours. Thus, we estimate that 1,809 total burden hours per response are currently required to prepare a registration statement on Form F–1. We further assume that 75% of the burden to produce a Form F–1 is carried by outside professionals retained by foreign private issuers at an average cost of $400 per hour, for a total cost of $22,798,800.

We estimate that currently approximately five companies that file registration statements on Form F–1 will be impacted by the proposal.[132] We expect that, if adopted, the proposed amendment would cause those foreign private issuers to have fewer burden hours. We estimate that each company affected by the proposal would have a 5% decrease (90.45 hours) in the number of burden hours required to prepare their registration statements on Form F–1, for a total decrease of 452 hours. We expect that 25% of these decreased burden hours (113 hours) will be saved by foreign private issuers. We further expect that 75% of the decreased burden hours (339 hours) will be saved by outside firms, at an average cost of $400 per hour, for a total of $135,600 in decreased costs to the respondents of the information collection.

Thus, we estimate that the proposed amendment to Form 20–F would decrease the annual burden incurred by foreign private issuers in the preparation of Form F–1 from 18,999 hours to 18,886 hours. We further estimate that the proposed amendment would decrease the total annual burden associated with Form F–1 preparation to 75,544 burden hours, which would decrease the average number of burden hours per response to 1,799. We further estimate that the proposed amendment would decrease the total annual costs

[130] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $400 as the cost to companies for the services of outside professionals retained to assist in the preparation of these disclosures. For Securities Act registration statements, we also consider additional reviews of the disclosure by underwriter's counsel and underwriters.

[131] We are using this figure for purposes of the Paperwork Reduction Analysis based on the number of Form 20–Fs that were filed with IFRS financial statements during the 2006 calendar year. As additional jurisdictions adopt IFRS as their basis of accounting in the future, the number of issuers that use IFRS is expected to increase.

[132] This figure is based on our estimate of the number of Form F–1s that were filed with IFRS financial statements during the 2006 calendar year.

attributed to the preparation of Form F–1 by outside firms to $22,663,200.

3. Form F–4

We estimate that currently foreign private issuers file 68 registration statements on Form F–4 each year. We assume that 25% of the burden required to produce a Form F–4 is borne internally by foreign private issuers, resulting in 24,503 annual burden hours incurred by foreign private issuers out of a total of 98,012 annual burden hours. Thus, we estimate that 1,441 total burden hours per response are currently required to prepare a registration statement on Form F–4. We further assume that 75% of the burden to produce a Form F–4 is carried by outside professionals retained by foreign private issuers at an average cost of $400 per hour, for a total cost of $29,403,600.

We estimate that currently approximately 5 companies that file registration statements on Form F–4 will be impacted by the proposal.[133] We expect that, if adopted, the proposed amendment would cause those foreign private issuers to have fewer burden hours. We estimate that each of the affected companies would have a decrease of 5% (72 hours) in the number of burden hours required to prepare their registration statements on Form F–4, for a total decrease of 360 hours. We expect that 25% of these decreased burden hours (90 hours) will be saved by foreign private issuers. We further expect that 75% of the decreased burden hours (270 hours) would be saved by outside firms at an average cost of $400 per hour, for a total of $108,000 in decreased costs to the respondents of the information collection.

Thus, we estimate that the proposed amendment to Form 20–F would decrease the annual burden incurred by foreign private issuers in the preparation of Form F–4 from 24,503 hours to 24,413 hours. We further estimate that the proposed amendment would decrease the total annual burden associated with Form F–4 preparation to 97,652 burden hours, which would decrease the average number of burden hours per response to 1,436. We further estimate that the proposed amendment would decrease the total annual costs attributed to the preparation of Form F–4 by outside firms to $29,295,600.

4. Form S–4

When a domestic issuer files a registration statement on Form S–4 for the acquisition of a foreign private issuer, the domestic issuer must include the financial statements of the acquired company in the Form S–4. If those financial statements are prepared using a basis of accounting other than U.S. GAAP, the domestic issuer must provide a reconciliation to U.S. GAAP, unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense.

We estimate that issuers file 619 registration statements on Form S–4 each year. We estimate that 1,355 total burden hours per response are currently required to prepare a registration statement on Form S–4. We assume that 75% of the burden required to produce a Form S–4 is borne by the domestic issuer, resulting in 629,059 annual burden hours incurred by issuers out of a total of 838,745 annual burden hours. We further assume that 25% of the burden to produce a Form S–4 is carried by outside professionals retained by the issuer at an average cost of $400 per hour for a total cost of $83,874,500.

We estimate that currently approximately 6 registration statements filed on Form S–4 will contain the financial statements of a foreign target that will be impacted by the proposal.[134] We expect that, if adopted, the proposed amendment would cause the domestic issuers that file the Form S–4 registration statements to have fewer burden hours. We estimate that for each of these domestic registrants, there would be a decrease of 2% (27 hours) in the number of burden hours required to prepare their registration statements on Form S–4, for a total decrease of 162 hours.[135] We expect that 75% of these decreased burden hours (122 hours) would be saved by issuers. We further expect that 75% of the decreased burden hours (40 hours) would be saved by outside professionals at an average cost of $400 per hour for a total of $16,000 in decreased costs to the respondents of the information collection.

Thus, we estimate that the proposed amendment would decrease the annual burden incurred by issuers in the preparation of Form S–4 from 629,059 hours to 628,937 hours. We further estimate that the proposed amendment would decrease the total annual burden associated with Form S–4 preparation to 838,584 burden hours, which would decrease the average number of burden hours per response to 1,354.7. We further estimate that the proposed amendment would decrease the total annual costs attributed to the preparation of Form S–4 by outside firms to $83,858,500.

5. Rule 701

Rule 701 provides an exemption from registration for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation. Issuers conducting employee benefit plan offerings in excess of $5 million in reliance on Rule 701 are required to provide employees covered by the plan with certain disclosures, including financial statement disclosures. This disclosure is a collection of information.

We estimate that currently 300 issuers provide information under Rule 701, and that the estimated number of burden hours per respondent is two. Therefore, we estimate an aggregate of 600 burden hours per year. We believe that the reduction in burden hours caused by the proposed rules will be insignificant. Therefore, we do not believe the proposed rules will alter current burden estimates associated with Rule 701.

C. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Evaluate the accuracy of our estimates of the burden of the proposed collections of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendments will have any effects on any other collections of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the collection of

[133] This figure is based on our estimate of the number of Form F–4s that were filed with IFRS financial statements during the 2006 calendar year.

[134] This figure is based on our estimate of the number of Form S–4s that were filed during the 2006 calendar year that contained IFRS financial statements.

[135] We estimate the burden decrease for purposes of this Paperwork Reduction Analysis would be less for Form S–4 than for other forms described in this section because, in the case of Form S–4, the registrant is obtaining the U.S. GAAP reconciliation from the foreign private issuer. Further, the registrant is not required to provide the reconciliation if it is unavailable or unobtainable without unreasonable cost or expense.

information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–13–07. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7–13–07 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

VI. Cost-Benefit Analysis

We are proposing amendments to existing rules and forms to accept financial statements from foreign private issuers prepared using IFRS as published by the IASB without reconciliation to U.S. GAAP. Currently, financial statements that foreign private issuers file with the Commission must be prepared either in accordance with U.S. GAAP, or in accordance with another GAAP with a reconciliation to U.S. GAAP. The amendments, if adopted, would therefore provide foreign private issuers with a third method of preparing financial statements filed with the Commission. We are not proposing to amend the current reconciliation requirements for foreign private issuers that prepare their financial statements using a basis of accounting other than IFRS as published by the IASB.

The amendments would apply to a registrant's financial statements contained in annual reports and registration statements on Form 20–F as well as to financial statements included in the Securities Act registration statements filed by foreign private issuers or, when applicable, included in a registration statement or reported pursuant to Rules 3–05, 3–09 or 3–16 of Regulation S–X. We also are proposing a conforming amendment to Rule 701, which provides an exemption from Securities Act registration for securities offered in certain employee benefit plans, to clarify that a foreign private issuer conducting an offering in excess of $5 million in reliance on that rule may furnish investors with financial statements prepared using IFRS as published by the IASB without reconciliation.

Currently, there are between 1,000 and 1,200 foreign private issuers registered with the Commission. The proposed amendments would be available to any of those foreign private issuers that comply with IFRS as published by the IASB, whether voluntarily or pursuant to a requirement. Some foreign companies that are registered under the Exchange Act already include in their filings with the Commission financial statements that comply with IFRS as published by the IASB. We estimate that there are approximately 110 foreign private issuers that represent in the footnotes to their financial statements that the financial statements comply with IFRS as published by the IASB. This representation may be in addition to a representation that the financial statements comply with a jurisdictional variation of IFRS. If a registrant's auditors are able to opine that those financial statements are in compliance with IFRS as published by the IASB, then those registrants would be in a position to immediately file their existing financial statements under the proposed approach. Another approximately 70 foreign private issuers already include in their filings financial statements that they state are prepared in accordance with solely a jurisdictional variation of IFRS. If these companies are also able to state (and their auditors are able to opine) that their financial statements comply with IFRS as published by the IASB, the companies would be in a similar position. Lastly, approximately 50 additional foreign private issuers that are incorporated in jurisdictions that have moved to IFRS include in their filings with the Commission financial statements prepared using U.S. GAAP. Some of these issuers also may be in a position to file financial statements under the proposed approach.[136]

We recognize that other registered foreign companies include financial statements in accordance with a home country GAAP. We believe that there would be different incentives for these companies to change their basis of accounting to IFRS as published by the IASB and thus be able to omit the U.S. GAAP reconciliation under the proposed approach. Some foreign companies are required under home country law or stock exchange rule to use a home country GAAP and are not permitted for home country purposes to use IFRS. At present, these companies generally include in their SEC filings financial statements prepared under home country GAAP with a U.S. GAAP reconciliation. These companies would be able to take advantage of the proposed amendments by preparing for the purpose of Commission filings (but not for home country purposes) financial statements in accordance with IFRS as published by the IASB. While these companies would incur the costs of preparing a separate set of financial statements, companies may elect to do so in light of benefits they may derive from preparing a set of IFRS financial statements as well as the costs of preparing the U.S. GAAP reconciliation.

Lastly, in coming years, as more countries adopt IFRS as their basis of accounting or permit companies to use IFRS as their basis of accounting, we believe that the number of foreign private issuers that would be eligible to rely on the proposed amendments will increase, although it is difficult to quantify that increase at this point in time.

In summary, while all foreign private issuers would receive a potential benefit from the third option for preparing financial statements described in this proposal, this option will not be immediately equally attractive to all such issuers. We recognize that the proposed acceptance of financial statements prepared using IFRS as published by the IASB without reconciliation does not confer an equal benefit on all foreign private issuers, as there are some issuers that will continue to find it more attractive to reconcile their financial statements to U.S. GAAP. For some foreign private issuers the proposed amendments are immediately attractive. For other foreign private issuers the option may become attractive at a later date when their situational constraints or opportunities change. For still other such issuers, the option may not become attractive or applicable at any time in the foreseeable future. The cost of preparing (or not having to additionally prepare) the relevant IFRS financial statements is one factor that may influence whether a foreign private issuer will use the option proposed, be it immediately or at some time in the future. The proposed option may be most attractive for issuers whose home jurisdiction or other capital markets in which the issuer lists securities allow financial statements prepared in accordance with IFRS. Foreign private issuers also may be concerned about public perception costs, as they may be perceived as being the outlier if companies with which

[136] The figures contained in this paragraph are per staff estimates based on the jurisdiction of the filers.

they compete for capital commonly report using another basis of accounting. Such an effect is likely to be smaller if a critical mass of issuers with whom the issuer competes for capital (such as those in its industry sector) also report in IFRS. In such situations, by reporting in IFRS, the foreign private issuer has made it more efficient for investors to analyze its financial results in comparison with the results of others with whom it competes for capital.

A. Expected Benefits

Our proposed acceptance of financial statements prepared using IFRS as published by the IASB is expected to help foster the preparation of financial statements in accordance with IFRS as a way of moving to a single set of globally accepted accounting standards, which we believe will have positive effects on investors and also issuers. Financial statements prepared using a common set of accounting standards help investors better understand investment opportunities as compared to financial statements prepared under differing sets of national accounting standards. Without a common standard and without a required reconciliation, global investors must incur the time and effort to understand financial statements reported using different bases of accounting so that they can compare opportunities.

The proposals are expected to increase the likelihood of realizing the net benefits of a single set of globally accepted accounting standards. This benefit is due to potential network effects of the proposed amendments: The more issuers that use IFRS as published by the IASB and file without a U.S. GAAP reconciliation, the more benefits there may be for other issuers to do so since the utility for investors of a set of accounting standards increases as the number of issuers using it increases.

The resulting reduction of the multiplicity of accounting standards that presently exist is expected to benefit investors by allowing them to spend less time and allocate fewer resources to learning, or keeping up with developments in, myriad GAAPs of varying quality in favor of a single, high-quality set of globally accepted standards. In addition to these benefits of moving away from a multiplicity of accounting standards towards a single set of standards, investors will further benefit from better information if the single set of standards that issuers use results in higher disclosure quality.

We believe that issuers would be affected by the proposal in a number of ways, including needing fewer resources to prepare U.S. filings.[137] To the extent that an issuer relying on the proposed amendments can reallocate its cost savings from not preparing a reconciliation to U.S. GAAP or possibly a second set of financial statements in U.S. GAAP to higher earning opportunities, and not suffer a relatively greater increase in the cost of its capital as a result, then the issuer also will realize a better rate of return on its capital which will benefit investors. Issuers also may enjoy greater timing flexibility in accessing the U.S. market if they can prepare IFRS financial statements more quickly without reconciliation, particularly with regard to the use of automatic shelf registration statements.

The proposed amendments are expected to benefit investors and issuers alike to the extent that they facilitate capital formation by foreign companies in the United States capital markets. Our proposed amendments to accept IFRS financial statements without reconciliation would reduce regulatory burdens for foreign private issuers that rely on them, thereby lowering the information disclosure preparation cost of raising capital in the United States for those issuers. We believe that foreign private issuers may therefore be more likely to enter the U.S. capital markets. If they do, investors would, in turn, benefit from having more investment opportunities in the United States and generally would incur lower transaction costs when trading a foreign company's securities in the United States relative to a foreign market. To the extent our acceptance of IFRS financial statements without reconciliation encourages foreign private issuers to enter or remain in the U.S. capital market, investors also will benefit from the protections of the U.S. regulatory and disclosure system relative to the protections they may receive if purchasing those securities overseas. Investors also are expected to benefit from the potential reduction in the cost of capital to issuers, as discussed above.

[137] For purposes of the Paperwork Reduction Analysis, as described above, we have estimated that the incremental decrease in the paperwork burden for all foreign private issuers that use IFRS and issuers that acquire foreign private issuers that use IFRS would be approximately 3,861 hours of company time and approximately $4,600,720 for the services of outside professionals. For purposes of these calculations, we estimated the average number of hours each entity spends completing the forms and the average hourly rate for outside professionals, including the time and the cost of in-house preparers, reviews by executive officers, in-house counsel, outside counsel, independent auditors and members of the audit committee. The impact on an individual issuer may vary, based on its specific circumstances.

B. Expected Costs

This proposal has no cost upon either a foreign private issuer or its investors until the issuer uses the proposed IFRS option. In so doing, the minimum required financial information the investors in the U.S. capital markets receive from any such issuer would differ from what it was previously. The extent to which this yields a different required information set will depend upon how the foreign issuer previously reported its financial statements. For instance, if the foreign issuer currently files its financial statements using U.S. GAAP and transitions to reporting in IFRS, then this may or may not represent a loss of required information in absolute terms. Whether there is an absolute loss of information would depend upon whether IFRS financial statements yielded more or less information about a particular issuer than do U.S. GAAP financial statements. On the other hand, if the foreign private issuer currently prepares its statements in IFRS and reconciles to U.S. GAAP, then a loss of information would result as U.S. GAAP information is omitted.

The proposed amendments may lead to some costs to both investors and to issuers. If the investor community prefers the information communicated by a U.S. GAAP reconciliation, a foreign private issuer that uses IFRS as published by the IASB without a reconciliation may face a reduced following in the marketplace. Investors may prefer a U.S. GAAP reconciliation, if investors are not sufficiently familiar with IFRS accounting standards. In addition, unfamiliarity with IFRS as published by the IASB may have an adverse effect on investors' confidence in what they would be investing in and thus lead them to insist on a risk premium for an investment in the company.

The proposed amendments also would entail some costs to investors. If an issuer provides IFRS financial statements without reconciliation as permitted under the proposed amendments, investors would not have the benefit of the reconciling information that previously would have been available to them as they evaluate the financial performance of that issuer. The usefulness of this information may depend on the nature of the investor and other considerations, as discussed below. Also, to the extent that an investor is not accustomed to working with IFRS financial statements, that investor also may be required to dedicate more time and resources to gaining familiarity with IFRS and

financial statements prepared using them.

Based in part on comments we received from participants at the Commission's IFRS roundtable held in March 2007, however, we believe that some investors are familiar with IFRS as a basis of accounting and therefore may make limited use of the reconciliation from IFRS to U.S. GAAP. However, because various investors may be differently situated in the market and have varying levels of familiarity with IFRS—for example, institutional investors may be more familiar with IFRS than retail investors—they may not all bear the cost from the proposed amendments equally. We are aware that investor familiarity with IFRS and the use that a particular investor may make of the reconciliation will depend on many factors. We believe that these factors may include, among other things, the size and nature of the investor, the size of the investment, the size of the issuer, the industry to which the issuer in question belongs. We also believe that the costs to investors of working without the reconciliation would be reduced over time as the use of IFRS as published by the IASB becomes even more widespread and investors gain increasing familiarity in working with IFRS financial statements.

Given these considerations, in this proposal we are soliciting comment on how familiar investors are with IFRS, the use they make of the U.S. GAAP reconciliation of IFRS financial statements, and how their ability to assess and compare investment opportunities would be impacted by the proposed amendment to permit the filing of financial statements prepared using IFRS as published by the IASB without reconciliation to U.S. GAAP.

Questions

47. Do you agree with our assessment of the costs and benefits as discussed in this section? Are there costs or benefits that we have not considered? Are you aware of data and/or estimation techniques for attempting to quantify these costs and/or benefits? If so, what are they and how might the information be obtained?

48. Which foreign private issuers would have the incentive to avail themselves of the proposed amendments, if adopted? Are there any reasons for which an issuer that is eligible to file IFRS financial statements without reconciliation under the proposed amendments would elect to file a reconciliation? If so, what are they?

49. Are there particular industry sectors for which a critical mass of the issuers who raise capital globally already report in IFRS? If so, which industries are they and why?

VII. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b), that the amendments to Form 20–F under the Exchange Act, Forms F–4 and S–4 and Rule 701 under the Securities Act and Regulation S–X contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposal would amend Form 20–F, Form F–4, Form S–4, Rule 701 and Regulation S–X to allow foreign private issuers that use as their basis of accounting IFRS as published by the IASB to file their financial statements without reconciliation to U.S. GAAP as described under Items 17 and 18 of Form 20–F. Based on an analysis of the language and legislative history of the Act, Congress does not appear to have intended the Regulatory Flexibility Act to apply to foreign issuers. For this reason, the proposed amendment should not have a significant economic impact on a substantial number of small entities.

We solicit written comments regarding this certification. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VIII. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation Analysis

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[138] we solicit data to determine whether the proposals constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposals on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 2(b) of the Securities Act[139] and Section 3(f) of the Exchange Act[140] require us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act[141] requires us to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The purpose of the proposed amendments to Form 20–F under the Exchange Act, Forms F–4 and S–4 and Rule 701 under the Securities Act, and Regulation S–X is to allow foreign private issuers that use as their basis of accounting IFRS as published by the IASB to include those financial statements in their annual reports and registration statements filed with the Commission without reconciliation to U.S. GAAP. This proposal is designed to increase efficiency, competition and capital formation by helping to move towards a single set of globally accepted accounting standards, as well as by alleviating the burden and cost that eligible companies would face if required to prepare a U.S. GAAP reconciliation for inclusion in annual reports and registration statements filed with us. Due to the cost to issuers of preparing the reconciliation to U.S. GAAP from IFRS, we believe that the proposed amendment would be likely to promote efficiency by eliminating financial disclosure that is costly to produce. We believe that investors would have adequate information on which to base their investment decisions and that capital may be allocated on a more efficient basis.

The proposed amendments are expected to facilitate capital formation by foreign companies in the U.S. capital markets by reducing regulatory compliance burdens for foreign private issuers that rely on the proposed amendments. Reduced compliance burdens are expected to lower the cost of preparing disclosure for purposes of raising capital in the United States for those issuers.

The proposed amendments also may have other impacts on efficiency and capital formation, which may not be felt equally by all market participants. For

[138] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[139] 15 U.S.C. 77b(b).

[140] 15 U.S.C. 78c(f).

[141] 15 U.S.C. 78w(a)(2).

example, the amendments may have a more favorable competitive impact on foreign private issuers from jurisdictions in which the use of IFRS is already required or permitted. Issuers from such jurisdictions may be able to benefit from the amendments more quickly than issuers from jurisdictions that do not permit the use of IFRS. Also, some foreign private issuers may be concerned about the public perception costs of not including a U.S. GAAP reconciliation, particularly if they compete for capital with other foreign companies that provide a reconciliation or that prepare financial statements that comply with U.S. GAAP.

The proposed amendments also may have effects on efficiency and capital formation to the extent that investors need to increase their familiarity with IFRS in order to compare investment opportunities without reference to a U.S. GAAP reconciliation. If investors prefer the information provided in a U.S. GAAP reconciliation, a foreign private issuer that uses IFRS as published by the IASB without reconciliation may face adverse competitive effects in the capital markets. For example, investor unfamiliarity with IFRS may adversely affect investor confidence in issuers that prepare IFRS financial statements without reconciliation to U.S. GAAP. This may lead investors to insist on a risk premium in those companies, which would affect their competitiveness in the capital markets. Also, if investors must incur costs in order to understand IFRS financial statements without a U.S. GAAP reconciliation, there may be an incentive for intermediary parties to provide U.S. GAAP reconciliation services.

We solicit comment on whether the proposed rules would impose a burden on competition or whether they would promote efficiency, competition and capital formation. For example, would the proposals have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act? Would the proposals create an adverse competitive effect on U.S. issuers or on foreign issuers that are not in a position to rely immediately on the accommodation? Would the proposed amendments, if adopted, promote efficiency, competition and capital formation? Commenters are requested to provide empirical data and other factual support for their views if possible.

IX. Statutory Basis and Text of Proposed Amendments

We propose the amendment to Exchange Act Form 20–F pursuant to Sections 6, 7, 10, and 19 of the Securities Act of 1933 as amended, and Sections 3, 12, 13, 15, 23 and 36 of the Securities Exchange Act of 1934.

Text of Proposed Amendments

List of Subjects in 17 CFR Parts 210, 230, 239 and 249

Accounting, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78l, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78ll, 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, unless otherwise noted.

2. Section 210.3–10 is amended by:

a. Revising the introductory text of paragraph (i), and

b. Revising paragraph (i)(12).

The revisions read as follows.

§ 210.3–10 Financial statements of guarantors and issuers of guaranteed securities registered or being registered.

* * * * *

(i) *Instructions for preparation of condensed consolidating financial information required by paragraphs (c), (d), (e) and (f) of this section.*

* * * * *

(12) Where the parent company's consolidated financial statements are prepared on a comprehensive basis other than U.S. Generally Accepted Accounting Principles or *the English language version of International Financial Reporting Standards as published by the International Accounting Standards Board*, reconcile the information in each column to U.S. Generally Accepted Accounting Principles to the extent necessary to allow investors to evaluate the sufficiency of the guarantees. The reconciliation may be limited to the information specified by Item 17 of Form 20–F (§ 249.220f of this chapter). The reconciling information need not duplicate information included elsewhere in the reconciliation of the consolidated financial statements.

3. Amend § 210.4–01 by revising paragraph (a)(2) to read as follows:

§ 210.4–01 Form, order and terminology.

(a) * * *

(2) In all filings of foreign private issuers (see § 230.405 of this chapter), except as stated otherwise in the applicable form, the financial statements may be prepared according to a comprehensive set of accounting principles, other than those generally accepted in the United States *or the English language version of International Financial Reporting Standards as published by the International Accounting Standards Board,* if a reconciliation to United States generally accepted accounting principles and the provisions of Regulation S–X of the type specified in Item 18 of Form 20–F (§ 249.220f of this chapter) is also filed as part of the financial statements. Alternatively, the financial statements may be prepared according to United States generally accepted accounting principles *or the English language version of International Financial Reporting Standards as published by the International Accounting Standards Board.*

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

4. The authority citation for Part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

5. Amend § 230.701 by revising the introductory text of paragraph (e) and revising paragraph (e)(4) to read as follows:

§ 230.701 Exemption for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation.

* * * * *

(e) *Disclosure that must be provided.* The issuer must deliver to investors a copy of the compensatory benefit plan or the contract, as applicable. In addition, if the aggregate sales price or amount of securities sold during any consecutive 12-month period exceeds $5 million, the issuer must deliver the following disclosure to investors a

reasonable period of time before the date of sale:

* * * * *

(4) Financial statements required to be furnished by Part F/S of Form 1–A (Regulation A Offering Statement) (§ 239.90 of this chapter) under Regulation A (§§ 230.251—230.263). Foreign private issuers as defined in Rule 405 must provide a reconciliation to generally accepted accounting principles in the United States (U.S. GAAP) if their financial statements are not prepared in accordance with U.S. GAAP or the English language version of IFRS as published by the IASB (Item 17 of Form 20–F (§ 249.220f of this chapter)). The financial statements required by this section must be as of a date no more than 180 days before the sale of securities in reliance on this exemption.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

6. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w, 78ll(d), 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

7. Amend Form S–4 (referenced in § 239.25) by revising the instruction to Item 17 to read as follows:

Note: The text of Form S–4 does not and this amendment will not appear in the Code of Federal Regulations.

Form S–4

* * * * *

Item 17. Information with Respect to Companies other than S–3 Companies.

* * * * *

Instructions:

1. * * *

2. *If the financial statements required by this paragraph are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP or the English language version of IFRS as published by the IASB, provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, provide a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. when the financial statements are prepared on a basis other than U.S. GAAP.*

* * * * *

8. Amend Form F–4 (referenced in § 239.34) by:

a. Revising Item 10(c)(2);

b. Revising Item 10(c)(3);

c. Revising Item 12(b)(2)(iii) and (iv);

d. Revising the Instruction to Item 17(b)(5) and (b)(6).

The revisions read as follows.

Note: The text of Form F–4 does not and this amendment will not appear in the Code of Federal Regulations.

Form F–4

* * * * *

Item 10. Information With Respect to F–3 Companies.

* * * * *

(c) * * *

(1) * * *

(2) Restated financial statements prepared in accordance with *or, if prepared using a basis of accounting other than the English language version of IFRS as published by the IASB*, reconciled to U.S. GAAP and Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(3) Restated financial statements prepared in accordance with *or, if prepared using a basis of accounting other than the English language version of IFRS as published by the IASB,* reconciled to U.S. GAAP and Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X (§ 210.11–01(b) of this chapter); or

* * * * *

Item 12. Information With Respect to F–3 Registrants.

* * * * *

(b) * * *

(2) * * *

(iii) Restated financial statements prepared in accordance with *or, if prepared using a basis of accounting other than the English language version of IFRS as published by the IASB,* reconciled to U.S. GAAP and Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(iv) Restated financial statements prepared in accordance with *or, if prepared using a basis of accounting other than the English language version of IFRS as published by the IASB,* reconciled to U.S. GAAP and Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X; and

* * * * *

Item 17. Information With Respect to Foreign Companies Other Than F–3 Companies.

* * * * *

Instructions to paragraph (b)(5) and (b)(6): If the financial statements required by paragraphs (b)(5) and (b)(6) are prepared on the basis of a comprehensive body of accounting principles other than U.S. GAAP *or the English language version of IFRS as published by the IASB,* provide a reconciliation to U.S. GAAP in accordance with Item 17 of Form 20–F (§ 249.220f of this chapter) unless a reconciliation is unavailable or not obtainable without unreasonable cost or expense. At a minimum, provide a narrative description of all material variations in accounting principles, practices and methods used in preparing the non-U.S. GAAP financial statements from those accepted in the U.S. when the financial statements are prepared on a basis other than U.S. GAAP.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.*, 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

10. Amend Form 20–F (referenced in § 249.220f) as follows:

a. Add a check box to the cover page indicating the basis of accounting used to prepare the financial statements;

b. Revise the check box on the cover page indicating whether Item 17 or Item 18 was used;

c. Revise the cover page to require contact information for the issuer;

d. Revise General Instruction G(b)(1)(A) and G(b)(2)(A);

e. Revise General Instruction G(d);

f. Revise General Instruction G(e);

g. Revise General Instruction G(f)(2)(B)(ii);

h. Revise General Instruction G(f)(2)(B)(iii);

i. Revise General Instruction G(h)(2);
j. Revise Instruction 2.b to General Instruction G(h);
k. Revise Item 3.A, Instruction 2;
l. Add an Instruction to Item 5;
m. In Item 8.A.5, add a sentence to the end of Instruction 3;
n. Add an Instruction to Item 11;
o. Revise Item 17(c);
p. Remove Item 17(c)(2)(iv)(B);
q. Remove Item 17(c)(2)(iv)(C);
r. Add text at the end of Item 17(c)(2)(v);
s. Add text at the end of Item 17(c)(2)(vi);
t. Remove Item 17(c)(2)(viii);
u. Remove Item 17, Instruction 6; and
v. Revise Item 18(b).

The additions and revisions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

(Exact name of Registrant as specified in its charter)
(Translation of Registrant's name into English)
(Jurisdiction of incorporation or organization)
(Address of principal executive offices)
(Name, Telephone and Address of Company Contact Person)

Large accelerated filer_____Accelerated filer_____Non-accelerated filer_____

Indicate by check which basis of accounting the registrant has used to prepare the financial statements included in this filing:
U.S. GAAP_____International Financial Reporting Standards as published by the International Accounting Standards Board (in English)_____Other_____

If ''Other'' has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow.

Item 17_____ Item 18_____

* * * * *

General Instructions

* * * * *

G. First-Time Application of International Financial Reporting Standards.

* * * * *

(b) * * *

(1) * * *

(A) the issuer's most recent audited financial statements required by Item 8.A.2 are for the 2012 financial year or an earlier financial year;

* * * * *

(2) * * *

(A) the annual report relates to the 2012 financial year or an earlier financial year;

* * * * *

(d) *Information on the Company.* The reference in Item 4.B to the ''body of accounting principles used in preparing the financial statements,'' means IFRS and not the basis of accounting that was previously used (''Previous GAAP'') or accounting principles used only to prepare *a U.S. GAAP reconciliation.*

(e) *Operating and Financial Review and Prospects.* The issuer shall present the information provided pursuant to Item 5. The discussion should focus on the financial statements for the two most recent financial years prepared in accordance with IFRS. No part of the discussion should relate to financial statements prepared in accordance with Previous GAAP.

(f) *Financial Information.*

* * * * *

(2)(B)(i) * * *

(ii) Two financial years of audited financial statements and interim financial statements (which may be unaudited) for the current and comparable prior year period, prepared in accordance with IFRS;

(iii) Three financial years of audited financial statements prepared in accordance with Previous GAAP and reconciled to U.S. GAAP as required by Item 17(c) or 18, as applicable; interim statements (which may be unaudited) for the current and comparable prior year period prepared in accordance with IFRS; and condensed financial information prepared in accordance with U.S. GAAP for the most recent financial year and the current and comparable prior year interim period (the form and content of this financial information shall be in a level of detail substantially similar to that required by Article 10 of Regulation S–X.

* * * * *

(h) *Financial Statements.*

* * * * *

(2) *U.S. GAAP Information.* The U.S. GAAP reconciliation referenced in Item 17(c) or 18 shall not be required for periods presented in accordance with the English language version of IFRS as published by the IASB.

Instructions:

* * * * *

b. *Present or incorporate by reference operating and financial review and prospects information pursuant to Item 5 that focuses on the financial statements for the two most recent financial years prior to the most recent financial year that were prepared in accordance with Previous GAAP. The discussion should not refer to a reconciliation to U.S. GAAP. No part of the discussion should relate to financial statements prepared in accordance with IFRS.*

* * * * *

Item 3. Key Information

* * * * *

Instructions to Item 3.A:

* * * * *

2. You may present the selected financial data on the basis of the accounting principles used in your primary financial statements. If you use a basis of accounting other than the English language version of IFRS as published by the IASB (''IFRS''), however, you also must include in this summary any reconciliations of the data to U.S. generally accepted accounting principles and Regulation S–X, pursuant to Item 17 or 18 of this Form. For financial statements prepared using a basis of accounting other than IFRS, you only have to provide selected financial data on a basis reconciled to U.S. generally accepted accounting principles for (i) those periods for which you were required to reconcile the primary annual financial statements in a filing under the Securities Act or the Exchange Act, and (ii) any interim periods.

* * * * *

Item 5. Operating and Financial Review and Prospects

* * * * *

Instructions to Item 5:

* * * * *

5. Issuers preparing their financial statements in accordance with the English language version of IFRS as published by the IASB (''IFRS'') should, in providing information in response to paragraphs of this Item 5 that refer to specific provisions of U.S. GAAP, refer to appropriate provisions of IFRS that contain the definitional principles embodied in the referenced U.S. GAAP items. In responding to this Item 5, issuers need not repeat information contained in financial statements prepared in accordance with IFRS.

* * * * *

Item 8. Financial Information

* * * * *

Instructions to Item 8.A.5:

* * * * *

3. * * * * *

A registrant using the English language version of IFRS as published by the IASB as its basis of accounting is not required to provide the information described in paragraphs

3(a) and (b) to this Instruction to Item 8.A.5.

* * * * *

Item 11. Quantitative and Qualitative Disclosures About Market Risk

* * * * *

Instruction: Issuers preparing their financial statements in accordance with the English language version of IFRS as published by the IASB should, in providing information in response to paragraphs of this Item that refer to specific provisions of U.S. GAAP, follow the appropriate provisions of IFRS that contain the principles embodied in the referenced U.S. GAAP items. In responding to this Item, issuers need not repeat information contained in financial statements prepared in accordance with the English language version of IFRS as published by the IASB.

* * * * *

Item 17. Financial Statements

* * * * *

(c): The financial statements and schedules required by paragraph (a) above may be prepared according to U.S. generally accepted accounting principles or the English language version of IFRS as published by the IASB. If the financial statements comply with the English language version of IFRS as published by the IASB, (i) it must be clearly stated in the notes to the financial statements and (ii) the auditor's report must include an opinion on whether the financial statements comply with the English language version of IFRS as published by the IASB. If the notes and auditor's report of an issuer do not contain the information in the preceding sentence, then the U.S. GAAP reconciliation information described in paragraphs (c)(1) and (c)(2) must be provided. Alternatively, such financial statements and schedules may be prepared according to a comprehensive body of accounting principles other than those generally accepted in the United States or the English language version of IFRS as published by the IASB if the following are disclosed:

* * * * *

(c)(2)(v): * * * Issuers that prepare financial statements using the English language version of IFRS as published by the IASB that are furnished pursuant to § 210.3.05 may omit the disclosures specified by paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this Item regardless of the size of the business acquired or to be acquired.

(c)(2)(vi): * * * Issuers that prepare financial statements using the English language version of IFRS as published by the IASB that are furnished pursuant to § 210.3.09 may omit the disclosures specified by paragraphs (c)(2)(i), (c)(2)(ii), and (c)(2)(iii) of this Item regardless of the size of the investee.

(c)(2)(vii):

* * * * *

Instructions to Item 17(C)(2):

* * * * *

Item 18. Financial Statements

* * * * *

(b) *If the financial statements are prepared using a basis of accounting other than the English language version of IFRS as published by the IASB,* all other information required by U.S. generally accepted accounting principles and Regulation S–X unless such requirements specifically do not apply to the registrant as a foreign issuer. However, information may be omitted (i) for any period in which net income has not been presented on a basis reconciled to United States generally accepted accounting principles, or (ii) if the financial statements are furnished pursuant to § 210.3.05 or less-than-majority owned investee pursuant to § 210.3.09 of this chapter.

Instructions to Item 18:

1. All of the instructions to Item 17 also apply to this Item, except Instruction 3 to Item 17, which does not apply.

2. An issuer that is required to provide disclosure under FASB, Statement of Accounting Standards No. 69, ''Disclosures about Oil and Gas Producing Activities,'' shall do so regardless of the basis of accounting on which it prepares its financial statements.

* * * * *

Dated: July 2, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–13163 Filed 7–10–07; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 1704/P.L. 110–44

First Higher Education Extension Act of 2007 (July 3, 2007; 121 Stat. 238)

S. 229/P.L. 110–45

To redesignate a Federal building in Albuquerque, New Mexico, as the "Raymond G. Murphy Department of Veterans Affairs Medical Center". (July 5, 2007; 121 Stat. 239)

S. 801/P.L. 110–46

To designate a United States courthouse located in Fresno, California, as the "Robert E. Coyle United States Courthouse". (July 5, 2007; 121 Stat. 240)

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