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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. AMS–FV–07–0104; FV07–987–1 FIR]

Domestic Dates Produced or Packed in Riverside County, CA; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the California Date Administrative Committee (committee) for the 2007–08 and subsequent crop years from $0.95 to $0.75 per hundredweight of dates handled. The committee locally administers the marketing order which regulates the handling of dates grown or packed in Riverside County, California. Assessments upon date handlers are used by the committee to fund reasonable and necessary expenses of the program. The crop year began October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* February 19, 2008.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Terry.Vawter@usda.gov* or *Kurt.Kimmel@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 987, as amended (7 CFR part 987), regulating the handling of dates grown or packed in Riverside County, California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dates beginning October 1, 2007, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that decreased the assessment rate established for the committee for the 2007–08 and subsequent crop years from $0.95 per to $0.75 per hundredweight of dates.

The California date marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers and handlers of California dates. They are familiar with the committee's needs and with the costs for goods and services in their local area, and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2005–06 and subsequent crop years, the committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on June 21, 2007, and unanimously recommended 2007–08 expenditures of $209,182 and an assessment rate of $0.75 per hundredweight of California dates. In comparison, last year's budgeted expenditures were $127,485. The assessment rate of $0.75 is $0.20 lower than the rate currently in effect. The committee believes that the assessment rate should be reduced, because the 2006–07 crop was 3 million pounds larger than expected, resulting in $105,652 in accumulated cash reserves available for 2007–08 expenditures. Section 987.72(c) states that the reserve may not exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years. The committee believes the decreased assessment rate will allow it to reduce the amount it holds in cash reserves to $30,115, by September 30, 2008, the end of the 2007–08 crop year. That reserve amount would be within the limits provided in § 987.72(c).

Proceeds from sales of cull dates are deposited in a surplus account for subsequent use by the committee in covering the surplus pool share of the committee's expenses. Handlers may also dispose of cull dates of their own

production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the committee for sale to non-human food product outlets. Pursuant to § 987.72(b), the committee is authorized to temporarily use funds derived from assessments to defray expenses incurred in disposing of surplus dates. All such expenses are required to be deducted from proceeds obtained by the committee from the disposal of surplus dates. For the 2007–08 crop year, the committee estimated that $2,000 from the surplus account would be needed temporarily to defray committee expenses incurred in disposing of surplus dates.

The major expenditures recommended by the committee for the 2007–08 crop year include $87,312 for general and administrative programs, $67,870 for promotional programs, $24,000 for marketing and media consulting, $5,000 for moving expenses, and $5,000 for updating marketing materials. The committee also budgeted $20,000 as a contingency reserve for other marketing and promotion projects that it may wish to support later in the year.

By comparison, expenditures for the 2006–07 crop year were $127,485. Major expenditures recommended by the committee included $75,095 for general and administrative expenses, $22,390 for promotional expenses, and $30,000 for date nutritional analysis.

The assessment rate of $0.75 per hundredweight of assessable dates was derived by applying the following formula where:

A= 2006–07 reserve on 10/1/07 ($105,652);

B= 2007–08 reserve on 9/30/07 ($30,115);

C= 2007–08 expenses ($209,182);

D= Cull Surplus Fund ($2,000);

E= Assessment Refund ($10,855); and

F= 2007–08 expected shipments (190,000 hundredweight).

(B − A+C − D+E)/F.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate is effective for an indefinite period, the committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2007–08 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 124 producers of dates in the production area and approximately 10 handlers subject to regulation under the marketing order. The Small Business Administration (SBA) (13 CFR 121.201) defines small agricultural producers as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $6,500,000.

An industry profile shows that four of the 10 handlers (40 percent) had date sales over $6,500,000 and could be considered large handlers by the SBA. Six of the 10 handlers (60 percent) had date sales of less than $6,500,000 and could be considered small handlers. An estimated 7 producers, or less than 6 percent, of the 124 total producers, would be considered large producers with annual incomes over $750,000. The remaining producers have incomes less than $750,000. The majority of handlers and producers of California dates may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the committee and collected from handlers for the 2007–08 and subsequent crop years from $0.95 to $0.75 per hundredweight of dates handled. The committee unanimously recommended 2007–08 expenditures of $209,182 and an assessment rate of $0.75 per hundredweight of dates, which is $0.20 lower than the 2005–06 rate, currently in effect. The committee recommended decreasing the assessment rate to reduce its cash reserve levels.

The quantity of assessable dates for the 2007–08 crop year is estimated at 19,000,000 pounds. Thus, the $0.75 rate should provide $142,500 in assessment income and, with reserve funds of $105,652 and the $2,000 contribution from the surplus program, will be adequate to meet the 2007–08 crop year expenses.

The major expenditures recommended by the committee for the 2007–08 crop year include $87,312 for general and administrative programs, $67,870 for promotional programs, $24,000 for marketing and media consulting, $5,000 for moving expenses, and $5,000 for updating marketing materials. The committee also budgeted $20,000 as a contingency reserve for other marketing and promotion projects that it may wish to support later in the year.

The committee recommended a reduced assessment rate because the unanticipated increased date production during the 2006–07 crop year resulted in a larger carry-in of funds than the committee prefers. The decrease in the assessment rate would allow the committee to reduce its cash reserves to an appropriate level.

The committee reviewed and unanimously recommended 2007–08 crop year expenditures of $209,182. Prior to arriving at this budget, the committee considered information from various sources, such as the committee's Marketing Subcommittee. Alternative expenditure levels were an option available to the committee, but given the windfall from the larger-than-expected 2006–07 crop, it was ultimately determined that a $209,182 budget would be most beneficial to the industry. The assessment rate of $0.75 per hundredweight of dates was then derived, based upon the committee's estimates of the available reserve, income, handler assessment refund, and anticipated expenses.

A review of historical information and preliminary information pertaining to the 2007–08 crop year indicates that the grower price for the 2007–08 crop year could range between $45 and $50 per hundredweight of dates. Therefore, the estimated assessment revenue for the 2007–08 crop year as a percentage of total grower revenue is approximately 1.67 to 1.5 percent, respectively.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may

be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the committee's meeting was widely publicized throughout the California date industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the June 21, 2007 meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on September 7, 2007 (72 FR 51354). Copies of that rule were also mailed or sent via facsimile to all date handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on November 6, 2007, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

PART 987—DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 987 which was published at 72 FR 51354 on September 7, 2007, is adopted as a final rule without change.

Dated: January 15, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–878 Filed 1–17–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 95

[Docket No. APHIS–2006–0026]

RIN 0579–AC45

Bovine Spongiform Encephalopathy; Minimal-Risk Regions; Identification of Ruminants, and Processing and Importation of Commodities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the importation of animals and animal products to remove several restrictions regarding the identification of animals and the processing of ruminant materials from regions that present a minimal risk of introducing bovine spongiform encephalopathy into the United States. We are removing these restrictions because they are not necessary to prevent the introduction of bovine spongiform encephalopathy into the United States.

DATES: *Effective Date:* February 19, 2008.

FOR FURTHER INFORMATION CONTACT: For information regarding ruminant products, contact Dr. Karen James-Preston, Director, Technical Trade Services, Animal Products, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

For information concerning live ruminants, contact Dr. Freeda Isaac, Director, AOVSA, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations in 9 CFR parts 93, 94, and 95 prohibit or restrict the importation into the United States of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including bovine spongiform encephalopathy (BSE).

In a final rule published in the **Federal Register** on January 4, 2005 (70 FR 460–553, Docket No. 03–080–3), we amended the regulations regarding the importation of animals and animal products to establish a category of regions that present a minimal risk of introducing BSE into the United States via live ruminants and ruminant products and byproducts, and added Canada to this category. We also established conditions for the importation of certain live ruminants and ruminant products and byproducts from such regions. These regulations are in 9 CFR parts 93, 94, 95, and 96.

On November 28, 2005, we published in the **Federal Register** an interim rule (70 FR 71213–71218, Docket No. 03–080–8) that (1) broadened who is authorized to break the seals on a means of conveyance carrying certain ruminants from Canada and (2) amended the provisions regarding the transiting through the United States of certain ruminant products from Canada to allow for limited direct transloading of the products from one means of conveyance to another in the United States.

On March 14, 2006, we published in the **Federal Register** a technical amendment (71 FR 12994–12998, Docket No. 03–080–9) that clarified our intent with regard to certain provisions in the January 2005 final rule and corrected several inconsistencies within the rule.

On August 9, 2006, we published in the **Federal Register** a proposed rule [1] (71 FR 45439–45444, Docket No.

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0026.*

APHIS–2006–0026) to amend the regulations in 9 CFR parts 93, 94, and 95 to remove several restrictions regarding the identification of ruminants and the processing of ruminant materials from BSE minimal-risk regions, as well as BSE-based restrictions on gelatin derived from bovine hides.

We solicited comments concerning our August 2006 proposed rule (referred to below as the ''proposed rule'') for 60 days ending October 10, 2006. In a document published in the **Federal Register** on November 9, 2006 (71 FR 65758–65759, Docket No. APHIS–2006–0026), we reopened and extended the deadline for comments until November 24, 2006.

We received 10 comments in response to our proposed rule. They were from organizations representing U.S. producers of livestock and livestock products, renderers, and other members of the public. The comments dealt with live animals as well as animal products. We discuss the comments below by topic.

Changes to This Final Rule Based on a September 2007 Final Rule

On September 18, 2007, we published in the **Federal Register** a final rule (72 FR 53113–53379, Docket No. APHIS–2006–0041; effective November 19, 2007) that established conditions for the importation into the United States from BSE minimal-risk regions of certain bovines and bovine commodities that had not been made eligible for importation by our January 2005 final rule. Some of the changes we made to the regulations in our September 2007 final rule affected regulatory text we had proposed to change in our August 2006 proposed rule, either by rewording text, deleting provisions that would have been changed by our August 2006 proposed rule, or redesignating CFR paragraph references. Consequently, we have made changes to this final rule to reflect the changes made by our September 2007 final rule. In our discussion of this final rule, we identify where those changes occur.

Comments Received in Response to Our August 2006 Proposed Rule

Identification of Live Ruminants Exported to the United States From BSE Minimal-Risk Regions

One of the changes to the regulations we proposed in our August 2006 proposed rule was a broadening of the options of acceptable forms of individual identification of bovines, sheep, and goats exported to the United States from BSE minimal-risk regions (currently only Canada). Under the current regulations in § 93.436, live bovines imported from a BSE minimal-risk region must be individually identified by means of an official eartag of the country of origin. The eartag must be determined by the APHIS Administrator to meet standards equivalent to those for official eartags in the United States, as defined in 9 CFR part 71, and to be traceable to the premises of origin. There is a similar requirement for sheep and goats in § 93.419. However, because § 93.419 refers specifically to sheep and goats from Canada, that section requires that sheep and goats from Canada be individually identified by an official Canadian Food Inspection Agency eartag.

In our proposed rule, we proposed to allow for means of individual identification other than eartags for the imported bovines, sheep, and goats. We proposed to provide that the animals must be officially identified with individual identification before the animals' arrival at the port of entry into the United States. We proposed to define *officially identified* to mean ''individually identified by means of an official identification device or method.'' In § 93.400 of the current regulations, *official identification device or method* is defined as a means of officially identifying an animal or group of animals using devices or methods approved by the Administrator, including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of inspection from a recognized brand inspection authority. We proposed to add a sentence at the end of that definition to make it clear that, for animals intended for importation into the United States, the particular device or method of identification must have been approved by the Administrator for that type of import before the animal is exported to the United States.

Several commenters expressed concern that our proposed change regarding animal identification would hinder the ability to conduct rapid traceback of cattle to their herd of origin in the event BSE is diagnosed in an animal imported from a BSE minimal-risk region. One of the commenters recommended that the identification requirements in the current regulations be retained. Another commenter recommended that the regulations explicitly require that all cattle from a BSE minimal-risk region be individually identified with a device or method that is visible and readable and that includes a unique animal identification number that enables traceback to the herd of origin.

We agree with the commenters that the individual identification of cattle—and sheep and goats—imported from a BSE minimal-risk region must be unique to individual animals and allow for rapid traceback of an animal to its herd of origin. The intent of the change we proposed was not to remove that requirement from the regulations, but simply to allow, in addition to eartags, other forms of individual identification that meet those criteria. That is the reason we proposed to provide in the definition of *official identification device or method* that the identification used must have been approved by the Administrator for that type of import before the animal is exported to the United States.

To ensure that there is no misunderstanding of our intent, in this final rule we are specifying in § 93.436(a)(2) and (b)(3) that, before arrival at the port of entry into the United States, each bovine imported into the United States from a BSE minimal-risk region must be officially identified with unique individual identification that is traceable to the premises of origin of the animal.[2] In § 93.419(c), we are including a similar identification requirement for sheep and goats imported from Canada.

In our August 2006 proposed rule, we proposed to replace the word ''eartag'' with the term ''official identification'' in what, at that time, were paragraphs (b)(8) and (b)(11) of § 93.436. However, our September 2007 final rule removed § 93.436(b)(8) and (b)(11).

In addition to addressing the issue of the types of allowable individual identification, two commenters expressed support for identification provisions of the current regulations that we did not propose to change. These are: (1) The provision that no person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at slaughter; and (2) the requirement that cattle imported from a BSE minimal-risk region for other than immediate slaughter be identified, before export to the United States, with a permanent mark that indicates the country of origin.

[2] **Note:** Paragraphs (a)(2) and (b)(3) of § 93.436 were designated as paragraphs (a)(3) and (b)(4), respectively, in our proposed rule, but are redesignated in this final rule to reflect the changes made in our September 2007 final rule.

Gelatin

In § 94.19(f)(2) of our proposed rule, we proposed to allow the importation into the United States of gelatin derived from the hides of bovines from BSE minimal-risk regions, provided the gelatin has not been commingled with materials ineligible for entry into the United States. In accordance with the regulations as amended by our September 2007 final rule, gelatin imported into the United States from a BSE minimal-risk region must either (1) be derived from the bones of bovines subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000 and from which specified risk materials were removed (§ 94.19(f)), or (2) be imported for use in human food, human pharmaceutical products, photography, or some other use that will not result in the gelatin coming into contact with ruminants in the United States (§ 94.18(c)).

A number of commenters supported allowing the importation of gelatin derived from the hides of bovines from BSE minimal-risk regions.

One commenter stated that it does not make sense to allow the importation of gelatin derived from hides of bovines from BSE minimal-risk regions at the same time the regulations restrict the importation of gelatin derived from bones. We disagree that it does not make sense to allow the importation of gelatin derived from hides. Bovine hides have not demonstrated BSE infectivity, even in infected animals, and the safety of bovine hides with regard to BSE is recognized internationally. The World Organization of Animal Health (commonly referred to as the OIE) supported that conclusion in its recommendation that gelatin derived exclusively from the hides of bovines not be subject to import restrictions (OIE Terrestrial Animal Health Code (the Code), 2006, Article 2.3.13.1). The European Commission Scientific Steering Committee reached a similar conclusion regarding the lack of BSE infectivity in hide-derived gelatin, provided contamination with potentially infected materials is avoided (European Commission's Updated Opinion on the Safety with Regard to TSE Risk of Gelatine Derived from Ruminant Bones or Hides, December 2002).

In contrast, gelatin derived from the bones of bovines from BSE minimal-risk regions can pose a risk of infectivity unless the risk mitigation measures in §§ 94.18(c) and 94.19(f), described above, are taken. The higher BSE risk of bone-derived gelatin is recognized internationally. The OIE Code contains BSE risk mitigation guidelines for gelatin derived from bovines (Article 2.3.13.15). The European Commission Scientific Steering Committee concluded in its Updated Opinion that ''the risk of transmissible spongiform infectivity is much higher with bones, as compared to hides.''

Therefore, we are making no changes based on this comment.

Processing of Non-Ruminant Material in BSE Minimal-Risk Regions

The current regulations in § 95.4(c) allow the importation of certain materials derived from nonruminants from BSE minimal-risk regions only if all steps of processing and storing the material are carried out in a facility that has not been used for the processing and storage of materials derived from ruminants that have been in any region listed in § 94.18(a) of the regulations. The regions listed in § 94.18(a) include BSE minimal-risk regions, as well as regions in which BSE exists and regions that present an undue risk of introducing BSE into the United States.

In our proposed rule, we proposed to amend § 95.4(c) so that nonruminant materials processed or stored in BSE minimal-risk regions would no longer need to be processed or stored in facilities separate from those used to process or store materials derived from ruminants from BSE minimal-risk regions.

Several commenters supported the proposed change to § 95.4(c).

One commenter stated that our intent regarding the proposed change to § 95.4(c) was not easily understandable from the wording we used in the regulatory text of the proposed rule. In § 95.4(c)(2) and (3) of the proposed rule, we made reference to regions listed in § 94.18(a)(1), (a)(2), and (a)(3). Those paragraphs list the following types of regions: § 94.18(a)(1) lists regions in which BSE exists; § 94.18(a)(2) lists regions that, because of import requirements less restrictive than those that would be acceptable for import into the United States and/or because of inadequate surveillance, present an undue risk of introducing BSE into the United States; and § 94.18(a)(3) lists BSE minimal-risk regions (currently only Canada). The commenter stated that the regulations would be clearer if, when referring to § 94.18(a)(1), (a)(2), and (a)(3), we also indicated the BSE category of regions listed in those paragraphs.

Because in § 95.4(c) as proposed we reference paragraphs that contain lists that can be easily described, we agree it would be useful to the reader if those references included a description of the content of each of those paragraphs. Therefore, we are including such descriptions in § 95.4(c)(2) and (c)(3) in this rule.

Tallow

One commenter addressed the provisions in § 95.4 regarding the importation of tallow. The commenter stated that APHIS should follow the OIE guideline of allowing the importation from BSE minimal-risk regions of tallow with no more than 0.15 percent impurities.

We did not propose to make any changes to the regulations regarding the importation of tallow from BSE minimal-risk regions. However, the commenter is correct that the wording in § 95.4 regarding tallow differs from the OIE guidelines in one respect. One of the criteria in § 95.4 for the importation of tallow derived from bovines from BSE minimal-risk regions is that the tallow be composed of less than 0.15 percent insoluble impurities. This differs slightly from the OIE guidelines, which recommend allowing the importation of tallow with a maximum level of insoluble impurities of 0.15 percent in weight.

The intent of our January 2005 final rule, as indicated on page 501 of the preamble to that rule, was to allow the importation of tallow composed of a maximum level of insoluble impurities of 0.15 percent in weight. However, the amendatory text of that rule incorrectly used the phrase ''less than 0.15 percent.'' Therefore, to make the wording of the regulations consistent with our stated intent, in this rule we are amending § 95.4 to require that bovine-derived tallow imported from a BSE minimal-risk region be composed of a maximum level of insoluble impurities of 0.15 percent in weight.

Other Comments

In our proposed rule, we proposed to specify in § 94.19(f)(1) (redesignated as § 94.19(g)(1) in our September 2007 final rule) as one of the conditions for the importation of gelatin derived from the bones of bovines from BSE minimal-risk regions that the gelatin not have been commingled with materials ineligible for entry into the United States. Other than that, we did not propose to change the provisions regarding gelatin derived from bones. One commenter, however, objected to the current regulations that allow the importation of bone-derived gelatin from BSE minimal-risk regions (currently only Canada). The commenter contended that the current regulations

are erroneously based on the determination that Canada is a BSE minimal-risk region, and that Canada should instead be considered a country of undetermined BSE risk according to OIE recommendations.

For similar reasons, a commenter opposed our proposal to no longer require that nonruminant materials processed or stored in BSE minimal-risk regions be processed or stored in facilities separate from those used to process or store materials derived from ruminants from BSE minimal-risk regions. The commenter expressed concern regarding what the commenter termed the ''undetermined prevalence'' of BSE in Canada and the detection of BSE in cows that were born after Canada implemented its feed ban. The commenter stated that APHIS should reconsider the proposed change on the basis that BSE infectivity is known to have circulated in Canada as recently as 2002.

We are making no changes based on these comments. APHIS recognized Canada as a BSE minimal-risk region in our January 2005 final rule that was published following notice-and-comment rulemaking. We did not propose to revisit that determination in our August 2006 proposed rule and do not consider such a change to the BSE risk status of Canada to be scientifically supportable or appropriate. One of the conditions for being recognized by APHIS as a BSE minimal-risk region is that the region have in place and maintain risk mitigation measures adequate to prevent widespread exposure and/or establishment of the disease. In classifying Canada as a BSE minimal-risk region in our January 2005 final rule, we determined that such mitigation measures are in place and are maintained in Canada.

We do not consider the diagnosis of BSE in several cows born after the establishment of the Canadian feed ban to be unexpected. Experience worldwide has demonstrated that, even in countries with an effective feed ban in place, BSE has occurred in cattle born after a feed ban was implemented. No regulatory effort can ensure 100 percent compliance. Isolated incidents, such as feed made from nonprohibited material being contaminated with prohibited material during processing, can occur due to human error. However, such isolated incidents are not epidemiologically significant and do not contribute to further spread of BSE, especially when considered in light of the entire risk pathway and its attendant risk mitigations.

One commenter made the general request that APHIS delete from the regulations the provisions regarding imports from BSE minimal-risk regions until further research and surveillance is done regarding all transmissible spongiform encephalopathies. The commenter did not address any specific provision of our proposal, and we are making no changes based on the comment.

One commenter requested that APHIS not require that products imported from a BSE minimal-risk region under the provisions of § 95.4 be accompanied by original signed certification, provided certain specified risk mitigation measures are in place. We consider the issue raised by the commenter to be outside the scope of the proposed rule, and are making no changes based on the comment. However, we will take the commenter's request into consideration in assessing the need for future rulemaking.

Several commenters expressed general opposition to the importation of ruminants from Canada, but did not specifically address provisions of the proposed rule. We are making no changes based on those comments.

Additional Nonsubstantive Changes

In addition to those discussed above, we are making several other nonsubstantive changes in this final rule to be consistent with wording changes and paragraph redesignations made in our September 2007 final rule.

Adoption of the Proposed Rule With Changes

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The Regulatory Flexibility Act requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions. We have prepared a final regulatory flexibility analysis, which is set forth below.

In a final rule published in January 2005, we established a category of regions that present a minimal risk of introducing BSE into the United States via live ruminants and ruminant products and byproducts, and added Canada to that category. We also established conditions for the importation of certain live ruminants and ruminant products and byproducts from such regions. A final rule published in September 2007 included conditions for the importation of additional commodities from BSE minimal-risk regions.

In this rule, we are removing certain restrictions on imports from BSE minimal-risk regions that concern animal identification, the derivation of bovine gelatin, and the processing of ruminant and nonruminant materials. We have determined these restrictions are not necessary to prevent the introduction of BSE into the United States.

Instead of limiting the type of allowable individual identification on bovines, sheep, and goats imported from a BSE minimal-risk region to an official eartag of the country of origin, we are allowing unique individual identification of animals by means other than eartags, provided the APHIS Administrator has approved the manner of identification for the type of animal intended for importation and the identification is traceable to the premises of origin of the animal.

Instead of limiting the importation of bovine-derived gelatin from BSE minimal-risk regions to gelatin derived from bones, we are allowing the importation of hide-derived gelatin, provided certain conditions are met.

We are also allowing nonruminant material that is processed in BSE minimal-risk regions—such as processed animal protein, tankage, offal, certain tallow, processed fats and oils, and derivatives of processed animal protein, tankage, and offal—to be processed in facilities that also process material derived from ruminants from the minimal-risk region.

We address below the potential economic effect of each of these changes.

Animal Identification

Giving owners of bovines, sheep, and goats in BSE minimal-risk regions the option of individually identifying animals being exported to the United States by means other than eartags is not expected to affect U.S. small entities. This amendment simply acknowledges that there are effective means of individual identification other than eartags, as long as the chosen device or method has been approved by the APHIS Administrator before the animal is exported to the United States. The unique individual identification must be traceable to the premises of origin of the animal (as is required of the eartags currently used), a disease control

measure that will benefit all U.S. cattle producers, the majority of which are small entities.

Hide-Derived Gelatin

This amendment, by allowing the importation of gelatin derived from bovine hides in addition to gelatin derived from bovine bones, could affect U.S. entities by providing an additional source of gelatin imported from Canada.

Gelatin is derived from collagen, an insoluble fibrous protein that is the principal constituent of connective tissues and bones. The main raw materials used in gelatin production are cattle bones, cattle hides, and porkskins. Gelatin recovered from bone is used primarily in photographic applications. Porkskin is currently the most significant raw material source for production of edible gelatin in North America. Cattle hides are the least used raw material for gelatin in North America today. Cattle hides sourced by member companies of the Gelatin Manufacturers Institute of America for the production of gelatin for food use are purchased from a small number of tanneries in the United States.

We do not have information about the quantity of hide-derived gelatin that would be imported from Canada because of this rule, nor do we have an estimate of the number of U.S. small entities that would be affected. Production of animal hides is classified by the North American Industry Classification System (NAICS) under ''Animal (except Poultry) Slaughtering'' (NAICS 311611), for which the small entity definition is businesses with not more than 500 employees. In the initial regulatory flexibility analysis we conducted for our August 2006 proposed rule, we requested information that would allow us to better understand the number and size of entities that might be affected by allowing hide-derived bovine gelatin to be imported from BSE minimal-risk regions (currently only Canada), but we received no information of this type.

Nonruminant Material

This amendment removes the requirement that nonruminant material that is processed in BSE minimal-risk regions be processed in a facility that does not also process material derived from ruminants from the minimal-risk region. If this amendment results in changes in the amounts of nonruminant material imported by the United States, then U.S. entities could be affected. Affected nonruminant material may include processed animal protein, tankage, offal, certain tallow, processed fats and oils, and derivatives of processed animal protein, tankage, and offal.

Facilities that produce these commodities are classified under ''Rendering and Meat By-product Processing'' (NAICS 311613), for which the small entity definition is businesses with not more than 500 employees. We do not have a basis for estimating the change in imports of Canadian nonruminant materials that might result from this rule, nor do we know the number or size of U.S. entities that will be affected. In our initial regulatory flexibility analysis, we requested information from the public regarding the number of small entities that might be affected and the likely magnitude of the effect, but we received no information of this type.

We do not foresee any significant economic effects on small entities because of this rule. There are no significant alternatives to this rule that would accomplish the stated objectives. Without the rule, unnecessary restrictions on certain exports to the United States from BSE minimal-risk regions will continue. With the rule, animal exporters in BSE minimal-risk regions will have the option of individually identifying bovines, sheep, and goats being exported to the United States by means other than eartags; U.S. entities will be allowed to import hide-derived, in addition to bone-derived, gelatin from BSE minimal-risk regions; and ruminant and nonruminant materials that are processed in the same facility in a BSE minimal-risk region will be allowed to be exported to the United States.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 95

Animal feeds, Hay, Imports, Livestock, Reporting and recordkeeping requirements, Straw, Transportation.

■ Accordingly, we are amending 9 CFR parts 93, 94, and 95 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 93.400 is amended by revising the definition of *official identification device or method* and adding a definition of *officially identified,* in alphabetical order, to read as follows:

§ 93.400 Definitions.

* * * * *

Official identification device or method. A means of officially identifying an animal or group of animals using devices or methods approved by the Administrator, including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of inspection from a recognized brand inspection authority. For animals intended for importation into the United States, the device or method of identification used must have been approved by the Administrator for that type of import before the animal is exported to the United States.

* * * * *

Officially identified. Individually identified by means of an official identification device or method.

* * * * *

§ 93.405 [Amended]

■ 3. In § 93.405, paragraph (a)(4) is amended by removing the word ''eartag'' and adding in its place the words ''official identification''.

■ 4. Section 93.419 is amended by revising paragraph (c) and paragraphs (e)(2), (e)(5), (e)(7)(i), and (e)(7)(iii) to read as follows:

§ 93.419 Sheep and goats from Canada.

* * * * *

(c) Any sheep or goats imported from Canada must not be pregnant, must be less than 12 months of age when imported into the United States and when slaughtered, must be from a flock or herd subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000, and, before the animal's arrival at the port of entry into the United States, must be officially identified with unique individual identification that is traceable to the premises of origin of the animal. No person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at the time of slaughter. The animals must be accompanied by the certification issued in accordance with § 93.405 that states, in addition to the statements required by § 93.405, that the conditions of this paragraph have been met. Additionally, for sheep and goats imported for immediate slaughter, the certificate must state that the conditions of paragraphs (d)(1) through (d)(3) of this section have been met, and, for sheep and goats imported for other than immediate slaughter, the certificate must state that the conditions of paragraphs (e)(1) and (e)(2) of this section have been met.

* * * * *

(e) * * *

* * * * *

(2) The animals may be moved from the port of entry only to a feedlot designated in accordance with paragraph (e)(7) of this section and must be accompanied from the port of entry to the designated feedlot by APHIS Form VS 17–130 or other movement documentation deemed acceptable by the Administrator, which must identify the physical location of the feedlot, the individual responsible for the movement of the animals, and the individual identification of each animal, which includes the official identification required under paragraph (c) of this section and any other identification present on the animal, including registration number, if any:

* * * * *

(5) The animals must be accompanied to the recognized slaughtering establishment by APHIS Form VS 1–27 or other documentation deemed acceptable by the Administrator, which must identify the physical location of the recognized slaughtering establishment, the individual responsible for the movement of the animals, and the individual identification of each animal, which includes the official identification required under paragraph (c) of this section and any other identification present on the animal, including registration number, if any;

* * * * *

(7) * * *

(i) Will not remove official identification from animals unless medically necessary, in which case new official identification will be applied and cross referenced in the records;

* * * * *

(iii) Will maintain records of the acquisition and disposition of all imported sheep and goats entering the feed lot, including the official identification number and all other identifying information, the age of each animal, the date each animal was acquired and the date each animal was shipped to slaughter, and the name and location of the plant where each animal was slaughtered. For Canadian animals that die in the feedlot, the feedlot will remove the official identification device if affixed to the animal, or will record any other official identification on the animal and place the official identification device or record of official identification in a file with a record of the disposition of the carcass;

* * * * *

■ 5. Section 93.436 is amended by revising paragraphs (a)(2) and (b)(3) to read as set forth below.

§ 93.436 Ruminants from regions of minimal risk for BSE.

* * * * *

(a) * * *

(2) Before the animal's arrival at the port of entry into the United States, each bovine imported into the United States from a BSE minimal-risk region must be officially identified with unique individual identification that is traceable to the premises of origin of the animal. No person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at slaughter;

* * * * *

(b) * * *

(3) Before the animal's arrival at the port of entry into the United States, each bovine imported into the United States from a BSE minimal-risk region must be officially identified with unique individual identification that is traceable to the premises of origin of the animal. No person may alter, deface, remove, or otherwise tamper with the official identification while the animal is in the United States or moving into or through the United States, except that the identification may be removed at slaughter;

* * * * *

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 6. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 7. In § 94.19, paragraph (f) is revised to read as follows:

§ 94.19 Restrictions on importation from BSE minimal-risk regions of meat and edible products from ruminants.

* * * * *

(f) *Gelatin other than that allowed importation under § 94.18(c).* The gelatin is derived from:

(1) The bones of bovines subject to a ruminant feed ban equivalent to the requirements established by the U.S. Food and Drug Administration at 21 CFR 589.2000 and from which SRMs were removed, and the gelatin has not been commingled with materials ineligible for entry into the United States; or

(2) The hides of bovines, and the gelatin has not been commingled with materials ineligible for entry into the United States.

* * * * *

PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES

■ 8. The authority citation for part 95 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 9. Section 95.4 is amended as follows:

■ a. Paragraph (c)(2) is revised to read as set forth below.

■ b. Paragraphs (c)(3) through (c)(7) are redesignated as paragraphs (c)(4) through (c)(8), respectively.

■ c. A new paragraph (c)(3) is added to read as set forth below.

■ d. Newly redesignated paragraph (c)(7) is revised to read as set forth below.

■ e. Paragraph (g)(2) is revised to read as set forth below.

§ 95.4 Restrictions on the importation of processed animal protein, offal, tankage, fat, glands, certain tallow other than tallow derivatives, and blood and blood products due to bovine spongiform encephalopathy.

* * * * *

(c) * * *

(2) In regions listed in § 94.18(a)(1) or (a)(2) of this subchapter as regions in which BSE exists or that present an undue risk of introducing BSE into the United States, all steps of processing and storing the material are carried out in a facility that has not been used for the processing and storage of materials derived from ruminants that have been in any region listed in § 94.18(a) of this subchapter.

(3) In regions listed in § 94.18(a)(3) of this subchapter as BSE minimal-risk regions, all steps of processing and storing the material are carried out in a facility that has not been used for the processing and storage of materials derived from ruminants that have been in any region listed in § 94.18(a)(1) or (a)(2) of this subchapter as a region in which BSE exists or a region that presents an undue risk of introducing BSE into the United States.

* * * * *

(7) Each shipment to the United States is accompanied by an original certificate signed by a full-time, salaried veterinarian of the government agency responsible for animal health in the region of export certifying that the conditions of paragraphs (c)(1) through (c)(4) of this section have been met; except that, for shipments of animal feed from a region listed in § 94.18(a)(3) of this subchapter, the certificate may be signed by a person authorized to issue such certificates by the veterinary services of the national government of the region of origin.

* * * * *

(g) * * *

(2) The tallow is composed of a maximum level of insoluble impurities of 0.15 percent in weight;

* * * * *

Done in Washington, DC, this 14th of January 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–883 Filed 1–17–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE281; Special Conditions No. 23–221–SC]

Special Conditions: Embraer S.A., Model EMB–500; Fire Extinguishing for Aft Fuselage Mounted Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer Model EMB–500 airplane. This airplane will have a novel or unusual design feature(s) associated with aft mounted engine fire protection. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is January 7, 2008. Comments must be received on or before February 19, 2008.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket CE281, 901 Locust, Room 506, Kansas City, Missouri 64106; or delivered in duplicate to the Regional Counsel at the above address. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri 64106; 816–329–4135, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Identify the regulatory docket or special condition number and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. If you wish the FAA to acknowledge receipt of the comments submitted in response to this notice, include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE281.'' The postcard will be date stamped and returned to the commenter.

Background

On October 5, 2005, Embraer S.A. applied for a type certificate for their new Model EMB–500. The Model EMB–500 is a normal category, low-winged monoplane with ''T'' tailed vertical and horizontal stabilizers, retractable tricycle type landing gear and twin turbofan engines mounted on the aircraft fuselage. Its design characteristics include a predominance of metallic construction. The maximum takeoff weight is 9,700 pounds, the V_{MO}/M_{MO} is 275 KIAS/M 0.70 and maximum altitude is 41,000 feet.

14 CFR part 23 has historically addressed fire protection through prevention, identification, and containment. Prevention has been provided through minimizing the potential for ignition of flammable fluids and vapors. Identification has been provided by locating engines within the pilots' primary field of view and/or with the incorporation of fire detection systems. This has provided both rapid detection of a fire and confirmation when it was extinguished. Containment has been provided through the isolation of designated fire zones, through flammable fluid shutoff valves, and firewalls.

This containment philosophy also ensures that components of the engine control system will function effectively to permit a safe shutdown of an engine. However, containment has only been demonstrated for 15 minutes. If a fire occurs in traditional part 23 airplanes, the appropriate corrective action is to land as soon as possible. For a small, simple airplane originally envisioned by part 23, it is possible to descend and land within 15 minutes; thus, the occupants can safely exit the airplane before the firewall is breached. These simple airplanes normally have the engine located away from critical flight control systems and primary structure. This has ensured that, throughout a fire event, a pilot can continue safe flight, and it has made the prediction of fire

effects relatively easy. Other design features of these simple aircraft, such as low stall speeds and short landing distances, ensure that even if an off-field landing occurs, the potential for the outcome being catastrophic has been minimized.

Title 14 CFR part 23 did not envision the type of configuration of the Model EMB–500 airplane. The Model EMB–500 incorporates two turbofan engines located on pylons on either side of the aft fuselage. These engines are not in the pilots' field of view. With the location on the aft fuselage, the ability to visually detect a fire is minimal.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer S.A. must show that the Model EMB–500 meets the applicable provisions of 14 CFR part 23, as amended by Amendments 23–1 through 23–55, thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model EMB–500 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model EMB–500 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, as defined in 11.19, are issued under § 11.38, and become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model EMB–500 incorporates two turbofan engines located on pylons on either side of the aft fuselage. These engines are not in the pilots' field of view. The effects of a fire in such a compartment are more varied and adverse than the typical engine fire in a simple part 23 airplane. With the location on the aft fuselage, the ability to visually detect a fire is minimal. However, the ability to extinguish an engine fire becomes extremely critical with the Model EMB–500 engine location.

Applicability

As discussed above, these special conditions are applicable to the Model EMB–500. Should Embraer S. A. apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under § 21.101(a)(1).

Good Cause

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Conclusion

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Embraer S. A. Model EMB–500 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

This action affects only certain novel or unusual design features on one model, Model EMB–500, of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer S. A. Model EMB–500 airplanes.

1. SC 23.1195—Add the requirements of § 23.1195 while deleting the phrase, ''For commuter category airplanes.''

23.1195, Fire Extinguishing Systems

(a) Fire extinguishing systems must be installed and compliance shown with the following:

(1) Except for combustor, turbine, and tailpipe sections of turbine-engine installations that contain lines or components carrying flammable fluids or gases for which a fire originating in these sections is shown to be controllable, a fire extinguisher system must serve each engine compartment;

(2) The fire extinguishing system, the quantity of extinguishing agent, the rate of discharge, and the discharge distribution must be adequate to extinguish fires. An individual ''one-shot'' system may be used; and

(3) The fire extinguishing system for a nacelle must be able to simultaneously protect each compartment of the nacelle for which protection is provided.

(b) If an auxiliary power unit is installed in any airplane certificated to this part, that auxiliary power unit compartment must be served by a fire extinguishing system meeting the requirements of paragraph (a)(2) of this section.

2. SC 23.1197—Add the requirements of § 23.1197 while deleting the phrase, ''For commuter category airplanes.''

23.1197, Fire Extinguishing Agents

The following applies:

(a) Fire extinguishing agents must—

(1) Be capable of extinguishing flames emanating from any burning fluids or other combustible materials in the area protected by the fire extinguishing system; and

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored.

(b) If any toxic extinguishing agent is used, provisions must be made to prevent harmful concentrations of fluid or fluid vapors (from leakage during normal operation of the airplane or as a result of discharging the fire extinguisher on the ground or in flight) from entering any personnel compartment, even though a defect may exist in the extinguishing system. This must be shown by test except for built-in carbon dioxide fuselage compartment fire extinguishing systems for which—

(1) Five pounds or less of carbon dioxide will be discharged under established fire control procedures into any fuselage compartment; or

(2) Protective breathing equipment is available for each flight crewmember on flight deck duty.

3. SC 23.1199—Add the requirements of § 23.1199 while deleting the phrase, ''For commuter category airplanes.''

23.1199, Extinguishing Agent Containers

The following applies:

(a) Each extinguishing agent container must have a pressure relief to prevent bursting of the container by excessive internal pressures.

(b) The discharge end of each discharge line from a pressure relief connection must be located so that discharge of the fire-extinguishing agent would not damage the airplane. The line must also be located or protected to prevent clogging caused by ice or other foreign matter.

(c) A means must be provided for each fire extinguishing agent container to indicate that the container has discharged or that the charging pressure is below the established minimum necessary for proper functioning.

(d) The temperature of each container must be maintained, under intended operating conditions, to prevent the pressure in the container from—

(1) Falling below that necessary to provide an adequate rate of discharge; or

(2) Rising high enough to cause premature discharge.

(e) If a pyrotechnic capsule is used to discharge the fire extinguishing agent, each container must be installed so that temperature conditions will not cause hazardous deterioration of the pyrotechnic capsule.

4. SC 23.1201—Add the requirements of § 23.1201 while deleting the phrase, ''For commuter category airplanes.''

23.1201, Fire Extinguishing System Materials

The following apply:

(a) No material in any fire extinguishing system may react chemically with any extinguishing agent so as to create a hazard.

(b) Each system component in an engine compartment must be fireproof.

Issued in Kansas City, Missouri on January 7, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–849 Filed 1–17–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

Human Cells, Tissues, and Cellular and Tissue-Based Products

CFR Correction

In Title 21 of the Code of Federal Regulations, Parts 800 to 1299, revised as of April 1, 2007, in part 1271, on page 718, § 1271.22 is reinstated to read as follows:

§ 1271.22 How and where do I register and submit an HCT/P list?

(a) You must use Form FDA 3356 for:

(1) Establishment registration,

(2) HCT/P listings, and

(3) Updates of registration and HCT/P listing.

(b) You may obtain Form FDA 3356:

(1) By writing to the Center for Biologics Evaluation and Research (HFM–775), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, Attention: Tissue Establishment Registration Coordinator;

(2) By contacting any Food and Drug Administration district office;

(3) By calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800; or

(4) By connecting to *http://www.fda.gov/opacom/morechoices/fdaforms/cber.html* on the Internet.

(c)(1) You may submit Form FDA 3356 to the Center for Biologics Evaluation and Research (HFM–775), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, Attention: Tissue Establishment Registration Coordinator; or

(2) You may submit Form FDA 3356 electronically through a secure web server at *http://www.fda.gov/cber/tissue/tisreg.htm*.

[69 FR 68681, Nov. 24, 2004]

[FR Doc. 08–55500 Filed 1–17–08; 8:45 am]

BILLING CODE 1505–01–D

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

RIN 3046–AA83

Procedural Regulations Under Title VII and ADA

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission is eliminating three bases for dismissal of charges in its procedural regulations because they are no longer needed to accomplish the Commission's case management goals.

DATES: *Effective Date:* February 19, 2008

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, or Mona Papillon, Senior General Attorney, at (202) 663–4640 (voice) or (202) 663–7026 (TTY). Copies of this final rule are also available in the following alternate formats: Large print, braille, audiotape and electronic file on computer disk. Requests for this notice in an alternative format should be made to EEOC's Publication Center at 1–800–669–3362 (voice) or 1–800–800–3302 (TTY).

SUPPLEMENTARY INFORMATION: Prior to 1977, the Commission's procedural regulations only authorized dismissal when the Commission issued a no cause determination, a charge was untimely, or a charge failed to state a claim. In 1977, the Commission adopted three additional bases for dismissal in order to resolve charges that were timely and stated a claim, but where the Commission was unable to issue a determination on the merits for various reasons. These three bases are currently set out in § 1601.18(b) through (d). Paragraph (b) permits dismissal when the charging party fails to cooperate. Paragraph (c) permits dismissal when the charging party cannot be located. Paragraph (d) permits dismissal when the charging party refuses to accept an offer of full relief for the harm alleged in the charge.

In 1995, the Commission adopted Priority Charge Handling Procedures (PCHP) to facilitate flexibility and permit more strategic use of resources. Among other things, PCHP authorized field offices to issue final determinations when further investigation was not likely to lead to evidence establishing a violation of the employment discrimination statutes. Thus, § 1601.18(b) through (d) are no longer needed to accomplish the Commission's case management goals. Their elimination is also consistent with EEOC's procedural regulations governing the Age Discrimination in Employment Act and the Equal Pay Act which do not contain the dismissal bases of failure to cooperate, to locate, and to accept full relief.

In addition, the continued inclusion of these dismissal bases in the regulations is causing unnecessary confusion. There is a split in the courts regarding the proper interpretation of paragraphs (b) through (d). *Compare*

McBride v. *Citgo Petroleum Corp.,* 281 F.3d 1099 (10th Cir. 2002) (dismissing a private plaintiff's claim under the Americans with Disabilities Act (ADA) on the ground that she had failed to exhaust her administrative remedies before the EEOC where the Commission dismissed plaintiff's charge for ''failure to cooperate'' as set forth in section 1601.18(b)) and *Shikles* v. *Sprint/United Management Company,* 426 F.3d 1304 (10th Cir. 2005) (extending the holding of *McBride* to the Age Discrimination in Employment Act (ADEA)), *with Doe* v. *Oberweis Dairy,* 456 F.3d 704 (7th Cir. 2006) (disagreeing with the Tenth Circuit and holding that the exhaustion requirement under Title VII does not impose a duty to cooperate with the EEOC).

The Commission did not anticipate that dismissals of charges under section 1601.18(b) through (d) would lead to dismissals of suits filed in Federal court. Nor did the Commission intend to impose on charging parties any obligations beyond the two statutory prerequisites recognized by Supreme Court precedent for charges filed under Title VII and the Americans with Disabilities Act [1]: the filing of a timely charge and receipt of a notice of right to sue. *See Alexander* v. *Garner-Denver,* 415 U.S. 36, 47 (1974) and *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792, 798 (1973). Rather, the Commission intended dismissals under sections 1601.18(b) through (d) as mechanisms to terminate further administrative processing of the charge and to permit the charging party to exercise his or her rights to *de novo* judicial review.

The Supreme Court long ago established the principle that plaintiffs in employment discrimination suits are entitled to a trial *de novo. McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792 (1973). At issue in that case was whether an individual could sue an employer under Title VII where ''the Commission made no finding on respondent's allegation of racial bias.'' *Id.* at 797–798. The Court unequivocally stated:

> [Charging party] satisfied the jurisdictional prerequisites to a federal action (i) by filing timely charges of employment discrimination with the Commission and (ii) by receiving and acting upon the Commission's statutory notice of the right to sue, 42 U.S.C. § § 2000e–5(a) and 2000e–5(e). The Act does not restrict a complainant's right to sue to those charges as to which the Commission has made findings of reasonable cause, and we will not engraft on the statute a requirement which may inhibit the review of claims of employment discrimination in the federal courts. * * * [T]he courts of appeal have held that, in view of the large volume of complaints before the Commission and the nonadversary character of many of its proceedings, ''court actions under Title VII are de novo proceedings and * * * a Commission 'no reasonable cause' finding does not bar a lawsuit in the case.

411 U.S. at 798–799 (citations omitted). See also *University of Tennessee* v. *Elliott,* 478 U.S. 788, 793 (1986) (citing with approval the Sixth Circuit's statement in the case that ''[I]t is settled that decisions by the EEOC do not preclude a trial *de novo* in federal court * * *.''); *Chandler* v. *Roudebush,* 425 U.S. 840, 844–845 (1976) (''It is well established that § 706 of the Civil Rights Act of 1964 accords private-sector employees the right to *de novo* consideration of their Title VII claims''). The Supreme Court has determined that Congress granted the right to a trial *de novo* to private plaintiffs suing under Title VII regardless of what action EEOC may take on the charge.

The overwhelming majority of charging parties cooperate fully with EEOC during its investigation because cooperation is in their self-interest. They cooperated before the regulation was promulgated and will continue to do so after the regulation is withdrawn. The Commission did not adopt this regulation to increase or encourage cooperation. The regulation was adopted simply as a case management tool. Now, it has outlived its usefulness.

As explained above, we are eliminating 1601.18(b) through (d) because they are no longer necessary and because the Commission did not intend to affect charging parties' rights to *de novo* judicial review when adopting them. The regulation will no longer provide for dismissals based upon ''failure to cooperate'' (29 CFR 1601.18(b)), ''failure to locate'' (29 CFR 1601.18(c)), or ''failure to accept full relief'' (29 CFR 1601.18(d)).

Regulatory Procedures

Executive Order 12866

This is not a ''significant regulatory action'' within the meaning of section 3 of Executive Order 12866.

Paperwork Reduction Act

This regulation contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it does not affect any small business entities. The regulation affects only federal sector employment. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million 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.

Congressional Review Act

This action concerns agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal Employment Opportunity.

For the Commission.

Naomi C. Earp,

Chair.

■ Accordingly, for the reasons set forth in the preamble, 29 CFR part 1601 is amended as follows:

PART 1601—PROCEDURAL REGULATIONS

■ 1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e–17; 42 U.S.C. 12111 to 12117.

§ 1601.18 [Amended]

■ 2. Section 1601.18 is amended by: Removing paragraphs (b), (c), and (d); redesignating paragraphs (e) and (f) as paragraphs (b) and (c); and removing the words ''paragraphs (a), (b), (c) or (d) of''

[1] The Age Discrimination in Employment Act and the Equal Pay Act do not have these same requirements. The ADEA only requires (1) a timely charge, and (2) a 60-day waiting period after filing the charge. *See Gilmer* v. *Interstate/Johnson Lane Corp.,* 500 U.S. 20, 27 (1991). ADEA plaintiffs are not required to obtain a right-to-sue notice. Additionally, the EPA allows an individual to bring a suit in court without even filing a charge. *See Ledbetter* v. *Goodyear Tire & Rubber Co., Inc.,* 127 S.Ct. 2162 (2007); *Washington County* v. *Gunther,* 452 U.S. 161, 175 n.14 (1981).

from the first sentence of redesignated paragraph (b).

[FR Doc. E8–826 Filed 1–17–08; 8:45 am]

BILLING CODE 6570–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–1079; FRL–8509–2]

Approval and Promulgation of Air Quality Implementation Plans; Nevada; Washoe County 8-Hour Ozone Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Washoe County portion of the Nevada State Implementation Plan. Submitted by the State of Nevada on May 30, 2007, this plan revision consists of a maintenance plan prepared for the purpose of providing for continued attainment of the 8-hour ozone standard in Washoe County through the year 2014 and thereby satisfying the related requirements under section 110(a)(1) of the Clean Air Act and EPA's phase 1 rule implementing the 8-hour ozone national ambient air quality standard. EPA is taking this action pursuant to those provisions of the Clean Air Act that obligate the Agency to take action on submittals of state implementation plans and plan revisions.

DATES: This rule is effective on *March 18, 2008* without further notice, unless EPA receives relevant adverse comment by February 19, 2008. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by EPA–RO9–OAR–2007–1079, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: Eleanor Kaplan at *kaplan.eleanor@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- Fax: Eleanor Kaplan, Planning Office (AIR–2), at fax number (415) 947–4147.
- Mail or deliver: Eleanor Kaplan, Air Planning Office, (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Hand or courier deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

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SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' refer to EPA. This supplementary information is organized as follows:

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I. Summary of Action

On May 30, 2007, the Governor's designee, the Nevada Division of Environmental Protection (NDEP), submitted the *Maintenance Plan for the Washoe County 8-Hour Ozone Attainment Area (April 2007)* (''Washoe County Ozone Maintenance Plan'' or ''Ozone Maintenance Plan'') to EPA for approval as a revision to the Washoe County portion of the Nevada State Implementation Plan (SIP). The Washoe County Ozone Maintenance Plan was developed by the Washoe County District Health Department, Air Quality Management Division (Washoe County AQMD) and adopted by the Washoe County District Board of Health (District Board of Health) on April 26, 2007. Washoe County AQMD prepared the plan to provide for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) through 2014 and to thereby satisfy the requirements of section 110(a)(1) of the Clean Air Act (CAA or ''Act'') and EPA's phase 1 rule implementing the 8-hour ozone NAAQS. The May 30, 2007 SIP revision submittal includes the maintenance plan and related technical appendices, as well as documentation of notice, public hearing, and adoption by the District Board of Health.

For the reasons set forth in this document, and pursuant to section 110(k) of the Act, we are approving the Washoe County Ozone Maintenance Plan as a revision to the Washoe County portion of the Nevada SIP. In so doing, we find that the submitted ozone

maintenance plan meets all of the applicable requirements of CAA section 110(a)(1) and our phase 1 rule implementing the 8-hour ozone NAAQS.

II. Background

A. Ozone Facts, Effects, and Ambient Standard

Ozone is a gas composed of three oxygen atoms. It is not usually emitted directly into the air, but at ground level is created by a chemical reaction between oxides of nitrogen (NO_X) and volatile organic compounds (VOC) in the presence of sunlight. Ozone has the same chemical structure whether it occurs miles above the earth or at ground-level and can be ''good'' or ''bad,'' depending on its location in the atmosphere.

In the earth's lower atmosphere, ground-level ozone is considered ''bad.'' Motor vehicle exhaust and industrial emissions, gasoline vapors, and chemical solvents as well as natural sources emit NO_X and VOC that help form ozone. Ground-level ozone is the primary constituent of smog. Sunlight and hot weather cause ground level ozone to form in harmful concentrations in the air. As a result it is known as a summertime air pollutant. Many urban areas tend to have high levels of ''bad'' ozone, but even rural areas are also subject to increased ozone levels because wind carries ozone and pollutants that form it hundreds of miles away from their original source. ''Good'' ozone occurs naturally in the stratosphere approximately 10 to 30 miles above the earth's surface and forms a layer that protects life on earth from the sun's harmful rays.

Breathing ozone can trigger a variety of health problems including chest pain, coughing, throat irritation, and congestion. It can worsen bronchitis, emphysema, and asthma. Ground-level ozone also can reduce lung function and inflame the linings of the lungs. Repeated exposure may permanently scar lung tissue. People with lung disease, children, older adults, and people who are active can be affected when ozone levels are unhealthy.

The CAA requires EPA to set national ambient air quality standards (NAAQS) to protect public health and public welfare. EPA has established a NAAQS for ozone at 0.08 parts per million (ppm), daily maximum 8-hour average. The 8-hour ozone NAAQS is met at an ambient air quality monitoring site when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. See 40 CFR 50.10 and appendix I.

B. General Description of Washoe County, Nevada

Washoe County is located in the northwest portion of Nevada and is bounded by California, Oregon, and the counties of Humboldt, Pershing, Storey, Churchill, Lyon and Carson City. Washoe County is a long, narrow strip, between 30 and 50 miles wide, 190 miles long north and south, and encompasses a land area of 6,608 square miles.

Population density in the county is concentrated for the most part in the eight valleys adjacent to the Truckee River, in the southern one-third of the county. The principal city, Reno (the county seat), is situated in the southern part of the county and is the business and transportation center for northern and western Nevada. Washoe County has experienced rapid growth over the past several decades and has seen its population roughly double since 1980 (from approximately 190,000 in 1980 to approximately 360,000 in 2002). The Washoe County AQMD is the designated agency responsible for air quality management throughout the entire county with the exception of certain types of power plants, which are subject, under Nevada law, to the jurisdiction of NDEP.

C. Regulatory Context

Under the Clean Air Act (CAA) as amended in 1970, EPA established national ambient air quality standards (NAAQS) for certain pervasive air pollutants, such as photochemical oxidant, carbon monoxide, and particulate matter. The NAAQS represent concentration levels below which public health and welfare are protected. The 1970 Act also required States to adopt and submit State Implementation Plans (SIPs) to implement, maintain, and enforce the NAAQS. The original Nevada SIP was submitted and approved by EPA in 1972. SIP revisions are required from time-to-time to account for new or amended NAAQS or to meet other changed circumstances.

The CAA was significantly amended in 1977, and under the 1977 Amendments, EPA promulgated attainment status designations for all areas of the country with respect to the NAAQS. The Truckee Meadows portion of Washoe County (hydrographic area #87) was designated as a nonattainment area for the NAAQS for photochemical oxidant. See 43 FR 8962, at 9012 (March 3, 1978). The Clean Air Act provides for periodic review and revision of the NAAQS by EPA, and in 1979, EPA established a new NAAQS for ozone of 0.12 ppm, one-hour average, to replace the oxidant standard of 0.08 ppm. See 44 FR 8202 (February 8, 1979). Areas designated nonattainment for oxidant were considered to be nonattainment for ozone as well, but States could request redesignation to attainment if monitoring data showed that an area met the ozone NAAQS.

To satisfy the requirements for oxidant/ozone nonattainment areas under the 1977 Amended Act, Washoe County District Board of Health adopted five stationary source rules regulating emissions of volatile organic compounds (VOC): Section 040.070 (''Storage of Petroleum Products''), section 040.075 (''Gasoline Loading into Tank Trucks and Trailers''), section 040.080 (''Gasoline Unloading from Tank Trucks and Trailers into Storage Tanks''), section 040.085 (''Organic Solvents''), and section 040.090 (Cut-back Asphalt''). On July 24, 1979, the State of Nevada submitted these five rules to EPA as a revision to the Nevada SIP. EPA approved them as such on April 14, 1981 (46 FR 21758). Meanwhile, late in 1980, the State of Nevada requested that EPA redesignate Truckee Meadows as an attainment area for the then-new ozone NAAQS based on available ozone monitoring data, and in the following year, EPA approved the redesignation of Truckee Meadows from nonattainment for oxidant to attainment for the ozone NAAQS. See 46 FR 37896 (July 23, 1981).

Congress significantly amended the Clean Air Act again in 1990, and under the 1990 Act Amendments, because of an ozone episode in 1990, EPA designated all of Washoe County as a ''marginal'' ozone nonattainment area, effective January 6, 1992. See 56 FR 56694 (November 6, 1991). Under the CAA, as amended in 1990, States with marginal ozone nonattainment areas were required to submit SIP revisions providing for changes to the program for review of new major sources and major modifications (''new source review'' or NSR), base year (1990) inventories of ozone precursor emissions and periodic inventory updates, rules requiring owners of larger stationary sources to submit annual emissions statements, and rules establishing procedures for determining conformity of certain types of projects to the SIP. See CAA sections 182(a) and 176(c).

NDEP has submitted various revisions to the Washoe County portion of the Nevada SIP over the past 15 years to meet these requirements. Specifically, NDEP submitted a SIP revision related to the Washoe County NSR program on

April 7, 1994, SIP revisions related to ozone precursor emission inventories on November 13, 1992 (year 1990 inventory), January 19, 1996 (year 1993), April 14, 1999 (year 1996), February 5, 2002 (year 1999), and February 3, 2005 (year 2002), a SIP revision related to emission statements (Washoe County District Board of Health section 030.219) on November 13, 1992, and a SIP revision related to general and transportation conformity on July 31, 1995.[1]

Improvements to the State's vehicle inspection and maintenance (I/M) program for the Truckee Meadows planning area to meet EPA's ''basic'' I/M performance standard, though adopted to meet CAA nonattainment planning requirements for carbon monoxide rather than ozone, also provide VOC emissions reductions.[2] NDEP submitted the upgraded I/M program on June 3, 1994 and submitted updated I/M-related statutes and rules on May 11, 2007. We expect to take action on the I/M submittals for Truckee Meadows in the near future in the context of taking action on NDEP's request for redesignation of Truckee Meadows to attainment for the carbon monoxide NAAQS.

NDEP, on behalf of Washoe County, submitted a maintenance plan for the 1-hour ozone NAAQS and a redesignation request to EPA on July 31, 1995. The Washoe County 1-hour ozone maintenance plan and redesignation request was revised and re-submitted by NDEP on April 2, 1997 but withdrawn from further consideration at the county's request on September 12, 1997 in the wake of EPA's revision of the ozone NAAQS during the summer of 1997.

In July 1997, subsequent to a periodic review of the ozone NAAQS, EPA established a new ozone NAAQS (0.08 ppm, eight-hour average) to replace the 1-hour ozone standard. See 62 FR 38856 (July 18, 1997). In 1998, we found that Washoe County was attaining the 1-hour ozone NAAQS based on 1994–1996 monitoring data and listed it as one of the areas in the country where the 1-hour ozone NAAQS no longer applied. See 63 FR 31014, at 31065 (June 5, 1998). In 2000, in response to continuing litigation over the 8-hour ozone NAAQS, we reinstated the 1-hour ozone NAAQS in those areas in which we had found the standard to no longer apply, such as Washoe County. See 65 FR 45182, at 45244 (July 20, 2000). In that 2000 action, we also reinstated Washoe County's classification as a ''marginal'' nonattainment area for the 1-hour ozone NAAQS, effective January 16, 2001, see 65 FR 45829 (July 25, 2000). In 2005, we made a second finding of attainment for Washoe County with respect to the 1-hour ozone NAAQS. See 70 FR 22803 (May 3, 2005). An attainment finding is but one of the criteria necessary to qualify for redesignation to ''attainment.''

Meanwhile, in 2004, following years of delay associated with court challenges, EPA promulgated area designations for the new 8-hour ozone NAAQS. See 69 FR 23858 (April 30, 2004). Washoe County was designated as an ''unclassifiable/attainment'' area, effective June 15, 2004. See 69 FR 23858 at 23919–23920. In another EPA rule published on April 30, 2004 (69 FR 23951), which is referred to as the ''Phase 1 8-Hour Ozone Implementation Rule'' or ''Phase 1 Rule,'' EPA revoked the one-hour ozone NAAQS effective June 15, 2005 and established certain requirements to prevent backsliding in those areas that were designated as nonattainment for the 1-hour ozone standard (or that were ''attainment'' but subject to a maintenance plan) at the time of designation for the 8-hour ozone standard. EPA codified these requirements at 40 CFR 51.905.

Because Washoe County's designations as of June 15, 2004 (i.e., the date of designation for the 8-hour NAAQS) were ''nonattainment'' for the 1-hour ozone NAAQS and ''unclassifiable/attainment'' for 8-hour ozone NAAQS, a maintenance plan was required for the area under CAA section 110(a)(1) and the Phase 1 Rule. See 40 CFR 51.905(a)(3). States were required to submit CAA section 110(a)(1) ozone maintenance plans by June 15, 2007. WCAQMD prepared the *Maintenance Plan for the Washoe County 8-Hour Ozone Attainment Area (April 2007)* to meet the requirements of section 110(a)(1) and EPA's Phase 1 Rule. In today's action, we are approving the Washoe County Ozone Maintenance Plan as a revision to the Washoe County portion of the Nevada SIP.

D. Ambient Ozone Conditions

Generally, we will determine whether an area's air quality is meeting the NAAQS based upon data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring sites (NAMS) and entered into the Air Quality System (AQS) database. Data entered into AQS has been determined to meet Federal monitoring requirements (see 40 CFR 50.6; 40 CFR part 50, appendix J; 40 CFR part 53; 40 CFR part 58, appendices A and B) and may be used to determine the attainment status of areas. Also, we also take into account data from other air monitoring stations, such as Special Purpose Monitors (SPMs), if the data is collected using a Federal reference method or Federal equivalent method, unless the air monitoring agency demonstrates that the data came from a particular period during which EPA requirements concerning quality assurance, methods, or siting criteria were not met in practice. See 71 FR 61236, at 61302 (October 17, 2006) and 40 CFR 58.20. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix I.

Washoe County AQMD measures ambient ozone concentration at six monitoring sites located in southern Washoe County, including Lemmon Valley, downtown Reno, Sparks, south Reno, Toll Road (Geiger Grade), and Incline Village. All of Washoe County AQMD's ozone monitoring sites are NAMS or SLAMS except for Incline Village, which is a SPM for ozone.

The current ozone NAAQS is met at an ambient air quality monitoring site when the three-year average of the annual fourth-highest daily maximum 8-hour ozone concentration (also referred to as the ''design value'') is less than or equal to 0.08 ppm, and the standard is met within an air quality planning area when the standard is met at all of the monitoring stations. A review of the data gathered at the various ozone monitoring sites in Washoe County and entered into AQS confirms that Washoe County is in attainment of the 8-hour ozone NAAQS. Since 1999, the highest design value at any of the ozone monitoring sites is 0.075 ppm, a value

[1] The submittal of the attainment inventory (year 2002) in the Washoe County Ozone Maintenance Plan supersedes all of the previously-submitted ozone precursor inventories with the exception of the February 3, 2005 inventory submittal, which provides technical support and documentation for all of the source categories listed in the Ozone Maintenance Plan for year 2002 with the exception of nonroad and on-road vehicles. The NSR and conformity submittals are no longer necessary for ozone purposes, but remain relevant for the purposes of the carbon monoxide and particulate matter (PM_{10}) NAAQS in the Truckee Meadows area of Washoe County. The State may withdraw the District's emission statements rule because it is no longer an ''applicable requirement'' for the Washoe County portion of the Nevada SIP given the county's designation as ''unclassifiable/attainment'' for the 8-hour ozone NAAQS and the revocation of the 1-hour ozone NAAQS. See 40 CFR 51.900(f).

[2] ''Marginal'' ozone nonattainment areas that had, or were required to have, I/M programs in their ozone SIPs prior to the passage of the 1990 CAAA were required to maintain and upgrade their programs under CAA section 182(a). Nevada implemented an I/M program in Truckee Meadows prior to the 1990 CAAA, but the EPA-approved version of the program at that time did not include emissions testing of hydrocarbons (i.e., the corresponding cutpoints in the approved program had been deleted). As such, the pre-1990 I/M program in Truckee Meadows is not considered a part of the ozone SIP for that area.

calculated for the Sparks monitor over the 2001–2003 period. For the purposes of comparison, due to rounding conventions, no design values less than 0.085 ppm violate the ozone NAAQS. More recently, the highest design value for both 2003–2005 and 2004–2006 periods is 0.071 ppm, the value calculated for the downtown Reno, south Reno, and Sparks monitoring sites.

III. Evaluation of State's Submittal

As noted above, EPA promulgated the 8-hour ozone NAAQS in 1997 and designated and classified areas for this standard in 2004. In 2004, we also published the Phase 1 Ozone Implementation Rule. Code of Federal Regulations, title 40, part 51, § 51.905(a)(3) and (4), established in that rulemaking, set forth requirements for anti-backsliding purposes for areas designated unclassifiable/attainment for the 8-hour standard. These provisions required States with such areas to submit 10-year maintenance plans under section 110(a)(1) of the CAA if these areas were also nonattainment areas (or were attainment areas subject to a CAA section 175A maintenance plan) under the 1-hour ozone standard.[3] Such plans are to be submitted as revisions to SIPs. Washoe County AQMD prepared the Washoe County Ozone Maintenance Plan in response to these requirements.

A. CAA Procedural Requirements

Under section 110 of the Act and EPA regulations (at 40 CFR part 51, subpart F), each State must provide reasonable notice and public hearing prior to adoption of SIPs and SIP revisions for subsequent submittal to EPA.

On March 23, April 5, and April 20, 2007, the District Board of Health published a notice in the *Reno Gazette-Journal,* a newspaper of general circulation in the Reno area, of a public hearing to consider the Washoe County Ozone Maintenance Plan. A public hearing was held on April 26, 2007 at District Health Department offices in Reno. On April 26, 2007, the District Board of Health adopted the maintenance plan and forwarded the plan to NDEP. On May 30, 2007, in accordance with Nevada law, the Administrator of NDEP submitted the Ozone Maintenance Plan to EPA. NDEP's May 30, 2007 SIP submittal package includes evidence of public notice, public hearing, and District Board of Health adoption as described above. No public comments were received on the draft maintenance plan. Based on review of these materials, we find that NDEP and the District Board of Health have met the procedural requirements of CAA section 110 and 40 CFR part 51, subpart F.

B. Evaluation of Ozone Maintenance Plan

The 8-hour ozone 110(a)(1) maintenance plan must provide for continued maintenance of the 8-hour ozone NAAQS in the area for 10 years from the effective date of the area's designation as unclassifiable/attainment for the 8-hour ozone NAAQS. At a minimum, the maintenance plan for such areas must include the five following components: Attainment inventory, maintenance demonstration, ambient air quality monitoring, verification of continued attainment, and contingency plan. As explained below, we find that the Washoe County Ozone Maintenance Plan includes all five components, that each component is acceptable, and that the overall plan provides for continued maintenance of the 8-hour ozone NAAQS in Washoe County through 2014 (i.e., 10 years beyond 2004, the year of the county's designation for the 8-hour ozone NAAQS).

1. Attainment Inventory

The attainment inventory should be based on actual ''typical summer day'' emissions of VOC and NO_X. EPA's Phase 1 8-Hour Ozone Implementation Rule provides that the 10-year maintenance period begins as of the effective date of designation for the 8-hour ozone standard for the area. For purposes of an attainment emissions inventory, the State may use one of any of the three years on which the 8-hour attainment designation was based (i.e., 2001, 2002, and 2003). The inventory should be consistent with EPA's most recent emissions inventory methods, models, and factors and should be based on the latest planning assumptions regarding population, employment, and motor vehicle activity.

For the Washoe County Ozone Maintenance Plan, Washoe County AQMD prepared an attainment inventory of ''typical summer day'' VOC and NO_X emissions for year 2002. Washoe County AQMD's attainment inventory is comprehensive and includes essentially all point, area, mobile and biogenic sources within the county. Table 1 below summarizes the plan's attainment inventory, as well as the plan's inventories for projected VOC and NO_X emissions for years 2010 and 2014.

TABLE 1.—WASHOE COUNTY OZONE PRECURSORS EMISSION INVENTORY, 2002, 2010 AND 2014

[Pounds per typical summer day]

Source category	Pollutant	Emissions (lb per summer day)		
		2002	2010	2014
VOC EMISSIONS:				
Point Sources	VOC	2,971	3,419	3,658
Area Sources	VOC	16,912	19,259	20,451
Biogenic Sources	VOC	104,618	104,618	104,618
Nonroad Mobile	VOC	30,299	22,032	20,890
On-road Mobile	VOC	31,244	29,645	15,471
Buffer Zone Sources	VOC	1,480	1,703	1,822
Total—VOC	VOC	187,524	180,676	166,910
Change Relative to 2002	VOC	0	−6,848	−20,614
NO_X EMISSIONS:				
Point Sources	NO_X	231	266	284

[3] We provided guidance to States regarding section 110(a)(1) ozone maintenance plans in a memorandum from Lydia N. Wegman, Director, Air Quality Strategies and Standards Division, EPA Office of Air Quality Planning and Standards, entitled, ''Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of the Clean Air Act,'' dated May 20, 2005. For the contingency plan element of section 110(a)(1) maintenance plans, our May 20, 2005 guidance cites an EPA policy memorandum from John Calcagni, entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' dated September 4, 1992.

TABLE 1.—WASHOE COUNTY OZONE PRECURSORS EMISSION INVENTORY, 2002, 2010 AND 2014—Continued

[Pounds per typical summer day]

Source category	Pollutant	Emissions (lb per summer day)		
		2002	2010	2014
Area Sources	NO_X	3,576	4,109	4,393
Biogenic Sources	NO_X	25,480	25,480	25,480
Nonroad Mobile	NO_X	27,404	24,847	22,312
On-road Mobile	NO_X	54,869	57,258	24,838
Buffer Zone Sources	NO_X	24,153	27,794	29,738
Total—NO_X	NO_X	135,713	139,754	107,045
Change Relative to 2002	NO_X	0	4,041	−28,668

Note.—"Buffer zone" refers to major sources within 25 miles of Washoe County.
Source: Washoe County Ozone Maintenance Plan (April 2007), tables 2, 3 and 4; EPA.

On February 3, 2005, NDEP submitted Washoe County AQMD's emissions inventories of VOC and NO_X for year 2002 as the latest in a series of periodic inventory updates that the county has prepared since 1990 to meet 1-hour ozone planning requirements. To develop the attainment inventory for the Washoe County Ozone Maintenance Plan, Washoe County AQMD relied upon the previously-submitted inventory information for year 2002 for point and area sources but updated certain source categories, such as nonroad equipment and on-road motor vehicles, for which new EPA emissions estimation models had become available.

As a general matter, for the point source portion of the attainment inventory, Washoe County AQMD used data collected from permitted sources during the annual permit renewal process or from emission statements. For area sources, Washoe County AQMD used EPA emission factor and methods or material balance calculations, except for structural and automobile fires for which Washoe County AQMD used emissions factors and methods developed by the California Air Resources Board. Aircraft and railroad emissions were estimated using EPA emissions factors and methods and local activity data provided by Washoe County Airport Authority and Union Pacific Railroad, respectively. Biogenic source emissions were determined using EPA's Biogenic Emissions Inventory System, version 2.3 (BEIS2.3). Documentation for the emissions developed for these various source categories is provided in Washoe County AQMD's *Washoe County, Nevada Ozone Non-Attainment Area, 2002 Periodic Emissions Inventory of Ozone Precursors (May 2004)*, and related appendices A, B, and C, submitted by NDEP on February 3, 2005.

As noted above, for nonroad vehicles and on-road motor vehicles, Washoe County AQMD re-calculated the emissions that had previously been calculated for 2002 to reflect updated EPA factors and models. For nonroad vehicles, Washoe County AQMD re-calculated emissions for 2002 using the EPA model NONROAD2005, and for on-road motor vehicles, Washoe County AQMD re-calculated emissions using the EPA model MOBILE6.2.03. The on-road vehicle category incorporated the most recent planning assumptions for the transportation network including vehicle miles traveled and vehicle speeds. These planning assumptions were consistent with those used by the metropolitan planning organization (MPO), which, in Washoe County, is the Regional Transportation Commission. Documentation for the emissions estimates for nonroad and on-road vehicles is provided in appendices A, B, and C of the Washoe County Ozone Maintenance Plan.

As shown in table 1, above, biogenic sources represent the largest source of VOC emissions during a typical summer day in Washoe County at approximately 56 percent of the inventory. Among the anthropogenic source categories, on-road and nonroad mobile sources contribute the most to the overall VOC inventory at 17 and 16 percent, respectively. With respect to NO_X emissions, the largest contributing sources are on-road and nonroad mobile sources at 40 percent and 20 percent, respectively.

Based on our review of the documentation submitted with the 2002 periodic inventory and the Washoe County Ozone Maintenance Plan, we conclude that the attainment inventory has been developed for the appropriate season of an acceptable attainment year, is comprehensive and based on appropriate factors and methods, and thus is acceptable for the purposes of a section 110(a)(1) ozone maintenance plan.

2. Maintenance Demonstration

The key element of a section 110(a)(1) ozone maintenance plan is a demonstration of how the area will remain in compliance with the 8-hour ozone standard for the 10-year period following the effective date of designation as unclassifiable/attainment. The end projection year is 10 years from the effective date of the attainment designation, which for Washoe County was June 15, 2004. Therefore, this plan must demonstrate attainment through 2014.

The typical method that areas have used in the past to demonstrate that an area will maintain the 1-hour ozone standard has been to identify the level of ozone precursor emissions in the area which is sufficient to attain the NAAQS and to show that future emissions of ozone precursors will not exceed the attainment levels. To perform this analysis, for the 8-hour maintenance plan, the State needs to develop emission inventories for the attainment year and for the projection year. Also, because the plan must demonstrate maintenance throughout the applicable 10-year period, not just in the projection year, the State should develop an emission inventory for an interim year between the attainment inventory year and the projection inventory year to show a trend analysis for maintenance of the standard.

For its maintenance demonstration, the Washoe County Ozone Maintenance Plan includes emissions inventories of ozone precursors in an interim year (2010) and the projection year (2014). To develop the emissions projections for these two future years, Washoe County AQMD used several different methods to project data from year 2002 to the years 2010 and 2014. For most point and area sources, Washoe County AQMD used Washoe County's 2010 and

2014 population and employment forecasts adopted by the Truckee Meadows Regional Planning Commission (which are consistent with those used by the local MPO) to project emissions into the future. Population forecasts were also used to project buffer zone source emissions and locomotive emissions. Emissions from fires and biogenic sources were assumed to remain constant over the 2002–2014 period. For nonroad vehicles and on-road vehicles, Washoe County AQMD used EPA models, NONROAD2005 and MOBILE6.2.03, respectively to project emissions for 2010 and 2014 using the latest vehicle activity projections used by the local MPO. Aircraft emissions projections were based on aviation activity forecasts provided by the local airport authority. We find that the methods and assumptions used by Washoe County AQMD to project emissions to 2010 and 2104 are acceptable.

Table 1, above, summarizes the emissions projections for 2010 and 2014 developed by Washoe County AQMD for the Washoe County Ozone Maintenance Plan and compares those estimates with the corresponding estimates for the attainment year (2002). Washoe County AQMD concludes in the Ozone Maintenance Plan, based on the comparison of emissions in 2014 with those in 2002, that the 8-hour ozone NAAQS will be maintained through the 10-year maintenance period. We agree with Washoe County AQMD's conclusion for the reasons given below.

As shown in table 1 above, decreases in VOC emissions from nonroad and on-road vehicle categories (relative to 2002) are expected to more-than-offset increases in the other source categories. With respect to NO_X, overall emissions are expected to increase through 2010 but then to decrease over the next four years as the benefits from new EPA emissions and fuels standards for diesel vehicles begin to take effect. We note, however, that the NO_X emissions increase in 2010 is less in absolute terms than the VOC emissions decrease in that same year. Thus, based on the inventory projections in the Washoe County Ozone Maintenance Plan, we believe that maximum daily 8-hour ozone concentrations in Washoe County through 2010 will most likely remain similar to those monitored in the 2001–2003 period (during which the area was in attainment of the standard) and then drop slightly afterwards in rough proportion to the decrease in ozone precursor emissions predicted from 2010 through 2014. As such, we find that the Washoe County Ozone Maintenance Plan demonstrates continued attainment of the 8-hour ozone standard through 2014.

3. Ambient Air Quality Monitoring

The State should continue to operate air quality monitors in accordance with 40 CFR part 58 to verify maintenance of the 8-hour ozone standard in the area. In 2006, Washoe County AQMD operated six ozone monitoring stations in southern Washoe County. In the maintenance plan, Washoe County AQMD commits to the continued operation of an appropriate ozone monitoring network in accordance with 40 CFR part 58 to verify the attainment status of the area. See page 9 of the Ozone Maintenance Plan. This is acceptable.

4. Verification of Continued Attainment

A section 110(a)(1) ozone maintenance plan should indicate how the State will track the progress of the maintenance plan. This is necessary due to the fact that emissions projections made for the maintenance demonstration depend on assumptions of point, area and mobile source activity and turn-over rates. One option for tracking the progress of the maintenance demonstration would be for the State to periodically update the emissions inventory.

To track the progress of the Washoe County Ozone Maintenance Plan, Washoe County AQMD has committed to prepare, and submit to EPA, comprehensive periodic ozone emissions inventories on a triennial basis through at least 2014. The plan's stated purpose for the triennial inventory updates is to screen for significant increases in actual ozone precursor emissions. See page 10 of the Ozone Maintenance Plan. This is acceptable.

5. Contingency Plan

EPA's Phase 1 8-Hour Ozone Implementation Rule requires section 110(a)(1) maintenance plans to include contingency provisions to promptly correct any violation of the ozone NAAQS that occurs. Generally, contingency plans should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific timeline for action by the State. Also, the State should identify specific indicators or triggers, which will be used to determine when the contingency measures need to be implemented.

The Washoe County Ozone Maintenance Plan includes a contingency plan that establishes a triggering mechanism, and identifies specific measures to be adopted, a schedule and procedure for adoption and implementation, and a specific timeline for action by the District Board of Health. The triggering mechanism is a confirmed violation of the 8-hour ozone NAAQS at one of the air monitoring stations operated by Washoe County AQMD.

The Washoe County Ozone Maintenance Plan identifies a list of potential contingency measures that are to be considered by the District Board of Health for implementation in the event that the triggering event occurs. The identified measures focus on the two of the largest anthropogenic source categories of ozone precursor emissions in Washoe County: On-road motor vehicles and nonroad gasoline-powered vehicles. With respect to on-road motor vehicles, the potential contingency measures include: (1) Increase the I/M waiver repair rate, (2) establish/enhance trip reduction programs, and (3) establish an early vehicle retirement program. With respect to nonroad gasoline engines, the potential contingency measures include: (1) Portable gas container emission controls, (2) construction fleet modernization, and (3) establish a fund program to electrify existing gasoline lawn and garden equipment. See page 12 of the Ozone Maintenance Plan. The Ozone Maintenance Plan indicates that the list of potential measures will be reviewed and updated at least once every three years in coordination with the periodic ozone emissions inventory update process.

With regard to adoption and implementation of measures, the contingency plan includes a commitment by Washoe County AQMD to make recommendations to the Washoe County District Board of Health at their next regularly scheduled meeting, but no later than 45 days after the trigger has been reached. The contingency plan then indicates that the District Board of Health's contingency measure adoption and implementation schedule shall be as expeditious as practicable, but not longer than 24 months.

Given that the contingency plan included in the Washoe County Ozone Maintenance Plan establishes a triggering mechanism, and identifies specific measures to be adopted, a schedule and procedure for adoption and implementation, and a specific timeline for action, we find that the Washoe County Ozone Maintenance Plan includes contingency provisions to promptly correct any violation of the 8-hour ozone NAAQS that occurs in Washoe County and thus is acceptable.

6. Conclusion

Based on the review presented above of the various elements of the submitted plan, we are approving the Washoe County Ozone Maintenance Plan as a revision to the Washoe County portion of the Nevada SIP. In so doing, we find that the Washoe County Ozone Maintenance Plan, adopted on April 26, 2007 by the Washoe County District Board of Health and submitted to EPA by NDEP on May 30, 2007, satisfies the requirements of CAA section 110(a)(1) and EPA's phase 1 rule implementing the 8-hour ozone standard.

IV. Final Action and Request for Comment

Under section 110(k) of the Clean Air Act, EPA is approving a revision to the Washoe County portion of the Nevada SIP that was submitted to EPA on May 30, 2007 and that consists of the *Maintenance Plan for the Washoe County 8-Hour Ozone Attainment Area (April 2007)* (''Washoe County Ozone Maintenance Plan''). As described in more detail above, we are approving the Washoe County Ozone Maintenance Plan because we find that it provides for continued attainment of the 8-hour ozone standard in Washoe County through the year 2014 and thereby satisfies the related requirements under section 110(a)(1) of the Clean Air Act and EPA's phase 1 rule implementing the 8-hour ozone NAAQS. Our approval of the Washoe County Ozone Maintenance Plan as a revision to the Nevada SIP makes the commitments included therein, such as those related to ambient air quality monitoring, verification of continued attainment, and the contingency plan, federally enforceable.

EPA is publishing this rule without prior proposal because we view this as a non-controversial action and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on *March 18, 2008* without further notice unless we receive adverse comment by *February 19, 2008*. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

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 approves a state plan as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. 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 rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *March 18, 2008*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 29, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraph (c)(65) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(65) The following plan was submitted on May 30, 2007 by the Governor's designee.

(i) Incorporation by reference.

(A) Washoe County District Health Department, Air Quality Management Division.

(1) Maintenance Plan for the Washoe County 8-Hour Ozone Attainment Area (April 2007), Washoe County District Health Department, excluding appendices.

* * * * *

[FR Doc. E8–743 Filed 1–17–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2006–0214; FRL–8514–7]

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Arizona; San Manuel Sulfur Dioxide State Implementation Plan and Request for Redesignation to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action under the Clean Air Act to approve the *Final State Implementation Plan Revision, San Manuel Sulfur Dioxide Nonattainment Area, March 2007* as a revision to the Arizona state implementation plan. The Arizona Department of Environmental Quality developed this plan to maintain the sulfur dioxide national ambient air quality standards in the San Manuel, Arizona area and to request redesignation of the area to attainment. The maintenance plan contains various elements, including contingency provisions that will be implemented if measured ambient concentrations of sulfur dioxide are above certain trigger levels. EPA is also approving the State of Arizona's request for redesignation of the San Manuel area from nonattainment to attainment for the sulfur dioxide standards.

EPA is taking these actions consistent with provisions in the Clean Air Act that obligate the Agency to approve or disapprove submittals of revisions to state implementation plans and requests for redesignation. The intended effect is to redesignate the San Manuel, Arizona sulfur dioxide nonattainment area to attainment, and to provide for maintenance of the standard for the ten-year period following redesignation.

DATES: This rule is effective on March 18, 2008 without further notice, unless EPA receives adverse comments by February 19, 2008. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0214, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: robin.marty@epa.gov.*

3. *Mail or deliver:* Marty Robin (Air–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Marty Robin, Air Planning Office, (415) 972–3961 or by e-mail at *robin.marty@epa.gov.*

SUPPLEMENTARY INFORMATION: Elsewhere in this **Federal Register**, we are proposing approval and soliciting written comment on this action. Throughout this document, the words ''we,'' ''us,'' or ''our'' mean U.S. EPA.

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I. Summary of Today's Direct Final Action

On June 7, 2007, the Arizona Department of Environmental Quality (''ADEQ'' or ''State'') submitted to EPA Region IX its *Final Arizona State Implementation Plan Revision, San*

Manuel Sulfur Dioxide Nonattainment Area, March 2007 and its request for redesignation to attainment (''San Manuel SO_2 Maintenance Plan'' or ''submittal''). The submittal summarizes the progress the State has made in attaining the 24-hour and annual average sulfur dioxide (SO_2) national ambient air quality standards (NAAQS) in the San Manuel nonattainment area in Pima and Pinal Counties, Arizona (''San Manuel area'') and includes a plan to assure continued attainment of the SO_2 NAAQS for at least the next 10 years. The State's June 2007 submittal also requested the withdrawal of the June 2002 *Final San Manuel Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan.* The June 2007 submittal updated the SIP to account for the closure of the dominant source of SO_2 emissions, the BHP Billiton copper smelter. The March 2007 SIP revision contains current information and analyses which supercede the obsolete information in the June 2002 SIP.

In today's direct final action, we are approving ADEQ's June 7, 2007 submittal as a revision to the Arizona SIP and redesignating the San Manuel area from nonattainment to attainment for the SO_2 NAAQS because we find that the San Manuel SO_2 Maintenance Plan meets the requirements for maintenance plans under section 175A of the Clean Air Act (CAA) and that the San Manuel area qualifies for redesignation under CAA section 107(d)(3)(E).

II. Introduction

The following section discusses the NAAQS for SO_2, CAA requirements for state implementation plans, SO_2 planning in Arizona generally and in the San Manuel area more specifically, and sources of emissions in the San Manuel area.

A. The SO_2 NAAQS

The NAAQS for SO_2 consists of three standards: two primary standards for the protection of public health and a secondary standard for protection of public welfare. The primary SO_2 standards address 24-hour average and annual average ambient SO_2 concentrations. The secondary standard addresses 3-hour average ambient SO_2 concentrations. The level of the annual SO_2 standard is 0.030 parts per million (ppm), which is equivalent to 80 micrograms per cubic meter ($\mu g/m^3$), not to be exceeded in a calendar year. The level of the 24-hour standard is 0.14 ppm (365 $\mu g/m^3$), not to be exceeded more than once per calendar year. The level of the secondary SO_2 standard is a 3-hour standard of 0.5 ppm (1,300 $\mu g/m^3$), not to be exceeded more than once per calendar year. See 40 CFR 50.2–50.5.

B. State Implementation Plans (SIPs)

The CAA requires states to implement, maintain, and enforce ambient air quality equal to or better than the NAAQS. A state's strategies for implementing, maintaining, and enforcing the NAAQS are submitted to EPA for approval, and, once approved, become part of the State Implementation Plan (or SIP) for that State. SIPs are compilations of regulatory and non-regulatory elements adopted, submitted, and approved at different times to address various types of changes in circumstances, such as new or revised NAAQS or amendments to the CAA. SIPs include, among other things, the following: (1) An inventory of emission sources; (2) statutes and regulations adopted by the state legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to be undertaken if an area fails to attain the standard or make reasonable progress toward attainment by the required date. The state must make proposed changes to the SIP available for public review and comment through a public hearing, and must formally adopt the changes before submitting them to EPA for approval. Upon our approval, a SIP revision becomes federally enforceable.

C. History of SO_2 Planning in Arizona

1. Development of the SO_2 SIP

In the early 1970s, soon after the CAA Amendments of 1970 were passed, Arizona began developing air quality regulations that applied to all Arizona primary copper smelters, including the one operating at that time in San Manuel. These regulations focused on establishing an air quality monitoring network in the areas surrounding the smelters and determining the allowable emission rates from the smelters so that the SO_2 NAAQS could be attained and maintained. Arizona submitted various SIP revisions during the 1970s to establish approvable emission limits for the primary copper smelters operating in the state. On September 20, 1979, the State submitted its SIP revision to EPA which contained its multi-point rollback (MPR) technique to establish operating limitations on smelters. After EPA's proposed conditional approval on November 30, 1981 (46 FR 58098), Arizona made necessary changes which corrected identified deficiencies. EPA granted full approval of the MPR-based SIP submittal on January 14, 1983 (48 FR 1717), but was not able to grant full approval to the SO_2 SIPs for six smelter areas (including San Manuel) because they lacked a strategy for addressing fugitive sources of SO_2.[1]

On November 1, 2004, EPA approved several revisions to the SO_2 SIP, including fugitive emissions standards, site-specific requirements, and compliance and monitoring for existing primary copper smelters. See 69 FR 63321. In that same notice, EPA promulgated a limited approval/limited disapproval of Arizona Administrative Code (AAC) R18–2–Appendix 8, which sets out procedures for calculating sulfur emissions using a sulfur balance method. ADEQ subsequently corrected the identified deficiencies and EPA approved the new version of R18–2–Appendix 8 as a SIP revision on April 12, 2006, effective June 12, 2006. See 71 FR 18624.

2. San Manuel SO_2 Nonattainment Area

Initially, the air quality planning area we refer to as the San Manuel SO_2 nonattainment area comprised all of Pima and Pinal Counties (43 FR 8969; March 3, 1978) but at the request of the State of Arizona, the boundaries were subsequently reduced to eleven townships around the primary copper smelter located near San Manuel (44 FR 21261, April 10, 1979). In addition, four adjacent townships were designated as unclassified.[2] All but one of the townships that define the nonattainment area are located in southeastern Pinal County, with the remaining southernmost township located in neighboring Pima County. The current boundaries of the nonattainment and unclassified areas are codified at 40 CFR 81.303 and are defined as follows: ''Does Not Meet Primary Standards'': T8S, R16E; T8S, R17E; T8S, R18E; T9S, R15E; T9S, R16E; T9S, R17E; T9S, R18E; T10S, R15E; T10S, R16E; T10S, R17E; T11S, R16E, and ''Cannot Be Classified'': T10S, R18E; T11S, R17E; T12S, R16E; T12S, R17E.

In June of 2002, ADEQ submitted the *Final San Manuel Sulfur Dioxide Nonattainment Area State Implementation and Maintenance Plan* and redesignation request. Since then, the San Manuel copper smelter, the

[1] ''Fugitive'' in this context refers to emissions that could not reasonably pass through a stack, chimney, vent or a functionally equivalent opening.

[2] Following the enactment of the 1990 CAA Amendments, the San Manuel area was classified by operation of law as nonattainment for the primary SO_2 standards, effective on November 15, 1990.

dominant source of emissions in the area, has permanently ceased operation. In January 2005, BHP Copper Inc. (BHP Billiton) notified ADEQ that the company intended to permanently cease operating the San Manuel smelter. As indicated in Appendix B of the current SIP submittal, in March 2005, ADEQ terminated the permit for the facility. The smelter stacks were dismantled in January 2007. The smelting facility cannot reopen without submitting New Source Review (NSR) and Title V (Part 70) permit applications to ADEQ.

D. Sources of SO_2 Emissions in the San Manuel Area

Emissions inventories for the San Manuel Nonattainment Area demonstrate that, although there were other sources of SO_2 emissions, the primary source of SO_2 emissions in the San Manuel area while it was operating was the San Manuel smelter, which comprised more than 99.5 percent of total SO_2 emissions in the nonattainment area. Data show that no other point, area, or mobile sources have contributed in the past or currently contribute to the same levels of SO_2 emissions in the San Manuel Nonattainment Area as those attributed to the smelter. Figure 4.1 on page 30 of the SIP illustrates sulfur dioxide emissions levels for the San Manuel smelter from 1972 through 2005. Implementation of new emissions control technologies at the smelter in the mid 1970s and again in the late 1980s are clearly reflected in the resulting emissions reductions for these periods. Closure of the smelter reduced emissions by more than 10,000 tons of SO_2 per year.

III. CAA Requirements for Redesignation Requests and Maintenance Plans

Arizona has requested that we redesignate the San Manuel SO_2 nonattainment area to attainment. Any redesignation from nonattainment to attainment requires EPA to determine whether the requirements of CAA section 107(d)(3)(E) have been met. These criteria are: (1) At the time of the redesignation, we must find that the area has attained the relevant NAAQS; (2) the state must have a fully approved SIP for the area; (3) we must determine that the improvements in air quality are due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal regulations and other permanent and enforceable reductions; (4) the state must have met all the nonattainment area requirements applicable to the area; and (5) we must have fully approved a maintenance plan for the area under CAA section 175A.

To evaluate the State's redesignation request for the San Manuel area, we relied upon the Clean Air Act, particularly section 110 and part D (of title I), EPA's NAAQS and SIP regulations in 40 CFR parts 50 and 51, and guidance set forth in ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992), and in the following EPA guidance documents: ''Procedures for Processing Requests To Redesignate Areas to Attainment,'' dated September 4, 1992, from John Calcagni, (''Calcagni Memo''), ''Attainment Determination Policy for Sulfur Dioxide Nonattainment Areas,'' dated January 26, 1995, from Sally L. Shaver, (''Shaver Memo''), and ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' dated October 14, 1994, from Mary D. Nichols (''Nichols Memo'').

IV. EPA's Evaluation of the Redesignation Request and Maintenance Plan for the San Manuel, Arizona SO_2 Nonattainment Area

A. The Area Must Be Attaining the SO_2 NAAQS

Under CAA section 107(d)(3)(E)(i), in order for an area to be redesignated, we must determine that the area has attained the applicable NAAQS. The air quality data should be representative of the area of highest concentration and should be measured by monitors that remain at the same location for the duration of the monitoring period required for demonstrating attainment. The data should be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System database (AQS) to be available for public review. Under 40 CFR part 58, States certify data that is entered into AQS on an annual basis.

For the purposes of determining whether an area has attained the SO_2 NAAQS, we require no fewer than two consecutive years of clean data (i.e., no violations) as recorded in AQS. In addition, to qualify for attainment determination purposes, the annual average and second-highest 24-hour average concentrations must be based upon hourly data that are at least 75 percent complete in each calendar quarter. See 40 CFR 50.4.

The State of Arizona began ambient SO_2 monitoring in the San Manuel area as early as 1969.[3] Over time, an extensive monitoring network was developed with more than eighteen stationary and mobile monitoring sites. This ambient SO_2 network, comprised of EPA, state, and facility monitors, was developed as the result of extensive efforts to identify maximum ambient impact areas using diffusion modeling, monitored atmospheric dispersion parameters, citizen observations, and ambient SO_2 concentrations.

Further refinement of the monitoring network was required by the adoption of the MPR rules that established stack emissions limits for the smelter in 1979 based on permanent controls. Placement of additional monitors was accomplished with EPA consultation to further evaluate ambient impacts. Following implementation of continuous emissions control technology and compliance with emissions limits as defined in AAC R18–2–715(F) at the San Manuel smelter, the number of permanent monitors was gradually reduced to a network of four: LDS Church, Townsite, Dorm Site, and Hospital. These were all high impact ambient monitor sites found to be representative of air quality for the area. The Dorm Site and Hospital monitors were primarily fugitive impact sites. The Townsite and the LDS Church site were primarily stack impact sites. The Townsite monitor was the ''limiting site'' for the original MPR analysis.[4] These monitoring site decisions were made by ADEQ in accordance with EPA guidance.

Following the shutdown of smelting operations in 1999, the facility-operated Townsite, Dorm Site, and Hospital monitors were closed. ADEQ continues to operate a monitor at the LDS Church site. Table 1 summarizes ambient SO_2 air quality monitoring from 1997 to 2005.

[3] *Sulfur Dioxide Monitoring Network Study,* Arizona State Department of Health, Environmental Health Services, Division of Air Pollution Control, 1969.

[4] See *Ultimate Sulfur Dioxide Limits for Arizona Copper Smelters,* Moyers and Peterson, September 14, 1979.

TABLE 1.—SUMMARY OF SAN MANUEL, SULFUR DIOXIDE AMBIENT AIR QUALITY MONITORING DATA, 1997–2005 (IN μg/m³)

[Primary NAAQS: Annual average 80 μg/m³ [0.030 ppm], 24-hour average 365 μg/m³ [0.14 ppm]: 3-hour 1300 μg/m³ [0.5 ppm]]

Site or city	Annual average	Max value 3-hr average	Max value 24-Hour average	Data recovery * (valid hourly samples)
2005: LDS Church	5	16	8	8,716
2004: LDS Church	4	26	9	8,742
2003: LDS Church	4	15	8.5	8,711
2002: LDS Church (opened 3/02)	4	24	8	6,827
1999:				
LDS Church (closed 10/99)	9	204.5	56.5	6,121
Townsite	4	272.5	63	n/a
Dorm Site	4	258.5	53	n/a
Hospital	8	416	111.5	n/a
1998:				
LDS Church	21	487.5	88	8,469
Townsite	8	406.5	93	8,656
Dorm Site	8	258.5	98.5	8,714
Hospital	11	464	184	8,642
1997:				
LDS Church	12	252	63	8,589
Townsite	33	313.5	93	8,725
Dorm Site	11	386	66.5	8,751
Hospital	32	654.5	180	8,742

* **Note:** Does not include Golf Course site for 1997 (site closed August 1997). Townsite, Dorm Site, and Hospital data are as contained in BHP's monthly reports. The facility reported zero concentrations for the period 2000–2001 at the Townsite, Dorm Site, and Hospital locations. LDS Church site data for 2002–2005 were obtained from ADEQ Annual Reports. LDS Church site data for 1997–1999 were calculated from data in EPA's Air Quality System Report (October 3, 2006) by multiplying sulfur dioxide values in parts per million by 2620 to convert to micrograms per cubic meter.

After reviewing the historic ambient SO_2 monitoring data, EPA concludes the data was collected in accordance with EPA guidelines. The monitoring sites were found to be representative of air quality for the area. As required for redesignation, the nonattainment area has recorded more than eight current, consecutive quarters of quality-assured monitoring data that is free of NAAQS violations.

ADEQ had included monitoring data in Chapter 3 of the SIP. ADEQ's review of historic ambient SO_2 monitoring data in the San Manuel area collected by ADHS, BAQC, and ADEQ confirms that the primary SO_2 NAAQS has not been violated since 1979 and the secondary SO_2 NAAQS has not been violated since 1985.

In the San Manuel SIP submittal, ADEQ proposes to close the San Manuel SO_2 monitoring site effective December 31, 2007. Federal regulations at 40 CFR 58.14 allows sites to be closed under specific circumstances. ADEQ believes that the closure of the San Manuel SO_2 site meets these criteria. Specifically, the option under 40 CFR 58.14(c)(3) allows for discontinuation of a monitor within an attainment, nonattainment, or maintenance area, "* * * provided the monitor has not measured violations of the applicable NAAQS in the previous five years, and the approved SIP provides for a specific, reproducible approach to representing the air quality of the affected county in the absence of actual monitoring data." This position is supported with the information provided below.

Monitoring data for 2002 through 2006 indicate that maximum ambient concentrations were three percent or less of the NAAQS for the 3-hour standard; five percent or less of the NAAQS for the 24-hour standard; and less than seven percent of the NAAQS for the annual standard. Following the shutdown of the San Manuel ambient SO_2 monitor, ADEQ will continue to demonstrate attainment and maintenance of the SO_2 NAAQS through updates to the emissions inventory as described in the San Manuel SO_2 Maintenance Plan, March 2007. Analyses contained in the SIP demonstrate that, although there were other sources of SO_2 emissions, the San Manuel copper smelter, which permanently closed in 2005, was the primary emissions source in the nonattainment area and comprised more than 99.5 percent of total emissions while it was operating. The more than 99 percent emissions reduction due to the closure of the smelter corresponds to a greater than 92 percent reduction in 3-hour average and 24-hour average ambient SO_2 concentrations.

With the permanent closure of the San Manuel smelter, no major point sources exist in the nonattainment area. Sulfur dioxide emissions in 2017 are projected to be less than 0.5 percent of 1997 and 1998 total nonattainment area emissions, a period in which the San Manuel smelter was operating full time.

Arizona does not anticipate any substantial increase in existing point source emissions between now and 2017 for the nonattainment area. Should any growth occur due to construction of additional SO_2 point sources, the ADEQ, Pinal County Air Quality Control District (PCAQCD), and Pima County Department of Environmental Quality (PDEQ) permit programs limit all emissions as part of construction of new point sources or upgrading of existing sources. ADEQ commits to re-establish an appropriate network before any major source of SO_2 begins operations in the San Manuel planning area.

Maintenance of the SO_2 NAAQS in San Manuel area will be tracked through updates to the emissions inventory and permit applications received for SO_2 emitting sources.

Therefore, ADEQ has demonstrated, and we concur, that the closure of the San Manuel SO_2 site meets the criteria set forth in 40 CFR 58.14.[5] We also

[5] EPA sets out requirements for ambient air quality surveillance in 40 CFR part 58. After the closure of the San Manuel SO_2 monitoring site, ADEQ will continue to monitor SO_2 emissions at

Continued

conclude that the area has attained the SO_2 NAAQS.

B. The Area's Applicable Implementation Plan Must Be Fully Approved Under CAA Section 110(k)

Under CAA section 107(d)(3)(E)(ii), the SIP for the San Manuel area must be fully approved under CAA section 110(k) of the Act. We examined the applicable SIP for Arizona and also looked at the disapprovals listed in 40 CFR 52.125 and have determined that no disapprovals listed remain relevant to the applicable SIP. Arizona has a fully approved SIP with respect to SO_2 in the San Manuel area.

C. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

CAA section 107(d)(3)(E)(iii) requires that EPA determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and/or applicable federal measures. As shown in Table 1, as required for redesignation, the nonattainment area has recorded more than eight current, consecutive quarters of quality-assured, violation-free data. Monitoring data for 1997 through 1999, while the San Manuel smelter was still operating, indicate that maximum ambient concentrations were less than 55 percent of the NAAQS for the 3-hour standard, less than 59 percent of the NAAQS for the 24-hour standard, and less than 33 percent of the NAAQS for the annual standard.

Closure of the smelter in 1999 further reduced emissions and resultant ambient SO_2 concentrations. Monitoring data for 2004 through 2005 indicate that maximum ambient concentrations were two percent of the NAAQS for the 3-hour standard and less than three percent for the 24-hour standard; and less than seven percent of the NAAQS for the annual standard. Monitoring network data for the period 1997 through 2005 are presented in Table 1. Closure of the smelter has resulted in permanent and enforceable emissions reductions, as required by the CAA.

D. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Under CAA section 107(d)(3)(E)(v), we must determine whether the State of Arizona has met all requirements under section 110 and under part D (of title I) of the CAA applicable to the San Manuel SO_2 nonattainment area.

1. Section 110 Requirements

CAA section 110 contains the general requirements for SIPs (enforceable emissions limits, ambient monitoring, permitting of new sources, adequate funding, etc.). EPA's guidance for implementing section 110 of the Act is discussed in the General Preamble to Title I (57 FR 13498, April 16, 1992). Over the years, we have approved Arizona's SIP as meeting these basic requirements. The SIP includes enforceable emission limitations; requires monitoring, compiling, and analyzing of ambient air quality data; requires preconstruction review of new major stationary sources and major modifications to existing ones; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and requires stationary source emission monitoring and reporting.

2. Part D Requirements

Before an area can be redesignated to attainment, it must have fulfilled the applicable requirements under part D (of title I). For this area, the relevant requirements are found in subparts 1 and 5 of part D. Subpart 1 of part D specifies the basic requirements applicable to all nonattainment areas. Subpart 5 sets out additional provisions for areas designated nonattainment for SO_2. As discussed below, EPA finds that Arizona has met the requirements of subpart 1 of part D, specifically sections 172(c) and 176, and subpart 5 as applicable for the San Manuel SO_2 nonattainment area.

a. Section 172

CAA section 172 contains the general requirements for nonattainment SIPs. A thorough discussion of the requirements of 172(c) can be found in the General Preamble for the implementation of title I (57 FR 13498, April 16, 1992). Additional guidance can be found in the Calcagni memo.

EPA has interpreted the requirements of CAA sections 172(c)(2) (reasonable further progress—RFP), 172(c)(6) (other measures), and 172(c)(9) (contingency measures) as not relevant to a redesignation request because they only have meaning for an area that is not attaining the standard (see the General Preamble and the Calcagni Memo), and as discussed above in section IV.A. of this notice, we find that the San Manuel area is attaining the SO_2 standard. Furthermore, the State has not sought to exercise options that would trigger section 172(c)(4) (identification of certain emissions increases). Thus, this provision is not relevant to this redesignation request. The other provisions under 172(c) are discussed below.

Reasonably available control measures. Under CAA section 172(c)(1), reasonably available control measures (RACM), which include requirements for reasonably available control technology (RACT), are required for existing sources in nonattainment areas. In 1983, we approved the State's submittal of A.A.C. R9–3–315, a predecessor to the State's current smelter rules codified at A.A.C. R18–2–715. See 48 FR 1717 (January 14, 1983). This rule limited stack emissions from primary copper smelters, including the smelter which was located in the San Manuel area. We concluded, however, that the control strategy for SO_2 in Arizona's six SO_2 nonattainment areas was incomplete due to the failure to address fugitive emissions problems. See 48 FR 1717 (January 14, 1983) and 40 CFR 52.125(a)(1).

In 1998, 2003, and 2006, the State submitted amended rules (AAC R18–2–715 (sections F, G, and H), R18–2–715.01, R18–2–715.02, and R18–2–Appendix 8).[6] These rules address both fugitive and stack emissions from smelters and, in approving the rules, we found that the amended rules met the RACT requirement under CAA sections 172(c)(1) and 191(b). See 69 FR 26789 at 26788 (May 14, 2004), 69 FR 63321 (November 2, 2004), and 71 FR 18624 at 18625 (April 12, 2006). Furthermore, because the area has attained the standard, no further demonstration that RACM has been implemented need be submitted by the State.

Emissions inventory. The emissions inventory requirement of section 172(c)(3) is satisfied by the maintenance plan inventory requirements. The maintenance plan inventory is evaluated below, in section IV.E.1.

NSR permit program. Section 172(c)(5) requires new source review (NSR) permits for the construction and operation of new and modified major stationary sources located in nonattainment areas. ADEQ is the agency responsible for implementing the nonattainment area NSR permit program in the San Manuel area. Under ADEQ's rules, all new major sources and modifications to existing major

several other sites within the state. For more information about the air monitoring system in place in Arizona, the reader may wish to consult the *State of Arizona Air Monitoring Network Plan For the Year 2007* submitted by ADEQ to EPA. This report can be found on Arizona's Web site at *http://www.azdeq.gov/environ/air/monitoring/download/airmonitoring.pdf.*

[6] A more extensive summary of the regulatory history of copper smelters in Arizona is included in EPA's proposed action on these rules. See 69 FR 26786 (May 14, 2004).

sources are subject to the NSR requirements of these rules.

We have not yet fully approved the ADEQ NSR rules.[7] We have, however, determined that an area being redesignated from nonattainment to attainment does not need to have an approved NSR program prior to redesignation, provided that the area demonstrates maintenance of the standard without nonattainment NSR in effect.[8] We have determined that the maintenance demonstration for San Manuel does not rely on nonattainment NSR.

Prevention of significant deterioration (PSD) is the permitting program that applies in attainment areas. PSD was established to preserve air quality in areas that are meeting the NAAQS. The PSD program requires new or reconstructed major stationary sources or major modifications to existing major stationary sources to undergo preconstruction review and to apply best available control technology. In addition, sources are required to review air quality and other impacts, which includes analysis of PSD increment consumption and undertake preconstruction modeling ADEQ has an EPA-approved PSD permitting program AAC R18–2–406 for all criteria pollutants except respirable particulate matter (PM10). See 48 FR 19878 (May 3, 1983). The federal PSD program for PM10 was delegated to the State on March 12, 1999. ADEQ's partially-approved, partially-delegated PSD program will apply automatically to new major sources or major modifications to existing sources of SO_2 in the San Manuel area once the area is redesignated to attainment.[9]

[7] ADEQ's NSR rules are included in the preconstruction review and permitting provisions of AAC, Title 18, Chapter 2, Articles 3 and 4. EPA approved an earlier version of ADEQ's NSR requirements (AAC R9–3–302) on May 5, 1982 (47 FR 19328) and August 10, 1988 (53 FR 30200).

[8] See memorandum from Mary Nichols dated October 14, 1994 (''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment.'')

[9] PSD also applies to new major sources or major modifications in Pima County. One township of the nonattainment area is in the Pima County. The federal PSD program applies with Pima County. See 40 CFR 52.144; 48 FR 19878 (May 3, 1983). PDEQ was delegated authority for the federal PDS program in 1994.

Compliance with section 110(a)(2). Under section 172(c)(7), plan provisions submitted to satisfy part D must meet the applicable provisions of section 110(a)(2) of the CAA. As noted in section IV.B. above, the San Manuel portion of the Arizona SIP meets these requirements.

b. Section 176

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. or the Federal Transit Laws (''transportation conformity'') as well as to all other federally supported or funded projects (''general conformity''). Because EPA does not consider SO_2 a transportation-related pollutant, only the requirements related to general conformity apply to the San Manuel SO_2 area. The State of Arizona adopted general conformity criteria and procedures as a revision to the Arizona SIP. EPA approved Arizona's general conformity SIP on April 23, 1999 (64 FR 19916). Thus, the requirements of CAA section 176 have been satisfied.

c. Subpart 5

Subpart 5 of part D contains additional provisions for areas designated nonattainment for SO_2. Under CAA section 191(b), States with existing nonattainment areas for the primary SO_2 NAAQS where those areas lack fully approved SIPs, including part D plans, must submit implementation plans meeting the requirements of subpart 1 of part D. As discussed in section IV.D.2.a of this notice, the State of Arizona has met the requirements of subpart 1 of part D for the San Manuel area. Under CAA section 192(b), such areas were required to meet the primary SO_2 NAAQS as expeditiously as possibly but no later than November 15, 1995. As discussed in section IV.A of this notice, the San Manuel SO_2 nonattainment area met the primary SO_2 standards well before the applicable attainment date of November 15, 1995 and has continued to attain since then.

E. The Area Must Have a Fully Approved Maintenance Plan

Section 107(d)(3)(E)(iv) of the Act makes EPA approval of a maintenance plan meeting the requirements of section 175A another prerequisite to redesignation. Under section 175A, a maintenance plan must provide for maintenance of the NAAQS for at least 10 years after redesignation, and include any additional control measures as may be necessary to ensure such maintenance. The Calcagni Memo contains EPA guidance on the contents of maintenance plans submitted for the purposes of meeting section 175A. Generally, such plans should address the following five topics: The attainment emissions inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. Maintenance plans are to contain such contingency provisions as EPA deems necessary to assure the prompt correction of a violation of the NAAQS that occurs after redesignation. The contingency measures must include, at a minimum, a requirement that the state will implement all control measures contained in the nonattainment SIP prior to redesignation.

Lastly, under CAA Section 175A(b), states are required to submit a subsequent maintenance plan eight years after redesignation providing for maintenance of the NAAQS for an additional 10-year period beyond the initial 10-year maintenance period. ADEQ has made a commitment to submit a subsequent maintenance plan to EPA eight years into the initial 10-year maintenance period (see page 15 of the submitted plan) and thereby satisfies the requirements of Section 175A(b).

1. Attainment Emissions Inventory

As required in the Calcagni memo as one of the core provisions necessary to ensure maintenance of the relevant NAAQS in an area seeking redesignation from nonattainment to attainment, the San Manuel Maintenance Plan includes an emissions inventory for point sources, area sources, and mobile sources for 1997 through 2005 as well as a projection of emissions to 2017.

TABLE 2.—SAN MANUEL NONATTAINMENT AREA SO_2 EMISSIONS AND EMISSIONS PROJECTIONS, ALL SOURCES (TONS): 1997–2017

	Area and mobile	Point	Annual totals
1997	30	11482	11512
1998	30	10409	10439
1999	38	3625	3663
2000	36	0.7	36.7
2001	33	0.9	33.9
2002	26	0.3	26.3
2003	n/a	0.2	≥0.2
2004	n/a	0.7	≥0.7
2005	27	0.6	27.6
2010	29	4.3	33.3
2015	30	4.3	34.3
2017	31	4.3	35.3

Note: Sulfur dioxide emissions in 2017 are projected to be less than 0.5 percent of 1997 and 1998 total nonattainment area emissions, a period in which the San Manuel smelter was operating full time.

Based on our review of the submitted plan, we conclude that the current and projected emissions inventories are based on reasonable methods and assumptions and are comprehensive and accurate.

2. Maintenance Demonstration

EPA allows states to demonstrate maintenance of the NAAQS by either showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS.[10] When ADEQ first submitted a maintenance plan for the San Manuel area in 2002, the plan contained a modeling exercise. In January 2005, BHP Copper Inc. (BHP Billiton) notified ADEQ of the company's intent to permanently cease operations and remove all equipment and buildings at their San Manuel smelting facility. In March 2005, ADEQ terminated the permit for the facility. Closure of the smelter reduced SO_2 emissions in the San Manuel area by more than 10,000 tons per year. Based on monitored data, the area had already attained the SO_2 ambient air quality standards. Annual ambient concentrations measured from 1997 through 1999 were less than 42 percent of the NAAQS and maximum 24-hour concentrations were less than 59 percent of the NAAQS.[11] ADEQ subsequently withdrew the 2002 maintenance plan, but included the modeling exercise in Appendix A of the current submittal. Since the modeling exercise demonstrated that the area could maintain the standard while the smelter was operating, we concur with the state that maintenance of the standard will continue since the smelter is no longer operating.

In addition, the projected inventory from the San Manuel SO_2 Maintenance Plan shows that emissions in the area are estimated to remain well below attainment period levels in 2017, the 10th year after redesignation. Although there is slight growth in total emissions from 2005 to 2017, projected 2017 emissions are 0.3 percent of 1998 emissions levels, due largely to the cessation of smelter operations. Therefore, we conclude that the San Manuel SO_2 maintenance plan contains an adequate maintenance demonstration.

3. Monitoring Network

Once an area has been redesignated, in accordance with 40 CFR Part 58, the State is required to continue operation of an appropriate air quality monitoring network to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification.

EPA allows a state to discontinue a monitor within a nonattainment or maintenance area provided the monitor has not measured violations of the applicable NAAQS in the previous five years, and the approved SIP provides for a specific, reproducible approach to representing the air quality of the affected area in the absence of actual monitoring data. Because the primary source of SO_2 emissions in the nonattainment area permanently closed and recorded air quality data for 2002 through 2005 indicate that maximum ambient concentrations are less than seven percent of the primary and secondary NAAQS, ADEQ intends to discontinue monitoring at this site.

EPA concurs with ADEQ's decision to discontinue SO_2 monitoring in the San Manuel area. Since the main source of SO_2 emissions has been permanently shut down and dismantled there is no longer any reason to monitor for this pollutant at this time. Section 7.2 of the SIP states that ADEQ commits to reestablishing an appropriate SO_2 monitoring network in the San Manuel area before any future major source of SO_2 begins operations in the San Manuel planning area.

4. Verification of Continued Attainment

ADEQ intends to track the progress of the San Manuel SO_2 Maintenance Plan through implementation and enforcement of the monitoring, reporting, and certification procedures to which permitted sources are subject under AAC R18–2–306 and R18–2–309. ADEQ anticipates no relaxation of any implemented control measures used to attain and maintain the ambient air quality standards.

Maintenance of the SO_2 NAAQS in San Manuel area will be tracked through updates to the emissions inventory and permit applications received from SO_2 emitting sources. The projected inventory from the San Manuel SO_2 Maintenance Plan shows that emissions in the area are estimated to remain well below attainment period levels in 2017, the 10th year after redesignation. Although there is slight growth in total emissions from 2005 to 2017, projected 2017 emissions are 0.3 percent of 1998 emissions levels, due largely to the cessation of smelter operations. The PCAQCD and PDEQ have authority for sources under their jurisdiction.

Considered together, the submitted plan and relevant state and local EPA-approved regulations adequately provide for verification of continued attainment of the SO_2 NAAQS in the San Manuel area.

[10] See Calcagni Memo., at p. 9.

[11] See page 8 of Appendix A of ADEQ's submittal.

5. Contingency Plan

Section 175A(d) of the CAA requires that maintenance plans include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area. The Calcagni memo provides additional guidance, noting that although a State is not required to have fully-adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved, the maintenance plan should ensure that the contingency measures are adopted expediently once they are triggered. Specifically, the maintenance plan should clearly identify the measures to be adopted, include a schedule and procedure for adoption and implementation of the measures, and contain a specific time limit for action by the State. In addition, the State should identify specific indicators, or triggers, that will be used to determine when the contingency measures need to be implemented.

The only threat to the SO_2 NAAQS in this planning area is from new sources. Because the primary source of SO_2 emissions in the San Manuel area is permanently closed, measures to ensure continued attainment of the SO_2 NAAQS are PSD permitting requirements. Any new source proposing to operate in the San Manuel area is subject to the provisions of A.A.C. R18–2–403, ''Permits for Sources Located in Nonattainment Areas,'' and those in A.A.C. R18–2–406, ''Permit Requirements for Sources Located in Attainment and Unclassified Areas.'' With our redesignation of San Manuel, they will only be subject to A.A.C. R18–2–406. These programs address NSR and PSD requirements applicable to SO_2 sources. Under the PSD program, new major stationary or major modifications to existing major sources are required to undergo preconstruction review before the facility is constructed, modified, or reconstructed, and to apply Best Available Control Technology (BACT). If a new source is not a major source, it may still be required to obtain a permit under minor source permitting rules at AAC R18–2-Article 3.[12]

Upon review of the contingency plan summarized above, we find that ADEQ has established a workable contingency plan for the San Manuel area. Since ADEQ anticipates no relaxation of any implemented control measures, and commits to submit to us any changes to rules or emission limits applicable to SO_2 sources, as well as committing to maintain the necessary resources to promptly correct any violations of the SO_2 NAAQS that occur after the redesignation of the San Manuel area to attainment, the State thereby satisfies the requirements of CAA section 175A(d).

6. Subsequent Maintenance Plan Revisions

As noted previously, CAA section 175A(b) requires states to submit a subsequent maintenance plan revision eight years after the redesignation request is approved by EPA. The subsequent maintenance plan is to provide for maintenance of the NAAQS for an additional 10 years following the first 10-year maintenance period. ADEQ has made a commitment to submit a subsequent maintenance plan to EPA eight years into the initial 10-year maintenance period (see page 15 of the submitted plan) and thereby satisfies CAA section 175A(b).

7. Conclusion

ADEQ's *Final State Implementation Plan Revision, San Manuel Sulfur Dioxide Nonattainment Area*, March 2007 adequately addresses the five basic topics that maintenance plans should address, including attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan, and also provides for submittal of a subsequent maintenance plan. Therefore, we approve the San Manuel SO_2 Maintenance Plan as a revision to the Arizona SIP and thereby satisfy the related redesignation criteria of CAA section 107(d)(3)(E)(iv).

V. Public Comment and EPA's Final Action

As authorized under section 110(k)(3) of the Act, EPA is approving the Final State Implementation Plan Revision, San Manuel Sulfur Dioxide Nonattainment Area, March, 2007 as submitted by ADEQ on June 7, 2007, as a revision to the Arizona SIP. In so doing, we find that the maintenance plan meets the requirements for such plans under CAA section 175A.

EPA is also approving the State of Arizona's request for redesignation of the San Manuel area from nonattainment to attainment for the SO_2 NAAQS based on our conclusion that all of the redesignation criteria in CAA section 107(d)(3)(E) have been satisfied. Specifically, we find that (1) the San Manuel area has attained the SO_2 NAAQS; (2) Arizona has a fully approved SIP for the San Manuel area; (3) the improvements in air quality in the San Manuel area are due to permanent and enforceable reductions in emissions resulting from the permanent closure of the smelter and from implementation of EPA's Title V permit conditions; (4) Arizona has met all of the nonattainment area requirements applicable to the San Manuel area; and (5) the State's submitted maintenance plan meets all relevant CAA requirements and is being approved in this notice.

EPA is finalizing this action without proposing it in advance because the Agency views this action as noncontroversial and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same maintenance plan and request for redesignation of the San Manuel, AZ SO_2 area. If we receive adverse comments by February 19, 2008, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on March 18, 2008. This will approve the redesignation request and maintenance plan submitted by Arizona on June 7, 2007.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

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 approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic

[12] Pima and Pinal counties have their own air pollution control agencies and have jurisdiction over stationary sources of air pollutants within their counties, except for refineries, copper smelters, coal-fired power plants, Portland cement plants, or portable sources that will operate in multiple counties. These sources must obtain permits from ADEQ. Facilities located on most Indian lands in Arizona are under the jurisdiction of U.S. EPA.

impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission; to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the 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 *March 18, 2008.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

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

Dated: December 20, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(140) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(140) The following plan was submitted on June 7, 2007 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality. *(1) Final Arizona State Implementation Plan Revision, San Manuel Sulfur Dioxide Nonattainment Area,* March 2007, Arizona Department of Environmental Quality.

PART 81—[AMENDED]

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

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

■ 4. In § 81.303 the table entitled ''Arizona—SO_2'' is amended by revising the entry for the ''San Manuel'' area to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * *	*	*	*	*
San Manuel:				
T8S, R16E				X
T8S, R17E				X
T8S, R18E				X
T9S, R15E				X
T9S, R16E				X
T9S, R17E				X

ARIZONA—SO_2—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
T9S, R18E				X
T10S, R15E				X
T10S, R16E				X
T10S, R17E				X
T11S, R16E				X
T10S, R18E				X
T11S, R17E				X
T12S, R16E				X
T12S, R17E				X
* * * * * * *				

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 488

[CMS–2278–IFC3]

RIN 0938–AP22

Revisit User Fee Program for Medicare Survey and Certification Activities

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

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period implements the continuation of the revisit user fee program for Medicare Survey and Certification activities, in accordance with the statutory authority in the Continuing Appropriations Resolution entitled, ''Making further continuing appropriations for the fiscal year 2008, and for all other purposes,'' Public Law 110–137 (''Continuing Resolution'') passed by the Congress and signed by the President on December 14, 2007. On September 19, 2007, we published a final rule that established a system of revisit user fees applicable to health care facilities that have been cited for deficiencies during initial certification, recertification or substantiated complaint surveys and require a revisit to confirm that previously-identified deficiencies have been corrected.

DATES: *Effective date:* These regulations are effective January 18, 2008, and applicable beginning December 14, 2007.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on March 18, 2008.

ADDRESSES: In commenting, please refer to file code CMS–2278–IFC3. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

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

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

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2278–IFC3, P.O. Box 8010, Baltimore, MD 21244–8016.

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

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2278-IFC3, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

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

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

FOR FURTHER INFORMATION CONTACT: Kelley Tinsley, (410) 786–6664.

SUPPLEMENTARY INFORMATION: *Submitting Comments:* As the public was provided an opportunity to comment on the substance of the rule during the comment period prior to the publication of the September 19, 2007 final rule, and as the substance of the rule is not changed by this interim final rule with comment period, we are accepting comments only to the extent that they pertain to the applicability of the new authority for the rule. You can assist us by referencing the file code CMS–2278–IFC3.

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

Regulations'' on that Web site to view public comments.

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

SUPPLEMENTARY INFORMATION:

I. Background

In the June 29, 2007 **Federal Register** (72 FR 35673), we published the proposed rule entitled, ''Establishment of Revisit User Fee Program for Medicare Survey and Certification Activities'' and provided for a 60-day comment period. In the September 19, 2007 **Federal Register** (72 FR 53628) we published the Revisit User Fee Program final rule. That final rule set forth final requirements and a final fee schedule for providers and suppliers who require a revisit survey as a result of deficiencies cited during an initial certification, recertification, or substantiated complaint survey.

The Centers for Medicare & Medicaid Services (CMS) has in place an outcome-oriented survey process that is designed to ensure that existing Medicare-certified providers and suppliers or providers and suppliers seeking initial Medicare certification, meet statutory and regulatory requirements, conditions of participation, or conditions for coverage. These health and safety requirements apply to the environments of care and the delivery of services to residents or patients served by these facilities and agencies. The Secretary of the Department of Health and Human Services (HHS) has designated CMS to enforce the conditions of participation/coverage and other requirements of the Medicare program. The revisit user fee will be assessed for revisits conducted in order to determine whether deficiencies cited as a result of failing to satisfy federal quality of care requirements have been corrected.

Pursuant to the requirements of the Continuing Appropriations Resolution budget bill for fiscal year (FY) 2007, the Secretary directed CMS to implement the revisit user fees for FY 2007 for certain providers and suppliers for which a revisit was required to confirm that previously-identified failures to meet federal quality of care requirements had been remedied. The fees recover the costs associated with the Medicare Survey and Certification program's revisit surveys. The primary purpose for implementing the revisit user fees is to ensure the continuance of CMS Survey and Certification quality assurance activities that improve patient care and safety. The fees became effective upon publication September 19, 2007, when the final rule was published.

II. Provisions of the Interim Final Rule

The current Continuing Resolution, Public Law 110–137, amends Public Law 110–16 Division B by striking the date specified in section 106(3) and inserting 'December 21, 2007'. The current Continuing Resolution authorizes HHS to continue to impose revisit user fees until December 21, 2007, as follows:

* * * Sec. 101. Such amounts as may be necessary, at a rate for operations as provided in the applicable appropriations Acts for fiscal year 2007 and under the authority and conditions provided in such Acts, for continuing projects or activities (including the costs of direct loans and loan guarantees) that are not otherwise specifically provided for in this joint resolution, that were conducted in fiscal year 2007, and for which appropriations, funds, or other authority were made available in the following appropriations Acts:

* * * * *

(3) The Continuing Appropriations Resolution, 2007 (division B of Pub. L. 109–289, as amended by Pub. L. 110–5). (*H.J. Res. 20, § 101 (2007)*).

Sec. 106. Unless otherwise provided for in this joint resolution or in the applicable appropriations Act for fiscal year 2008, appropriations and funds made available and authority granted pursuant to this joint resolution shall be available until whichever of the following first occurs: * * *

(3) December 21, 2007.

As directed by the Secretary, in the September 19, 2007 **Federal Register** (72 FR 53628), we established the revisit user fee program for revisit surveys. We put forth in regulation the relevant definitions, criteria for determining the fees, the fee schedule, procedures for the collection of fees, the reconsideration process, enforcement and regulatory language addressing enrollment and billing privileges, and provider agreements. In the September 19, 2007 final rule, cost projections were based on FY 2006 actual data and were expected to amount to $37.3 million for FY 2007. These calculations were included in section IV of the final rule (72 FR 53642).

We stated in the final rule that, ''if authority for the revisit user fee is continued, we will use the current fee schedule in [the final rule] for the assessment of such fees until such time as a new fee schedule notice is proposed and published in final form.'' (72 FR 53628). The current Continuing Resolution continues the authority of the FY 2007 Continuing Resolution from December 14, 2007 through December 21, 2007. Accordingly, the revisit fees will continue to be assessed for the entire time period authorized by the current Continuing Resolution.

III. Response to Comments

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

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule in accordance with *5 U.S.C. 553(b)* of the Administrative Procedure Act (APA). The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. We find that the notice-and-comment procedure is unnecessary in this circumstance because providers and suppliers have already been provided notice and an opportunity to comment on the substance of this rule. This interim final rule with comment merely updates the Congressional authority under which the rule operates.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day public comment period.

We ordinarily provide a 30-day delay in the effective date of the provisions of a rule in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 553(d). However, the delay in the effective date may be waived as, in pertinent part, ''provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The Secretary finds that good cause exists to waive the 30-day effective date delay.

The good cause exception to the 30-day effective date delay provision of section 553(d) of the APA is read to be broader than the good cause exception to the notice and comment provision of section 553(b) of the APA.

The legislative history of the APA indicates that the purpose for deferring the effectiveness of a rule under section 553(d) was to ''afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take other action which the issuance may prompt.'' S. Rep. No. 752, 79th Cong., 1st Sess. 15 (1946); H.R. Rep. No. 1980, 79th Cong. 2d Sess. 25 (1946). In this case, affected parties do not need time to adjust their behavior before this rule takes effect. This rule merely updates the authority under which the revisit fee is assessed and does not provide any additional requirements for the affected parties. Moreover, with or without a revisit fee, a provider or supplier must be found to have corrected significant deficiencies in order to avoid termination. Additionally, the application of a fee for the revisit does not place appreciable administrative burdens on the affected providers or suppliers. We do not expect appreciable cost to State survey agencies because we are undertaking the billing and collection of the revisit user fee.

We identified in the September 19, 2007 final rule the immediacy of this revisit user fee program and the specific statutory requirement contained limited in the Continuing Resolution that required us to implement the revisit user fee program in FY 2007. Accordingly, providers and suppliers have been on notice for some time that these fees will be imposed, and do not need additional time to be prepared to comply with the requirements of this regulation. We believe that given the short timeframe that we have to collect fees before the statutory authority of the current Continuing Resolution expires, there is good cause to waive the 30-day effective date.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Analysis

A. Overall Impact

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

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This rule is not a major rule. The aggregate costs will total approximately $37.3 million in any one year.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. Small businesses are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.9 million or less in any one year for purposes of the RFA. The September 19, 2007 final rule provided an analysis on the impact of small entities (72 FR 53642–3). The analysis published in the final rule remains valid. Since this interim final rule with comment merely updates the Congressional authority under which the rule operates, we have determined that this rule will not have a significant impact on small entities based on the overall effect on revenues.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan statistical Area (superseded by Core Based Statistical Areas) and has fewer than 100 beds. This rule affects those small rural hospitals that have been cited for a deficiency based on noncompliance with required conditions of participation and for which a revisit is needed to ensure that the deficiency has been corrected. We identified in the September 19, 2007 final rule that for the effective period of that rule that less than 3 percent of all hospitals may be assessed a revisit user fee and that less than 1 percent of those hospitals would be rural hospitals (72 FR 53643). The analysis published in the final rule remains valid. Since this interim final rule with comment merely updates the Congressional authority under which the rule operates, we maintain that this rule will not have a significant impact on small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This interim final rule with comment will have no mandated effect on State, local, or tribal governments and the impact on the private sector is estimated to be less than $120 million and will only effect those Medicare providers or suppliers for which a revisit user fee is assessed based on the need to conduct a revisit survey to ensure deficient practices that were cited have been corrected.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This interim final rule with comment will not substantially affect State or local governments. This rule establishes user fees for providers and suppliers for which CMS has identified deficient practices and requires a revisit to assure that corrections have been made. Therefore, we have determined that this interim final rule with comment will not have a significant effect on the rights, roles, and responsibilities of State or local governments.

B. Impact on Providers/Suppliers

There is no change on the impact on providers and suppliers with the publication of this interim final rule with comment. The impact remains as discussed in the final rule (72 FR 53643).

Final Fee Schedule for Onsite and Offsite Revisit Surveys

The FY 2007 fee schedule published on September 19, 2007 (72 FR 53647) in the final rule will be retained. As noted in the final rule, the published fee schedule will be used by CMS for the assessment of fees until a new fee schedule is proposed and published in final form. The calculations used to

determine the fee as identified in the final rule will be the same (72 FR 53645–6). We will continue to assess a flat fee based on provider or supplier type and type of revisit survey conducted. Table A below identifies the final fee schedule.

TABLE A.—FINAL FEE SCHEDULE

Facility	Fee assessed per offsite revisit survey	Fee assessed per onsite revisit survey
SNF & NF	$168	$2,072
Hospitals	168	2,554
HHA	168	1,613
Hospice	168	1,736
ASC	168	1,669
RHC	168	851
ESRD	168	1,490

Costs for All Revisit User Fees Assessed

We anticipated that the combined costs for all providers and suppliers for all revisit surveys in FY 2007 would total approximately $37.3 million on an annual basis, with onsite revisit surveys amounting to approximately $34.6 million and offsite revisit surveys totaling approximately $2.7 million. (72 FR 53645). However, actual fees assessed in FY 2007 were much less than this amount, since CMS did not charge for revisits that occurred prior to publication of the final regulation. Since we continue to operate under this same estimate for FY 07, we provide below monthly estimates of the impact for the period of the current Continuing Resolution in Tables B and C. For the period of the current Continuing Resolution, we will use the FY 2007 fee schedule established in the final rule for the assessment of fees until a new fee schedule notice is proposed and published as final.

In Table B below, we provide the projected costs for the period of this current Continuing Resolution based on the fee schedule of the final rule. We expect the combined costs for all providers and suppliers for all onsite revisit surveys for the period of this current Continuing Resolution to total approximately $665,000. We first multiplied the total number of onsite revisit surveys in one year by the expected revisit user fees assessed per revisits as finalized in Table A above, estimated by provider or supplier, to obtain the annual cost of revisit surveys. We then divided this number by 52 to obtain the weekly cost per provider or supplier of onsite revisit surveys to obtain the total costs for onsite revisit surveys for the period of the current Continuing Resolution (roughly 1 week). We then totaled all providers and suppliers to achieve the total costs for all onsite revisit surveys for the period of this current Continuing Resolution.

TABLE B.—ONSITE REVISIT SURVEYS—ESTIMATED WEEKLY COSTS

Facility	Number of onsite revisit surveys (FY 2006)	Fee assessed per onsite revisit surveys (hrs x $112)	Number of onsite revisit surveys est. for 1 week *	Monthly costs for onsite revisit surveys **
SNF & NF	14,288	$2,072	275	$569,321
Hospitals	575	2,554	11	28,241
HHA	1,068	1,613	21	33,128
Hospice	256	1,736	5	8,546
ASC	95	1,669	2	3,049
RHC	149	851	3	2,438
ESRD	698	1,490	13	20,000
Total	17,129	.....	330	664,723

* Estimated total numbers of onsite revisit surveys per week were rounded up after dividing yearly survey totals from FY 2006 actual data by 52.
** Weekly costs may differ from the multiple of weekly revisits and fee per revisit due to rounding.

We expect the combined costs for all providers and suppliers for all offsite revisit surveys to total $52,905 for the period of the current Continuing Resolution. In Table C below, we first estimated by provider or supplier the number of offsite revisit surveys expected for an entire fiscal year, and multiplied this number by the expected revisit user fee of $168 per offsite revisit survey to obtain the annual cost of surveys. We then divided this number by 52 to obtain the weekly cost of offsite revisit surveys to obtain the total costs for offsite revisit surveys for the period of the current Continuing Resolution (roughly 1 week).

TABLE C.—OFFSITE REVISIT SURVEYS—ESTIMATED WEEKLY COSTS

Facility	Number of offsite revisit surveys (FY 2006)	Fee assessed per offsite revisit survey ($112 x 1.5 hrs)	Number of offsite revisit surveys est. for 1 week *	Weekly costs for offsite revisit surveys **
SNF & NF	15,138	$168	291	$48,907
Hospitals	278	168	5	898
HHA	517	168	10	1,670
Hospice	51	168	1	168
ASC	93	168	2	300
RHC	67	168	1	216
ESRD	231	168	4	746
Total	16,375	.....	314	52,905

* Estimated total numbers of offsite revisit surveys per week were rounded up after dividing yearly survey totals from FY 2006 actual data by 52.
** Weekly costs may differ from the multiple of weekly revisits and fee per revisit due to rounding.

As shown in Table D below, we provide the aggregate costs expected as projected for the entire FY 2007, as well as the costs we would expect to offset for the period of the current Continuing Resolution.

TABLE D.—TOTAL COSTS COMBINED FOR ALL REVISITS SURVEYS PER FISCAL YEAR & PERIOD OF CR

	FY 2007	Period of CR *
Onsite Revisit Surveys	$34,565,760	$664,723
Offsite Revisit Surveys	2,751,000	52,905
Total Costs All Revisits	37,316,760	717,628

* CR period's costs are based on CR period revisit surveys rounded up to the nearest whole number as shown in Table B & C.

E. Alternatives Considered

We considered a number of alternatives to the revisit user fee program. Such alternatives were discussed in the final rule published on September 19, 2007 (72 FR 53647). We affirm the continuing validity of that analysis. The current Continuing Resolution provides CMS with the authority to continue projects or activities as was otherwise provided for in FY 2007, and as such CMS is required to publish an interim final rule with comment. This interim final rule with comment merely updates the Congressional authority under which the rule operates.

In accordance with Executive Order 12866, this rule was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 488

Administrative practice and procedure, Health facilities, Medicare, Reporting and recording requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, part 488 as set forth below:

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 488 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302 and 1395(hh)); Continuing Resolution Pub. L. 110–137 H.J. Res. 69.

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

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 4, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: January 15, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. E8–895 Filed 1–17–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

Foreign Acquisition

CFR Correction

In Title 48 of the Code of Federal Regulations, Chapter 1 (Parts 1 to 51), revised as of October 1, 2007, on page 508, in section 25.1101, in paragraph (b)(2)(iii), remove ''$58,550'' and add ''$64,786'' in its place.

[FR Doc. 08–55501 Filed 1–17–08; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 73, No. 13
Friday, January 18, 2008

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 293

RIN 3260–AL24

Personnel Records

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to achieve a consistent and effective policy for the use of Social Security Numbers by Federal agencies to combat fraud and identity theft. Federal agencies must reduce the threat of identity theft by eliminating the unnecessary use and collection of Social Security Numbers. This proposed regulation imposes significant restrictions on the use of Social Security Numbers throughout the Federal Government and is consistent with the recommendations made by the President's Identity Theft Task Force.

DATES: Comments must be received on or before March 18, 2008.

ADDRESSES: Send or deliver written comments to the Deputy Associate Director for Workforce Information and System Requirements, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7439, 1900 E Street, NW., Washington, DC 20415–8200; by fax at (202) 606–4891.

FOR FURTHER INFORMATION CONTACT: Leroy McKnight, by telephone at (202) 606–4054; by fax at (202) 606–1719; or by e-mail at *Leroy.Mcknight@opm.gov.*

SUPPLEMENTARY INFORMATION: In an effort to better protect sensitive personal information, particularly Social Security Numbers (SSNs), Federal agencies must take immediate action to restrict the unnecessary use of this important personal identifier. Continued exposure of individuals' SSNs increases their vulnerability to identity theft and other harmful situations. While some Federal agencies have taken steps to reduce the use of SSNs in certain functions, inconsistencies in approaches and standards for protecting the SSN creates a risk that can lead to misuse. The Office of Personnel Management (OPM) has been working with the President's Identity Theft Task Force and the agencies on a number of identity theft protection initiatives, and was tasked with issuing formal guidance to the agencies on the appropriate ways to restrict the use, and conceal the SSNs in employee records and human resources information systems. OPM issued formal guidance to the Federal Chief Human Capital Officers on June 18, 2007, to help agencies achieve a consistent and effective policy for safeguarding the Social Security Numbers of Federal employees. A copy of the guidance package can be obtained by going to *http://www.chcoc.gov.* These proposed regulations are intended to update OPM's regulations governing personnel records so they are consistent with that guidance. These proposed regulations impose significant restrictions on the use of SSNs, leading to enhanced protection of sensitive personal information. Applying the guidance and regulations is a first step in protecting the personal identity of Federal employees.

Efforts are underway to develop requirements for a new Government-wide employee identifier which will replace the Social Security Number as the primary employee identifier. Once this new employee identifier is established, Federal agencies will have a viable alternative to the use of SSNs in their business activities. The use of this new employee identifier as a substitute for the SSN would diminish the risk of identity theft by eliminating the unnecessary use of the SSN as an employee identifier in many situations.

OPM is proposing the following specific changes, which we believe will assist Federal agencies in their efforts to combat fraud and identity theft:

In § 293.102 we are proposing to add definitions of *Exposure*, and *Primary Key*, which are new terms used in the proposed regulations.

In § 293.105, which addresses restrictions on collection and use of information, we propose to add paragraphs (b)(3) through (13). These new paragraphs provide agencies with specific information on the appropriate and inappropriate use of employee Social Security Numbers in employee records and human resources information systems.

OPM also proposes to add paragraphs (a)(8) through (10) to § 293.107, which requires special safeguards for automated records. The additional paragraphs will ensure that agencies know what they must do to improve their data security measures. These safeguards pertain specifically to improving the protection of employee Social Security Numbers.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 293

Government employees, Privacy, Records.

Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, OPM proposes to amend 5 CFR part 293 as follows:

PART 293—PERSONNEL RECORDS

1. The authority citation for part 293 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a, 1103, 1104, 1302, 2951(2), 3301, and 4315; E.O. 12107 (December 28, 1978), 3 CFR 1954–1958 Comp.; 5 CFR 7.2; E.O. 9830; 3 CFR 1943–1948 Comp.

Subpart A—Basic Policies on Maintenance of Personnel Records

2. In § 293.102 the definitions of *Exposure* and *Primary Key* are added in alphabetical order as follows:

§ 293.102 Definitions.

* * * * *

Exposure means the unprotected display, storage, and transmission of personally identifiable information (PII), e.g., Social Security Numbers;

* * * * *

Primary Key means a particular item chosen to uniquely identify a specific individual or to associate information

with a specific individual in an automated environment;

* * * * *

3. In § 293.105, paragraphs (b)(3) through (13) are added to read as follows:

§ 293.105 Restrictions on collection and use of information.

* * * * *

(b) * * *

(3) If Social Security Numbers are collected, they will be collected only at the time of the employee's appointment to be entered into the human resources and payroll systems. The collection tool (if paper-based) will be stored in a protected location to guard against exposure until it is no longer required. The Guide to Personnel Recordkeeping will be used to determine retention requirements for certain paper-based collection tools. Disposal of all paper-based collection tools (i.e., forms, letters, and other correspondence) will be in accordance with the General Record Schedule issued by the National Archives and Records Administration.

(4) Agencies may not use the Social Security Number as an employee's primary key, i.e., unique identifier, in internal or external data processing activities.

(5) Agencies must ensure that Social Security Numbers are not printed, e.g., on forms, or reports, or displayed on computer display screens.

(6) Access to Social Security Numbers must be restricted to those individuals whose official duties require such access. A listing of all individuals with access authorization based on legitimate business needs must be maintained and reviewed for continued applicability.

(7) Agencies must ensure, through appropriate annual training and educational programs, including training on Privacy Act and Freedom of Information Act requirements, that those individuals who are authorized to access Social Security Numbers understand their responsibility to protect sensitive and personal information. This responsibility includes securing this information when working from home or another remote location.

(8) Agencies must use privacy and confidentiality statements that describe accountability clearly and warn of possible disciplinary action for unauthorized release of the Social Security Number and other personally identifiable information. These statements must be signed by all individuals who have access to Social Security Numbers.

(9) Agencies must ensure their telework policies and written agreements are in compliance with Federal privacy protection policies, including policies governing protection of personally identifiable information, e.g., Social Security Numbers.

(10) Agencies must require supervisory approval before authorized individuals may access, transport, or transmit information containing a Social Security Number outside of the agencies' facilities. Electronic records containing Social Security Numbers must be transported or transmitted in an encrypted or protected format as prescribed in all established guidance regarding the protection of sensitive agency information. Paper-based records containing Social Security Numbers must be transported in wheeled containers, portfolios, briefcases, or similar devices that can be locked when not in use. In addition, these containers must be identifiable by tag or decal with contact and mailing address information.

(11) Agencies must ensure access to Social Security Numbers, including access involving data entry, printing, and screen displays, occurs in a protected location to guard against exposure.

(12) Agencies must ensure all security incidents involving personally identifiable information, especially Social Security Numbers, are reported in accordance with all established guidance regarding the reporting of incidents involving personally identifiable information. In addition, agencies must inform all employees of all established incident reporting requirements annually.

(13) Agencies must ensure all authorized disclosures of information containing Social Security Numbers and other personally identifiable data are made in accordance with established regulations and procedures.

4. In § 293.107, paragraphs (a)(8) through (10) are added to read as follows:

§ 293.107 Special safeguards for automated records.

(a) * * *

(8) Minimize the risk of unauthorized disclosure of Social Security Numbers during data entry activities by concealing the Social Security Number on the screens.

(9) Assure adequate internal control procedures to properly monitor authorized and unauthorized access to Social Security Numbers and other personally identifiable data.

(10) Assure all Social Security Number safeguards and protection rules are enforced in both test and production environments.

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[FR Doc. E8–858 Filed 1–17–08; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC14

Common Crop Insurance Regulations; Dry Pea Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations; Dry Pea Crop Insurance Provisions to include the insurability of additional types of dry peas, to offer winter coverage, to allow replanting payments, and to make chickpeas insurable under the Dry Pea Crop Provisions rather than the Dry Bean Crop Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy provisions to better meet the needs of the producers, and to reduce vulnerability to program fraud, waste, and abuse. The changes will apply for the 2009 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business March 18, 2008 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments, titled ''Dry Pea Crop Provisions'', by any of the following methods:

- *By Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205.
- *By Express Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, 9240 Troost Avenue, Kansas City, MO 64131–3055.
- *E-mail: DirectorPDD@rma.usda.gov.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST,

Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Claire Elsea, Economist, Product Management, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through June 30, 2008.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to revise 7 CFR part 457, Common Crop Insurance Regulations, by amending § 457.140 Dry Pea Crop Insurance Provisions, to be effective for the 2009 and succeeding crop years. Several requests have been made for changes to improve the coverage offered, address program integrity issues, simplify program administration, and improve clarity of the policy provisions.

The proposed changes are as follows:

1. Section 1—FCIC proposes to revise the definition of ''base price'' to delete the word ''processor'' and add ''seed company'' since the contract is with a seed company, not a processor.

FCIC also proposes to revise the definition of ''contract seed peas.'' Proposed language makes coverage available to fall and spring planted acreage. FCIC now proposes to insure fall planted acreage. Therefore, it must be included in the definition of ''contract seed peas.'' FCIC also proposes to remove the requirement that acreage must be enrolled in the seed certification program administered by the state in which the peas are produced because some states no longer administer seed certification programs. Therefore, enforcing this requirement could limit the availability of crop insurance for contract seed pea producers.

FCIC proposes to revise the definition of ''dry peas'' to allow insurability of additional types of dry peas. Currently, only spring planted smooth green and yellow types of commercial dry peas, peas grown for seed, fall planted types of Austrian Winter peas if provided for in the Special Provisions, all spring planted types of lentils, and all types of contract seed peas are insurable. FCIC proposes to amend these provisions to remove the specific types that are insurable and to specify that the insurable types will be contained in the Special Provisions. FCIC also proposes to insure chickpeas (a.k.a. garbanzo beans) under the Dry Pea Crop Provisions. Chickpeas are currently insurable under the Dry Bean Crop Provisions only. However, the agronomical and physiological traits of chickpeas are more similar to dry peas and lentils than dry beans. This change will also simplify the crop insurance program by allowing producers of dry peas, lentils and chickpeas to purchase coverage for these crops under one policy.

FCIC proposes to clarify the definition of ''harvest'' by adding the following sentence ''Dry peas that are swathed prior to combining are not considered harvested.'' Swathing is a step in the harvest process but the seed is not removed from the plant until the crop is combined.

FCIC proposes to revise the definition of ''local market price'' to specify that factors not associated with grading under United States Standards for Whole Dry Peas, Split Peas and the Lentils will not be considered unless otherwise specified on the Special Provisions. The intent of this change is to standardize the grading standards to be used in quality adjustment, recognizing that there may be circumstances where it may be necessary to deviate from such standards. If such circumstances arise, the proposed change provides the flexibility to make changes through the Special Provisions, if necessary.

FCIC proposes to revise the definition of ''nurse crop (companion crop)'' for clarity and to be consistent with the definition of ''nurse crop (companion crop)'' in the Small Grains Crop Provisions.

FCIC proposes to revise the definition of ''practical to replant'' to reference the addition of fall planted dry peas. As stated above, insurance coverage will now be provided for fall planted dry peas. Therefore, the conditions under which it will not be considered practical to replant fall planted dry peas must be specified because the conditions are not the same as for spring planted dry peas.

FCIC proposes to revise the definition of ''price election'' to provide clarification that the price election is used to determine premium and any indemnity for contract seed peas under this policy.

FCIC proposes to revise the definition of ''seed company contract'' to remove the word ''varieties'' and add the word ''types'' in both places. This change is necessary because FCIC has proposed to insure categories of dry peas that will be contained in the Special Provisions to allow the flexibility to add new types as appropriate.

FCIC proposes to add a definition of ''swathed'' to describe the process that is used by producers prior to combining the crop because a crop that has only been swathed is not considered harvested.

FCIC proposes to add a definition of ''type'' because FCIC has proposed to refer to the categories that may be insured as ''types,'' and specify that the insured types will be contained in the Special Provisions, which will allow additional types to be quickly added as appropriate.

FCIC proposed to add a definition of ''windrow'' because the term is used in the definition of ''swathed.''

2. Section 2—FCIC proposes to revise the language in section 2 to specify optional units may be established for each type specified in the Special Provisions because different types may have significantly different characteristics and risks, making it more appropriate to have separate guarantees, premium, and loss adjustment for each type.

3. Section 3—FCIC proposes to revise section 3 to allow the insured to select a separate coverage level and price percentage for each insurable type listed on the Special Provisions. Previously, only coverage levels could be selected by type but because the types may have significantly different characteristics with different risks, allowing separate price elections is appropriate.

4. Section 7—FCIC proposes to revise section 7 to add provisions that state dry peas planted to plow down, graze, harvest as hay or to otherwise not harvest as a mature dry pea crop are not insurable. The Dry Pea Crop Provisions allow coverage for dry peas that have reached maturity. These practices do not commonly take place when the dry peas have reached maturity. Also, FCIC has not established premium rates for dry peas that are plowed down, grazed or harvested as hay. Therefore, dry peas that are planted to plow down, graze, harvest as hay or to otherwise not harvest as a mature crop are not insurable under the Dry Pea Crop Provisions.

FCIC also proposes to revise section 7 to allow insurability of fall planted acreage of dry peas, and to allow for coverage for fall seeded acreage of dry peas between the time coverage begins and the spring final planting date under the Winter Coverage Option. More producers are planting in the fall and FCIC has sufficient data to assess the risks and provide appropriate coverage. Without the availability of such coverage, producers who plant in the fall are at risk until the spring coverage takes affect.

5. Section 9—FCIC proposes to add provisions to specify the criteria for insurance coverage when the Special Provisions designate only a spring final planting date or both a fall and spring final planting date. This change is necessary because fall planted acreage is now insurable under the Dry Pea Crop Provisions.

6. Section 11—FCIC proposes to add a new section 11 authorizing replanting payments for dry peas. Adding replanting payments for dry peas makes the Dry Pea Crop Provisions consistent with the coverage available for other similar crops.

7. Redesignated section 13—FCIC proposes to revise the introductory text in 13(a) to be consistent with the provisions in the Small Grain Crop Provisions.

FCIC also proposes to revise redesignated sections 13(c)(1) to add the word ''mature.'' Adding the word ''mature'' is necessary because only mature production is eligible for quality adjustments. FCIC also proposes to specify measurable standards in the seed company contract when discussing dry peas that meet or fail to meet the standards in the seed company contract. FCIC has had problems in the past with contract standards that contained standards that were not objective or measurable, which made it very difficult to determine whether the insured crop met such standards. This language will make it clear that FCIC is only providing quality adjustments for dry peas that do not meet the objective measurable standards in the seed company contract.

FCIC proposes to revise redesignated section (d)(1)(iii) to remove the phrase ''excluding Austrian Winter Peas'' and add the phrase ''in accordance with the following unless otherwise specified in the Special Provisions.'' Adding the phrase ''in accordance with the following unless otherwise specified in the Special Provisions'' is necessary because there may be situations where other quality adjustment procedures are more appropriate and this language provides the flexibility to quickly make such changes.

FCIC proposes to revise the introductory text of redesignated section 13(e) by removing the specifically listed types of dry peas. The insured types will now be specified in the Special Provisions to allow the flexibility to add new types, as applicable, more quickly.

FCIC also proposes to revise the introductory text of redesignated section 13(e) by clarifying that seed peas that do not meet the objective, measurable terms of the contract (e.g., size, germination percentage) are eligible for quality adjustment. As stated above, there had been problems in the past with subjective standards in these contracts, which made quality adjustment difficult. This change will clarify that only those objective, measurable standards in the contract will be used to determine whether the dry peas meet the standards in the contract.

FCIC proposes to revise the introductory text of redesignated section 13(e)(1) by allowing deficiencies in

quality to be specified in the Special Provisions. This revision is consistent with the proposed change in section 13(d)(1)(iii).

8. Section 15—FCIC proposes to add a new section 15 Winter Coverage Option. This option allows optional coverage during the over-wintering period for fall planted acreage. Currently, there is a period during which the crop may be in the field and coverage is not available. The Winter Coverage Option will permit coverage during this risk period. FCIC proposes the Winter Coverage Option be available in counties for which the actuarial table provides a premium rate. The option provides coverage on fall planted dry peas from the time the insurance attaches until the spring final planting date, unless otherwise provided by a written agreement. This coverage will allow insureds who have winter damage on their fall planted dry peas to continue to care for the crop, replant the crop, or destroy the crop in accordance with the provisions. FCIC proposes the Winter Coverage Option also provides replant payments.

9. FCIC also proposes to remove those provisions that are now duplicative of provisions contained in the Common Crop Insurance Policy Basic Provisions and revise certain provisions for clarity. No substantive changes are made to such provisions.

List of Subjects in 7 CFR Part 457

Crop insurance, Dry peas, Reporting and recordkeeping requirements, Proposed Rule.

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2009 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Amend § 457.140 as follows:

a. Revise the introductory text:

b. Remove the paragraph immediately preceding section 1;

c. Amend section 1 by revising the definitions of ''base price,'' ''contract seed peas,'' ''dry peas,'' ''harvest,'' ''local market price,'' ''nurse crop (companion crop),'' ''practical to replant,'' ''price election,'' ''seed company contract,'' and add definitions of ''swathed,'' ''type,'' and ''windrow;''

d. Revise section 2;

e. Revise section 3;

f. Revise section 7;

g. Revise section 9;

h. Redesignate sections 11 through 13 as 12 through 14, respectively, and add a new section 11;

i. Revise redesignated section 12;

j. Amend redesignated section 13 by removing the phrase ''section 12'' and adding the phrase ''section 13'' in its place everywhere it appears;

k. Revise redesignated section 13(a) introductory text, (a)(1), and (a)(2);

l. Revise the introductory text in redesignated section 13(c)(1);

m. Revise redesignated section 13(d)(1)(iii);

n. Revise the introductory text of redesignated sections 13(e) and 13(e)(1); and

o. Add a new section 15.

The revised and added text reads as follows:

§ 457.140 Dry Pea Crop Insurance Provisions.

The Dry Pea Crop Insurance Provisions for the 2009 and succeeding crop years are as follows:

* * * * *

1. Definitions

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Base contract price. The price per pound stipulated in the seed company contract without regard to discounts or incentives that may apply, and that will be paid to the producer for at least 50 percent of the total production under contract with the seed company.

* * * * *

Contract seed peas. Dry peas grown under the terms of a seed company contract for the purpose of producing seed to be used for producing dry pea crops in a future crop year.

Dry peas. Peas (*Pisum sativum L.*), Austrian peas (*Pisum sativum* spp *arvense*), lentils (*Lens culinaris Medik.*) and chickpeas (*Cicer arietinum L.*) and those types listed on the Special Provisions.

Harvest. Combining of dry peas. Dry peas that are swathed prior to combining are not considered harvested.

Local market price. The cash price per pound for the U.S. No. 1 grade of dry peas as determined by us. Such price will be the prevailing dollar amount buyers are willing to pay for dry peas containing the maximum limits of quality deficiencies allowable for the U.S. No. 1 grade. Factors not associated with grading under the United States Standards for Whole Dry Peas, Split Peas and Lentils will not be considered, unless otherwise specified in the Special Provisions.

Nurse crop (companion crop). A crop planted into the same acreage as another crop to improve the growing conditions for the crop with which it is grown, and that is intended to be harvested separately.

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Practical to replant. In addition to the definition contained in the Basic Provisions, it will not be considered practical to replant dry peas, except for seed peas and fall planted dry peas, more than 25 days after the final planting date unless replanting is generally occurring in the area. For seed peas, it will not be considered practical to replant unless the seed company will accept the production under the terms of the seed company contract. For fall planted dry peas, it will not be considered practical to replant more than 25 days after the final planting date for the corresponding spring planted type of dry pea.

Price election. In addition to the provisions of the definition contained in the Basic Provisions, the price election for contract seed peas will be the percentage you elect (not to exceed 100 percent) of the base price and used for the purposes of determining premium and indemnity for contract seed peas under this policy.

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Seed company contract. A written agreement between the producer and the seed company, executed by the acreage reporting date, containing at a minimum:

(a) The producer's promise to plant and grow one or more specific types of contract seed peas, and deliver the production from those types to the seed company;

(b) The seed company's promise to purchase all the production stated in the contract; and

(c) A fixed price, or a method to determine such price based on published information compiled by a third party, that will be paid to the producer for at least 50 percent of the production stated in the contract.

Swathed. Severance of the stem and pods from the ground without removal of the seeds from the pods and placing such into a windrow.

Type. A category of dry peas identified as a type in the Special Provisions.

Windrow. Dry peas where the plants are cut and placed in a row.

2. Unit Division

In addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, separate optional units may be established for each dry pea type as specified on the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In lieu of the requirements of section 3 of the Basic Provisions, you may select only one coverage level for each type listed on the Special Provisions.

(b) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all dry peas in the county insured under this policy unless the Special Provisions provide different price elections for a particular type, in which case you may select one price election for each dry pea type so designated in the Special Provisions.

(1) If the Special Provisions designate different price elections by type, the price elections you choose for each type are not required to have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price for one type, you may also choose 75 percent of the maximum price for another type;

(2) If you elect the Catastrophic Risk Protection level of insurance for any of the above, the same level of coverage will be applicable to all insured dry pea acreage in the county;

(3) If the Special Provisions do not designate different price elections by type, the price election you choose for each type is required to have the same percentage relationship to the maximum price offered by us for each price. For example, if you choose 100 percent of the maximum price election for one type, the 100 percent election will apply to all other types you produce.

* * * * *

7. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the dry pea types in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are planted for harvesting once maturity is reached as:

(i) Dry peas; or

(ii) Contract seed peas, if a seed company contract is executed on or before the acreage reporting date; and

(3) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop;

(ii) Planted into an established grass or legume;

(iii) Planted as a nurse crop; or

(iv) Planted to plow down, graze, harvest as hay, or to otherwise not harvest as a mature dry pea crop.

(b) You will be considered to have a share in the insured crop if, under the seed company contract, you retain control of the acreage on which the dry peas are grown, you are at risk of loss (i.e., if there is a reduction in quantity or quality of your dry pea production, you will receive less income under the contract), and the seed company contract is in effect for the entire insurance period.

(c) In counties for which the actuarial documents provide premium rates for the Winter Coverage Option (see section 15), coverage is available for dry peas between the time coverage begins and the spring final planting date. Coverage under the option is effective only if you qualify under the terms of the option and you elect the option by the sales closing date.

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9. Insurance Period

In accordance with the provisions of section 11 of the Basic Provisions and subject to provisions provided by the Winter Coverage Option (see section 15) if you elect such option, the insurance period is as follows:

(a) Coverage for fall planted dry peas not covered by the Winter Coverage Option will begin on the earlier of April 15 or the date we agree to accept the acreage for insurance, but not before March 1, unless otherwise specified on the Special Provisions.

(b) The calendar date for the end of the insurance period for all insurable types of dry peas in the county is September 30 of the crop year in which the crop is normally harvested, unless otherwise specified in the Special Provisions.

(c) Any acreage of the insured crop damaged before the final planting date, to the extent that producers in the surrounding area would not further care for the crop, must be replanted unless we agree that it is not practical to replant.

(d) Whenever the Special Provisions designate both fall and spring final planting dates:

(1) Any fall planted dry peas that are damaged before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a fall planted type of dry peas to maintain insurance based on the fall planted type unless we agree that replanting is not practical. If it is not practical to replant to a fall planted type of dry peas but it is practical to replant to a spring planted type, you must replant to a spring planted type to keep your insurance coverage based on the fall planted type in force.

(2) Any fall planted dry pea acreage that is replanted to a spring planted type when it was practical to replant the fall planted type will be insured as the spring planted type and the production guarantee, premium and price election applicable to the spring planted type will be used. In this case, the acreage will be considered to be initially planted to the spring planted type.

(3) Notwithstanding sections 9(d)(1) and (2), if you have elected coverage under the Winter Coverage Option (if available in the county), insurance will be in accordance with the option.

(e) Whenever the Special Provisions designate only a spring final planting date, any acreage of a fall planted dry pea crop is not insured unless you request such coverage on or before the spring sales closing date, and we agree in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee.

(1) The fall planted dry pea crop will be insured as a spring planted type for the purpose of the production guarantee, premium and price election.

(2) Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not determine adequacy of the stand prior to the spring final planting date.

(3) Any acreage of such fall planted dry peas that is damaged after it is accepted for insurance but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring planted type of dry pea unless we agree it is not practical to replant.

(4) If fall planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall planted acreage.

* * * * *

11. Replanting Payments

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions;

(2) You must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions (except as allowed in section 11(a)(1)) and in the Winter Coverage Option for which you are eligible and which you have elected;

(3) The insured crop must be damaged by an insurable cause of loss to the

extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage.

(4) The acreage must have been initially planted to a spring type of the insured crop in those counties with only a spring final planting date;

(5) Damage must occur after the fall final planting date in those counties where both a fall and spring final planting date is designated (if the Special Provisions provide more than one fall final planting date, the fall final planting date applicable to policies with the Winter Coverage Option (see section 15) will be used for this purpose, regardless of whether or not the option is actually in effect); and

(6) The replanted crop must be seeded at a rate sufficient to achieve a total (undamaged and new seeding) plant population that will produce at least the yield used to determine your production guarantee.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20.0 percent of the production guarantee or 200 pounds, multiplied by your price election, multiplied by your share, unless otherwise stated in the Special Provisions.

(c) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(d) Replanting payments will be calculated using the price election and production guarantee for the dry pea type that is replanted and insured. For example, if damaged smooth green and yellow pea acreage is replanted to lentils, the price election and production guarantee applicable to lentils will be used to calculate any replanting payment that may be due. A revised acreage report will be required to reflect the replanted type. Notwithstanding the previous two sentences, the following will have a replanting payment based on the guarantee and price election for the crop type initially planted:

(1) Any damaged fall planted crop type replanted to a spring planted type that retains insurance based on the production guarantee and price election for the fall planted type; and

(2) Any acreage replanted at a reduced seeding rate into a partially damaged stand of the insured crop.

12. Duties in the Event of Damage or Loss

Representative samples are required in accordance with section 14 of the Basic Provisions.

13. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional units, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

* * * * *

(c) * * *

(1) For mature production meeting the objective, measurable minimum quality requirements (e.g., size, germination percentage) contained in the seed company contract, and for production that does not meet such requirements due to uninsured causes:

* * * * *

(d) * * *

(1) * * *

(iii) Unharvested production (mature unharvested production of dry peas may be adjusted for quality deficiencies in accordance with section 13I or (e), or as specified in the Special Provisions); and

* * * * *

(e) Mature dry pea production that does not qualify as contract seed peas under the policy terms or does not meet the objective, measurable terms of the contract (e.g., size, germination percentage), may be adjusted for quality deficiencies.

(1) Production will be eligible for quality adjustment in accordance with the following, unless otherwise specified in the Special Provisions:

* * * * *

15. Winter Coverage Option

(This is a continuous endorsement)

(a) In the event of a conflict between this section and sections 1–14 of these Crop Provisions, this section will control.

(b) Catastrophic Risk Protection Coverage is not available under this option.

(c) In return for payment of the additional premium designated in the actuarial documents, this option is available in counties for which the actuarial documents provide premium rates for the winter coverage option, coverage is available for dry peas between the time coverage begins and the spring final planting date.

(d) You must have a Dry Pea Crop Insurance Policy in effect and elect to insure the dry pea type under such policy.

(e) You must select this coverage on your application for insurance on or before the sales closing date. Failure to do so means you have rejected this coverage for the dry pea crop planted in the fall and this option is void.

(f) Coverage under this option begins on the later of the date we accept your application for coverage or on the fall final planting date designated in the Special Provisions. Coverage ends on the spring final planting date designated in the Special Provisions.

(g) In addition to the provisions of section 34(b) of the Basic Provisions and section 2 of the Dry Pea Crop Provisions, optional units may be established for dry peas if each optional unit contains only dry peas initially planted in the fall or only dry peas initially planted in the spring.

(h) In lieu of sections 4 and 5 of these Crop Provisions, if you elect this option for the dry pea crop initially planted in the fall, the following dates will be applicable to all your fall planted and spring planted dry pea crop in the county:

(1) Contract change date is June 30 preceding the cancellation date;

(2) Cancellation date is September 30; and

(3) Termination date is November 30.

(i) In lieu of the provisions in section 14 of the Basic Provisions, all notices of damage must be provided to us not later than 15 days after the spring final planting date designated in the Special Provisions.

(j) All insurable acreage of each fall planted dry pea type covered under this option must be insured.

(k) The amount of any indemnity paid under the terms of this option will be subject to any reduction specified in the Basic Provisions for multiple crop benefits in the same crop year.

(l) Whenever any acreage of a dry pea crop planted in the fall is damaged during the insurance period and at least 20 acres or 20 percent of the insured planted acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage, you may, at your option, take one of the following actions:

(1) Continue to care for the damaged crop. By doing so, coverage will continue under the terms of the Basic Provisions, the Dry Pea Crop Insurance Provisions and this option;

(2) Replant the acreage to an appropriate type of the insured crop, if it is practical, and receive a replanting payment in accordance with the terms of section 11. By doing so, coverage will continue under the terms of the Basic Provisions, the Dry Pea Crop Insurance Provisions and this option, and the production guarantee for the dry pea

type planted in the fall will remain in effect; or

(3) Destroy the remaining crop on such acreage:

(i) By destroying the remaining crop, you agree to accept an appraised amount of production determined in accordance with section 13(d)(1) of the Dry Pea Crop Insurance Provisions to count against the unit production guarantee. This amount will be considered production to count in determining any final indemnity on the unit and will be used to settle your claim as described in section 13.

(ii) You may use such acreage for any purpose, including planting and separately insuring any other crop if such insurance is available.

(iii) If you elect to plant and elect to insure spring planted acreage of the same dry pea type (you must elect whether or not you want insurance on the spring planted acreage of the same dry pea type at the time we release the fall planted acreage), you must pay additional premium for the insurance. Such acreage will be insured in accordance with the policy provisions that are applicable to acreage that is initially planted in the spring to the same dry pea type, and you must:

(A) Plant the spring planted acreage in a manner which results in a clear and discernible break in the planting pattern at the boundary between it and any remaining acreage of the fall planted dry pea acreage; and

(B) Store or market the production in a manner which permits us to verify the amount of spring planted production separately from any fall planted production. In the event you are unable to provide records of production that are acceptable to us, the spring planted acreage will be considered to be a part of the original fall planted unit.

* * * * *

Signed in Washington, DC, on January 7, 2008.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E8–321 Filed 1–17–08; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0034; Directorate Identifier 2007–CE–097–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Model 750XL Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

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

DCA/750XL/3A is prompted by a report from the manufacturer of the possibility that wiring loom protective sleeving is not fitted to aircraft S/N 107 through to 134. AD applicability revised to include aircraft up to S/N 134.

To prevent fretting damage to the wiring loom that may lead to arcing in proximity to the fuel vent lines and the possibility of fire * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 19, 2008.

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0034; Directorate Identifier 2007–CE–097–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for New Zealand, has issued AD DCA/750XL/3A, dated November 28, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

DCA/750XL/3A is prompted by a report from the manufacturer of the possibility that wiring loom protective sleeving is not fitted to aircraft S/N 107 through to 134. AD applicability revised to include aircraft up to S/N 134.

To prevent fretting damage to the wiring loom that may lead to arcing in proximity to the fuel vent lines and the possibility of fire, inspect the main wiring loom on the right hand side of the aircraft adjacent to the frames at station 114.34'' and 118.84'', per PACSB/XL/009 issue 2, to ensure that two pieces of protective sleeving are fitted.

The effectivity of the service information is serial number (S/N) 102 through 106. The MCAI expanded the applicability to S/N 102 through 134.

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

Relevant Service Information

Pacific Aerospace Corporation Limited has issued Mandatory Service Bulletin PACSB/XL/009, issue 2, revised July 23, 2004. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 7 products of U.S. registry. We also estimate that it would take about 0.5 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $30 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $490, or $70 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pacific Aerospace Limited: Docket No. FAA–2008–0034; Directorate Identifier 2007–CE–097–AD.

Comments Due Date

(a) We must receive comments by February 19, 2008.

Affected ADs

(b) or None.

Applicability

(c) This AD applies to Model 750XL airplanes, serial numbers 102 through 134, certificated in any category.

Note 1: The applicability of this AD takes precedence over Pacific Aerospace Corporation Limited Mandatory Service Bulletin PACSB/XL/009, issue 2, revised July 23, 2004.

Subject

(d) Air Transport Association of America (ATA) Code 39: Electrical Wiring.

Reason

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

DCA/750XL/3A is prompted by a report from the manufacturer of the possibility that wiring loom protective sleeving is not fitted to aircraft S/N 107 through to 134. AD applicability revised to include aircraft up to S/N 134.

To prevent fretting damage to the wiring loom that may lead to arcing in proximity to the fuel vent lines and the possibility of fire, inspect the main wiring loom on the right hand side of the aircraft adjacent to the frames at station 114.34'' and 118.84'', per PACSB/XL/009, issue 2, to ensure that two pieces of protective sleeving are fitted.

The effectivity of the service information is serial number (S/N) 102 through 106. The MCAI expanded the applicability to S/N 102 through 134.

Actions and Compliance

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

(1) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the main wiring loom on the right hand side of the aircraft adjacent to the frames at station 114.34'' and 118.84'' to ensure there are two pieces of protective sleeving installed following Pacific Aerospace Corporation Limited Mandatory Service Bulletin PACSB/XL/009, issue 2, revised July 23, 2004.

(2) If the protective sleeves are missing, install protective sleeves following Pacific Aerospace Corporation Mandatory Service Bulletin PACSB/XL/009, issue 2, revised July 23, 2004.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office,

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

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

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

Related Information

(h) Refer to MCAI Civil Aviation Authority of New Zealand AD DCA/750XL/3A, dated November 28, 2007; and Pacific Aerospace Corporation Limited Mandatory Service Bulletin PACSB/XL/009, issue 2, revised July 23, 2004, for related information.

Issued in Kansas City, Missouri, on January 11, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–827 Filed 1–17–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0031; Directorate Identifier 2007–NM–313–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; Model DC–8–50 Series Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–60 Series Airplanes; Model DC–8–60F Series Airplanes; Model DC–8–70 Series Airplanes; and Model DC–8–70F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all McDonnell Douglas airplanes identified above. This proposed AD would require revising the FAA-approved maintenance program to incorporate new airworthiness limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This proposed AD results from a design review of the fuel tank systems. We are proposing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by March 3, 2008.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, *Attention:* Data and Service Management, Dept. C1–L5A (D800–0024).

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0031; Directorate Identifier 2007–NM–313–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address

unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed the following appendixes of the Boeing DC–8 Special Compliance Item Report, MDC–02K9030, Revision A, dated August 8, 2006 (hereafter referred to as ''Report MDC–02K9030''):

- Appendix B, Critical Design Configuration Control Limitations (CDCCLs).
- Appendix C, Airworthiness Limitation Instructions (ALIs).
- Appendix D, Short-Term Extensions.

Appendixes B and C of Report MDC–02K9030 describe new airworthiness limitations (AWLs) for fuel tank systems. The new AWLs include:

- CDCCLs, which are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection; and
- AWL inspections, which are inspections of certain features for latent failures that could contribute to an ignition source.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require revising the FAA-approved maintenance program by incorporating the information in Appendixes B, C, and D of Report MDC–02K9030.

Difference Between the Proposed AD and Service Information

Although Report MDC–02K9030 specifies to submit certain information to the manufacturer, this proposed AD does not include that requirement.

Explanation of Compliance Time

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for efficient and coordinated implementation of these regulations and this proposed AD, we are using this same compliance date in this proposed AD.

Rework Required When Implementing AWLs Into an Existing Fleet

The maintenance program revision specified in paragraph (f) of this proposed AD for the fuel tank systems, which involves incorporating the information specified in Report MDC–02K9030, would affect how operators maintain their airplanes. After doing the maintenance program revision, operators would need to do any maintenance on the fuel tank system as specified in the CDCCLs. Maintenance done before the maintenance program revision specified in paragraph (f) would not need to be redone in order to comply with paragraph (f). For example, the AWL that requires fuel pumps to be repaired and overhauled per the FAA-approved component maintenance manual (CMM) applies to fuel pumps repaired after the maintenance programs are revised; spare or on-wing fuel pumps do not need to be reworked.

Changes to Fuel Tank System AWLs

Paragraph (f) of this proposed AD would require revising the FAA-approved maintenance program by incorporating certain information specified in Report MDC–02K9030. Paragraph (f) allows accomplishing the revision in accordance with later revisions of Report MDC–02K9030 as an acceptable method of compliance if they are approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. In addition, Appendix B of Report MDC–02K9030 specifies that any deviations from the published AWL instructions, including AWL intervals, must be approved by the Manager, Los Angeles ACO. Therefore, after the maintenance program, any further revision to an AWL or AWL interval should be done as an AWL change, not as an alternative method of compliance (AMOC). For U.S.-registered airplanes, operators must make requests through an appropriate FAA Principal Maintenance Inspector (PMI) or Principal Avionics Inspector (PAI) for approval by the Manager, Los Angeles ACO. A non-U.S. operator should coordinate changes with its governing regulatory agency.

Exceptional Short-Term Extensions

Appendix D of Report MDC–02K9030 has provisions for an exceptional short-term extension of 30 days. An exceptional short-term extension is an increase in an AWL interval that may be needed to cover an uncontrollable or unexpected situation. For U.S.-registered airplanes, the FAA PMI or PAI must concur with any exceptional short-term extension before it is used, unless the operator has identified another appropriate procedure with the local regulatory authority. The FAA PMI or PAI may grant the exceptional short-term extensions described in Appendix D without consultation with the Manager, Los Angeles ACO. A non-U.S. operator should coordinate changes with its governing regulatory agency. As explained in Appendix D, exceptional short-term extensions must not be used for fleet AWL extensions. An exceptional short-term extension should not be confused with an operator's short-term escalation authorization approved in accordance with the Operations Specifications or the operator's reliability program.

Ensuring Compliance With Fuel Tank System AWLs

Boeing has revised the applicable maintenance manuals and task cards to address AWLs and to include notes about CDCCLs. Operators that do not use Boeing's revision service should revise their maintenance manuals and task cards to highlight actions tied to CDCCLs to ensure that maintenance personnel are complying with the CDCCLs.

Recording Compliance With Fuel Tank System AWLs

The applicable operating rules of the Federal Aviation Regulations (14 CFR parts 91, 121, 125, and 129) require operators to maintain records with the identification of the current inspection

status of an airplane. The AWLs contained in Appendix C of Report MDC–02K9030 are inspections for which the applicable sections of the operating rules apply. The AWLs contained in Appendix B of Report MDC–02K9030 are CDCCLs, which are tied to conditional maintenance actions. An entry into an operator's existing maintenance record system for corrective action is sufficient for recording compliance with CDCCLs, as long as the applicable maintenance manual and task cards identify actions that are CDCCLs.

Changes to Component Maintenance Manuals (CMMs) Cited in Fuel Tank System AWLs

Some of the AWLs in Appendix B of Report MDC–02K9030 refer to specific revision levels of the CMMs as additional sources of service information for doing the AWLs. Boeing is referring to the CMMs by revision level in the applicable AWL for certain components rather than including information directly in the AWL because of the volume of that information. As a result, the Manager, Los Angeles ACO, must approve the CMMs. Any later revision of those CMMs will be handled like a change to the AWL itself. Any use of parts (including the use of parts manufacturer approval (PMA) approved parts), methods, techniques, and practices not contained in the CMMs need to be approved by the Manager, Los Angeles ACO, or governing regulatory authority. For example, certain pump repair/overhaul manuals must be approved by the Manager, Los Angeles ACO.

Changes to Airplane Maintenance Manual Referenced in Fuel Tank System AWLs

In other AWLs in Report MDC–02K9030, the AWLs contain all the necessary data. The applicable section of the maintenance manual is usually included in the AWLs. Boeing intended this information to assist operators in maintaining the maintenance manuals. A maintenance manual change to these tasks may be made without approval by the Manager, Los Angeles ACO, through an appropriate FAA PMI or PAI, by the governing regulatory authority, or by using the operator's standard process for revising maintenance manuals. An acceptable change would have to maintain the information specified in the AWL such as the pass/fail criteria or special test equipment.

Costs of Compliance

We estimate that this proposed AD would affect 125 airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $10,000, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2008–0031; Directorate Identifier 2007–NM–313–AD.

Comments Due Date

(a) We must receive comments by March 3, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–61, DC–8–62, and DC–8–63 airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F airplanes; Model DC–8–71, DC–8–72, and DC–8–73 airplanes; and Model DC–8–71F, DC–8–72F, and DC–8–73F airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections and maintenance actions. Compliance with these limitations is required by 14 CFR 43.16 and 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these limitations, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 43.16 and 91.403(c), the operator must request approval for revision to the airworthiness limitations (AWLs) in the Boeing DC–8 Special Compliance Item Report, MDC–02K9030, according to paragraph (f) or (h) of this AD, as applicable.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Revise the FAA-Approved Maintenance Program

(f) Before December 16, 2008, revise the FAA-approved maintenance program to

incorporate the information specified in Appendixes B, C, and D of the Boeing DC–8 Special Compliance Item Report, MDC–02K9030, Revision A, dated August 8, 2006. Accomplishing the revision in accordance with a later revision of the Boeing DC–8 Special Compliance Item Report, MDC–02K9030, is an acceptable method of compliance if the revision is approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

No Reporting Requirement

(g) Although the Boeing DC–8 Special Compliance Item Report, MDC–02K9030, Revision A, dated August 8, 2006, specifies to submit certain information to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles ACO, FAA, ATTN: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on January 9, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–854 Filed 1–17–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0032; Directorate Identifier 2007–NM–314–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes; Model DC–9–10 Series Airplanes; Model DC–9–20 Series Airplanes; Model DC–9–30 Series Airplanes; Model DC–9–40 Series Airplanes; Model DC–9–50 Series Airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes; Model MD–88 Airplanes; and Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all McDonnell Douglas airplanes identified above. This proposed AD would require revising the FAA-approved maintenance program, or the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness, as applicable, to incorporate new AWLs for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This proposed AD results from a design review of the fuel tank systems. We are proposing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by March 3, 2008.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0032; Directorate Identifier 2007–NM–314–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs

do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed the following appendixes of the Boeing Twinjet Special Compliance Items Report, MDC–92K9145, Revision G, dated June 7, 2007 (hereafter referred to as ''Report MDC–92K9145''):

- Appendix B, Critical Design Configuration Control Limitations (CDCCLs)
- Appendix C, Airworthiness Limitation Instructions (ALIs)
- Appendix D, Short-Term Extensions

Appendixes B and C of Report MDC–92K9145 describe new airworthiness limitations (AWLs) for fuel tank systems. The new AWLs include:

- CDCCLs, which are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection; and
- AWL inspections, which are inspections of certain features for latent failures that could contribute to an ignition source.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require revising the FAA-approved maintenance program, or the AWLs section of the Instructions for Continued Airworthiness, as applicable, by incorporating the information in Appendixes B, C, and D of Report MDC–92K9145.

Difference Between the Proposed AD and Service Information

Although Report MDC–92K9145 specifies to submit certain information to the manufacturer, this proposed AD does not include that requirement.

Explanation of Compliance Time

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for efficient and coordinated implementation of these regulations and this proposed AD, we are using this same compliance date in this proposed AD.

Rework Required When Implementing AWLs Into an Existing Fleet

The maintenance program revision specified in paragraph (g) of this proposed AD, and the AWLs revision specified in paragraph (h) of this proposed AD, for the fuel tank systems, which involve incorporating the information specified in Report MDC–92K9145, would affect how operators maintain their airplanes. After doing the maintenance program revision or AWLs revision, as applicable, operators would need to do any maintenance on the fuel tank system as specified in the CDCCLs. Maintenance done before the maintenance program revision specified in paragraph (g), or the AWLs revision specified in paragraph (h), as applicable, would not need to be redone in order to comply with paragraph (g) or (h). For example, the AWL that requires fuel pumps to be repaired and overhauled per the FAA-approved component maintenance manual (CMM) applies to fuel pumps repaired after the maintenance programs are revised; spare or on-wing fuel pumps do not need to be reworked.

Changes to Fuel Tank System AWLs

For certain airplanes, paragraph (g) of this proposed AD would require revising the FAA-approved maintenance program by incorporating certain information specified in Report MDC–92K9145. For certain other airplanes, paragraph (h) of this proposed AD would require revising the AWLs section of the Instructions for Continued Airworthiness by incorporating certain information specified in Report MDC–92K9145. Paragraphs (g) and (h) allow accomplishing the revision in accordance with later revisions of Report MDC–92K9145 as an acceptable method of compliance if they are approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. In addition, Appendix B of Report MDC–92K9145 specifies that any deviations from the published AWL instructions, including AWL intervals, must be approved by the Manager, Los Angeles ACO. Therefore, after the maintenance program or AWLs revision, any further revision to an AWL or AWL interval should be done as an AWL change, not as an alternative method of compliance (AMOC). For U.S.-registered airplanes, operators must make requests through an appropriate FAA Principal Maintenance Inspector (PMI) or Principal Avionics Inspector (PAI) for approval by the Manager, Los Angeles ACO. A non-U.S. operator should coordinate changes with its governing regulatory agency.

Exceptional Short-Term Extensions

Appendix D of Report MDC–92K9145 has provisions for an exceptional short-term extension of 30 days. An exceptional short-term extension is an increase in an AWL interval that may be needed to cover an uncontrollable or unexpected situation. For U.S.-registered airplanes, the FAA PMI or PAI must concur with any exceptional short-term extension before it is used, unless the operator has identified another appropriate procedure with the local regulatory authority. The FAA PMI or PAI may grant the exceptional short-term extensions described in Appendix D without consultation with the Manager, Los Angeles ACO. A non-U.S. operator should coordinate changes with its governing regulatory agency. As explained in Appendix D, exceptional short-term extensions must not be used for fleet AWL extensions. An exceptional short-term extension should not be confused with an operator's short-term escalation authorization approved in accordance with the Operations Specifications or the operator's reliability program.

Ensuring Compliance With Fuel Tank System AWLs

Boeing has revised the applicable maintenance manuals and task cards to address AWLs and to include notes about CDCCLs. Operators that do not use Boeing's revision service should revise their maintenance manuals and task cards to highlight actions tied to CDCCLs to ensure that maintenance personnel are complying with the CDCCLs.

Recording Compliance With Fuel Tank System AWLs

The applicable operating rules of the Federal Aviation Regulations (14 CFR parts 91, 121, 125, and 129) require operators to maintain records with the identification of the current inspection status of an airplane. The AWLs contained in Appendix C of Report MDC–92K9145 are inspections for which the applicable sections of the operating rules apply. The AWLs contained in Appendix B of Report MDC–92K9145 are CDCCLs, which are tied to conditional maintenance actions. An entry into an operator's existing maintenance record system for corrective action is sufficient for recording compliance with CDCCLs, as long as the applicable maintenance manual and task cards identify actions that are CDCCLs.

Changes to Component Maintenance Manuals (CMMs) Cited in Fuel Tank System AWLs

Some of the AWLs in Appendix B of Report MDC–92K9145 refer to specific revision levels of the CMMs as additional sources of service information for doing the AWLs. Boeing is referring to the CMMs by revision level in the applicable AWL for certain components rather than including information directly in the AWL because of the volume of that information. As a result, the Manager, Los Angeles ACO, must approve the CMMs. Any later revision of those CMMs will be handled like a change to the AWL itself. Any use of parts (including the use of parts manufacturer approval (PMA) approved parts), methods, techniques, and practices not contained in the CMMs need to be approved by the Manager, Los Angeles ACO, or governing regulatory authority. For example, certain pump repair/overhaul manuals must be approved by the Manager, Los Angeles ACO.

Changes to Airplane Maintenance Manual Referenced in Fuel Tank System AWLs

In other AWLs in Report MDC–92K9145, the AWLs contain all the necessary data. The applicable section of the maintenance manual is usually included in the AWLs. Boeing intended this information to assist operators in maintaining the maintenance manuals. A maintenance manual change to these tasks may be made without approval by the Manager, Los Angeles ACO, through an appropriate FAA PMI or PAI, by the governing regulatory authority, or by using the operator's standard process for revising maintenance manuals. An acceptable change would have to maintain the information specified in the AWL such as the pass/fail criteria or special test equipment.

Costs of Compliance

We estimate that this proposed AD would affect 780 airplanes of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $62,400, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2008–0032; Directorate Identifier 2007–NM–314–AD.

Comments Due Date

(a) We must receive comments by March 3, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model 717–200 airplanes; Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; Model DC–9–41 airplanes; Model DC–9–51 airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; Model MD–88 airplanes; and Model MD–90–30 airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections and maintenance actions. Compliance with these limitations is required by 14 CFR 43.16 and 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these limitations, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 43.16 and 91.403(c), the operator must request approval for revision to the airworthiness limitations (AWLs) in the Boeing Twinjet Special Compliance Items Report, MDC–92K9145, according to paragraph (g), (h), or (j) of this AD, as applicable.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Service Information Reference

(f) The term ''Report MDC–92K9145,'' as used in this AD, means the Boeing Twinjet Special Compliance Items Report, MDC–92K9145, Revision G, dated June 7, 2007.

Revise the FAA-Approved Maintenance Program

(g) For Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; Model DC–9–41 airplanes; Model DC–9–51 airplanes; and Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes: Before December 16, 2008, revise the FAA-approved maintenance program to incorporate the information specified in Appendixes B, C, and D of Report MDC–92K9145. Accomplishing the revision in accordance with a later revision of Report MDC–92K9145 is an acceptable method of compliance if the revision is approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Revise the AWLs Section

(h) For Model 717–200, Model MD–88, and Model MD–90–30 airplanes: Before December 16, 2008, revise the AWLs section of the Instructions for Continued Airworthiness to incorporate the information specified in Appendixes B, C, and D of Report MDC–92K9145. Accomplishing the revision in accordance with a later revision of Report MDC–92K9145 is an acceptable method of compliance if the revision is approved by the Manager, Los Angeles ACO.

No Reporting Requirement

(i) Although Report MDC–92K9145 specifies to submit certain information to the manufacturer, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Los Angeles ACO, FAA, ATTN: Serj Harutunian, Aerospace Engineer, Propulsion Branch, ANM–140L, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5254; fax (562) 627–5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on January 9, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–857 Filed 1–17–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27687; Directorate Identifier 2000–NE–42–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines. That AD currently requires a onetime inspection of certain fan disks for electrical arc-out indications, replacing fan disks with electrical arc-out indications, and reducing the life limit of certain fan disks. This proposed AD would require the same reduced life limit of certain fan disks, on-wing inspection of certain fan disks installed on regional jets, and would add a requirement to perform an inspection on certain business jet applications that have already had a shop-level inspection. This proposed AD results from us determining that we inadvertently left out an inspection requirement. We are proposing this AD to prevent uncontained fan disk failure and airplane damage.

DATES: We must receive any comments on this proposed AD by March 18, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215; telephone (513) 672–8400; fax (513) 672–8422; for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–27687; Directorate Identifier 2000–NE–42–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments

received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

The FAA proposes to amend 14 CFR part 39 by superseding AD 2007–07–07R1, Amendment 39–15179 (72 FR 49183, August 28, 2007). That AD requires a onetime inspection of certain fan disks for electrical arc-out indications, replacing fan disks with electrical arc-out indications, and reducing the life limit of certain fan disks. That AD was the result of GE revising their service information and a comment from an operator asking us to clarify Table C of this AD. That condition, if not corrected, could result in an uncontained fan disk failure and airplane damage.

Actions Since AD 2007–07–07R1 Was Issued

Since we issued that AD, we determined that we inadvertently left out an inspection requirement in Table C of that AD to perform a shop inspection on disks that have greater than 6,000 flight hours and have already undergone a shop inspection.

Relevant Service Information

We have reviewed and approved the technical contents of GE ASB No. CF34–BJ S/B 72–A0212, Revision 3, dated June 27, 2007, ASB No. CF34–AL S/B 72–A0233, Revision 3, dated June 27, 2007, and ASB No. CF34–AL S/B 72–A0231, Revision 1, dated June 27, 2007. All three ASBs list the affected fan disks by serial number and part number. The first two ASBs describe procedures for performing fluorescent penetrant inspection (FPI), a Tactile and Enhanced Visual (TEV) inspection, and eddy current inspection (ECI) for cracks and electrical arc-out defects. The third ASB describes procedures for performing an on-wing TEV inspection of fan disks for electrical arc-out defects.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other GE CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines of the same type design. For that reason, we are proposing this AD to prevent an uncontained fan disk failure and airplane damage. This proposed AD would require:

- Replacing certain fan disks installed on regional jets within 15 days after the effective date of this proposed AD, and
- On-wing and shop-level inspections of fan disks for electrical arc-out defects on fan disks installed on regional jets.
- Shop-level inspections of fan disks for electrical arc-out defects on fan disks installed on business jets.

You must use the service information described previously to perform the actions required by this AD.

Costs of Compliance

We estimate that this proposed AD would affect 1,727 engines installed on airplanes of U.S. registry. We also estimate that it would take about 6.0 work-hours per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour. There are no required parts. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $828,960.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15179 (72 FR 49183, August 28, 2007) and by adding a new airworthiness directive to read as follows:

General Electric Company: Docket No. FAA–2007–27687; Directorate Identifier 2000–NE–42–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by March 18, 2008.

Affected ADs

(b) This AD supersedes AD 2007–07–07R1, Amendment 39–15179.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines, with fan disks part numbers (P/Ns) 5921T18G01, 5921T18G09, 5921T18G10, 5921T54G01, 5922T01G02, 5922T01G04, 5922T01G05, 6020T62G04, 6020T62G05, 6078T00G01, 6078T57G01, 6078T57G02, 6078T57G03, 6078T57G04, 6078T57G05, and 6078T57G06 installed. These engines are installed on, but not limited to, Bombardier Canadair airplane models CL–600–2A12, –2B16, and –2B19.

Unsafe Condition

(d) This AD results from us determining that we inadvertently left out an inspection requirement. We are issuing this AD to prevent uncontained fan disk failure and airplane damage.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Removal of Certain Fan Disks From Service

(f) For fan disks listed by P/N and serial number (SN) in the following Table A that have fewer than 8,000 cycles-since-new (CSN) on the effective date of this AD, replace fan disks before accumulating 8,000 CSN:

TABLE A.—FAN DISKS THAT REQUIRE REMOVAL BASED ON BLENDED CALLOUTS

Disk part No.	Disk serial No.
6078T57G02	GAT6306N
6078T00G01	GAT3860G
6078T57G02	GAT1924L
5922T01G04	GAT9599G
6078T57G04	GEE05831
6078T57G04	GEE06612

TABLE A.—FAN DISKS THAT REQUIRE REMOVAL BASED ON BLENDED CALLOUTS—Continued

Disk part No.	Disk serial No.
6078T57G04	GEE06618
6078T57G04	GEE06974
6078T57G04	GEE06980
6078T57G05	GEE143FY
6078T57G05	GEE1453G
6078T57G05	GEE14452
6078T57G05	GEE145NA
6078T57G04	GEE08086
6078T57G04	GEE09287
6078T57G04	GEE09337
6078T57G05	GEE12720
6078T57G05	GEE14214
6078T57G05	GEE142YT
6078T57G05	GEE146GT

(g) For fan disks listed in Table A of this AD that have 8,000 CSN or more on the effective date of this AD, replace the disk within 15 days after the effective date of this AD.

Inspections of Fan Disks Installed in Regional Jet Airplanes

(h) For CF34–3A1 and CF34–3B1 turbofan engines installed on Bombardier Canadair CL600–2B19 Regional Jet airplanes:

On-Wing Tactile and Enhanced Visual (TEV) Inspection

(1) Perform an on-wing TEV inspection on the fan disks listed by P/N and SN in Table 1 of GE ASB No. CF34–AL S/B 72–A0231, Revision 1, dated June 27, 2007, using the compliance times specified in the following Table B:

TABLE B.—REGIONAL JET ON-WING FAN DISK INSPECTION COMPLIANCE TIMES

For fan disks:	Inspect:
(i) That have not had a shop-level inspection	Within 500 flight hours after September 12, 2007.
(ii) That are marked with an asterisk in Table 1 of GE ASB No. CF34–AL S/B 72–A0231, Revision 1, dated June 27, 2007.	Within 500 flight hours after September 12, 2007.

(2) Use paragraphs 3.A. through 3.A.(13) of the Accomplishment Instructions of GE ASB No. CF34–AL S/B 72–A0231, Revision 1, dated June 27, 2007, to do the inspection.

Shop-Level Inspection

(3) Within 5,000 flight hours or by September 12, 2012, whichever occurs first, fluorescent-penetrant inspect (FPI), TEV inspect, and eddy current inspect (ECI) at shop-level for cracks and electrical arc-out defects on the fan disks listed by P/N and SN in Table 1 of GE ASB No. CF34–AL S/B 72–A0233, Revision 3, dated June 27, 2007.

(4) Use paragraphs 3.A.(1) through 3.A.(6) of the Accomplishment Instructions of GE ASB No. CF34–AL S/B 72–A0233, Revision 3, dated June 27, 2007, to do the inspections.

Shop-Level Inspection Exemption

(5) Fan disks that meet the following criteria are exempt from the shop-level inspection:

(i) Fan disks inspected before the effective date of this AD per GE Engine Manual No. SEI–756, Section 72–21–00 (FAN ROTOR ASSEMBLY INSPECTION); and

(ii) That have accumulated no more than 100 cycles since that inspection; and

(iii) That pass the on-wing TEV inspection in paragraph (h)(2) of this AD.

Inspection of Fan Disks Installed in Business Jet Airplanes

(i) For CF34–1A, –3A, –3A1, –3A2, and –3B turbofan engines installed on Bombardier Canadair Models CL–600–2A12 (CL–601), CL–600–2B16 (CL–601–3A), (CL–601–3R), and (CL–604) Business Jet airplanes:

(1) FPI, TEV inspect, and ECI for cracks and electrical arc-out defects at shop-level on the fan disks listed by P/N and SN in Table 1 of GE ASB No. CF34–BJ S/B 72–A0212, Revision 3, dated June 27, 2007, using the compliance times specified in the following Table C:

TABLE C.—BUSINESS JET SHOP-LEVEL FAN DISK INSPECTION COMPLIANCE TIMES

For fan disks:	Inspect:
(i) That have not had a shop-level inspection and have more than 5,500 flight hours on September 12, 2007.	Within 500 flight hours after September 12, 2007.
(ii) That have not had a shop-level inspection and have 5,500 or fewer flight hours on the effective date of this AD.	Within accumulating a total of 6,000 fan disk operating hours-since-new or by September 12, 2012, whichever occurs first.
(iii) That have had a shop-level inspection	Within accumulating an additional 6,000 fan disk operating hours-since-shop-level inspection, or by September 12, 2012, whichever occurs first.

(2) Use paragraphs 3.A. through 3.A.(10) of the Accomplishment Instructions of GE ASB No. CF34–BJ S/B 72–A0212, Revision 3, dated June 27, 2007, to do the inspections.

Reporting Requirements

(j) Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD, and has assigned OMB Control Number 2120–0056.

(1) Report the results of the on-wing inspections performed in paragraph (h)(2) of this AD by following the instructions in paragraph 3.A.(14) of the Accomplishment Instructions of GE ASB No. CF34–AL S/B 72–A0231, Revision 1, dated June 27, 2007.

(2) Report the results of the shop-level inspections performed in paragraph (h)(4) of this AD by following the instructions in paragraph 3.A.(3)(b)11 of the Accomplishment Instructions of GE ASB No. CF34–AL S/B 72–A0233, Revision 3, dated June 27, 2007.

(3) Report the results of the shop-level inspections performed in paragraph (i)(2) of this AD by following the instructions in paragraph 3.A.(3)(b)11 of the Accomplishment Instructions of GE ASB No. CF34–AL S/B 72–A0212, Revision 3, dated June 27, 2007.

Previous Credit

(k) We are allowing previous credit for:

(1) Fan disks previously shop-level inspected before the effective date of this AD using GE ASB No. CF34–AL S/B 72–A0233,

dated March 7, 2007, Revision 1, dated March 16, 2007, or Revision 2, dated March 22, 2007; and GE ASB No. CF34–BJ S/B 72–A0212, dated March 7, 2007, Revision 1, dated March 16, 2007, or Revision 2, dated March 22, 2007.

(2) Fan disks previously on-wing TEV inspected before the effective date of this AD using GE ASB No. CF34–AL S/B 72–A0231, dated March 7, 2007.

Alternative Methods of Compliance

(l) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(m) Emergency AD 2007–04–51 and AD 2007–05–16 also pertain to the subject of this AD.

(n) GE Alert Service Bulletins ASB No. CF34–BJ S/B 72–A0212, Revision 3, dated June 27, 2007; ASB No. CF34–AL S/B 72–A0233, Revision 3, dated June 27, 2007; and ASB No. CF34–AL S/B 72–A0231, Revision 1, dated June 27, 2007; pertain to the subject of this AD.

(o) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on January 10, 2008.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–821 Filed 1–17–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0035; Directorate Identifier 2007–CE–103–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Regional Aircraft Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

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

Two incidents have been reported where the normal hydraulic supplies were lost due to failure/loss of the steering jack gland housing. This has been attributed to pre-existing thread damage on the steering jack gland housing. Three previous failures may also be due to this failure mechanism.

Failure of the steering jack gland housing resulted in significant damage to the right hand undercarriage bay door, and could result in the nose landing gear jamming in a fully or partially retracted position. Landing in such a condition is considered as potentially unsafe due to the degraded control of the aircraft post touch down.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by February 19, 2008.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0035; Directorate Identifier 2007–CE–103–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2006–0128, dated May 18, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Two incidents have been reported where the normal hydraulic supplies were lost due to failure/loss of the steering jack gland housing. This has been attributed to pre-existing thread damage on the steering jack gland housing. Three previous failures may also be due to this failure mechanism.

Failure of the steering jack gland housing resulted in significant damage to the right hand undercarriage bay door, and could result in the nose landing gear jamming in a fully or partially retracted position. Landing in such a condition is considered as potentially unsafe due to the degraded control of the aircraft post touch down.

Changes to the gland have been introduced in order to prevent further recurrence.

This proposed AD would require you to install a serviceable steering jack.

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

Relevant Service Information

British Aerospace Regional Aircraft has issued British Aerospace Jetstream Series 3100 and 3200 Service Bulletin 32–JM5417, Original Issue: March 22, 2005. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the

MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 149 products of U.S. registry. We also estimate that it would take about 10 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $100 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $134,100, or $900 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace Regional Aircraft: Docket No. FAA–2008–0035; Directorate Identifier 2007–CE–103–AD.

Comments Due Date

(a) We must receive comments by February 19, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

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

Two incidents have been reported where the normal hydraulic supplies were lost due to failure/loss of the steering jack gland housing. This has been attributed to pre-existing thread damage on the steering jack gland housing. Three previous failures may also be due to this failure mechanism.

Failure of the steering jack gland housing resulted in significant damage to the right hand undercarriage bay door, and could result in the nose landing gear jamming in a fully or partially retracted position. Landing in such a condition is considered as potentially unsafe due to the degraded control of the aircraft post touch down.

Changes to the gland have been introduced in order to prevent further recurrence.

This AD would require you to install a serviceable steering jack.

Actions and Compliance

(f) Unless already done, within the next 12 months after the effective date of this AD, install a serviceable steering jack that has been modified following APPH Ltd. Service Bulletin 32–78, dated February 2005, as specified in British Aerospace Jetstream Series 3100 and 3200 Service Bulletin 32–JM5417, Original Issue: March 22, 2005.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4138; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2006–0128,

dated May 18, 2006; and British Aerospace Jetstream Series 3100 and 3200 Service Bulletin 32–JM5417, Original Issue: March 22, 2005, for related information.

Issued in Kansas City, Missouri, on January 11, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–824 Filed 1–17–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–29164; Airspace Docket No. 07–ANM–14]

Proposed Establishment of Class E Airspace; Pagosa Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Pagosa Springs, CO. Additional controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Stevens Field. The FAA is proposing this action to enhance the safety and management of aircraft operations at Stevens Field, Pagosa Springs, CO.

DATES: Comments must be received on or before March 3, 2008.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2007–29164; Airspace Docket No. 07–ANM–14, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, System Support Group, Western Service Area, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 917–6726.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2007–29164 and Airspace Docket No. 07–ANM–14) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2007–29164 and Airspace Docket No. 07–ANM–14''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Federal Register's web page at *http://www.gpoaccess.gov/fr/index.html*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Pagosa Springs, CO. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAP at Stevens Field. This action would enhance the safety and management of aircraft operations at Stevens Field, Pagosa Springs, CO.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAAs authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Stevens Field, Pagosa Springs, CO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO, E5 Pagosa Springs, CO [New]

Stevens Field, Pagosa Springs, CO
(Lat. 37°17′11″ N., long. 107°3′22″ W.)

That airspace extending upward from 700 feet above the surface within a 10.0 mile radius of Stevens Field and within 8.0 miles each side of the 169° bearing from the Airport extending from the 10.0 mile radius to 25.0 miles south of the Airport.

* * * * *

Issued in Seattle, Washington, on December 21, 2007.

Clark Desing,

Manager, System Support Group, Western Service Area.

[FR Doc. E8–850 Filed 1–17–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0205; Airspace Docket No. 07–ANM–17]

Proposed Establishment of Class E Airspace; Walden, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Walden-Jackson County Airport, Walden CO. Additional controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Walden-Jackson County Airport, Walden, CO. The FAA is proposing this action to enhance the safety and management of aircraft operations at Walden-Jackson County Airport, Walden, CO.

DATES: Comments must be received on or before March 3, 2008.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2007–0205; Airspace Docket No. 07–ANM–17, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, System Support Group, Western Service Area, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2007–0205 and Airspace Docket No. 07–ANM–17) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2007–0205 and Airspace Docket No. 07–ANM–17''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Area, System Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Walden-Jackson County Airport, Walden, CO. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAP at Walden-Jackson County Airport, Walden, CO. This action would enhance the safety and management of aircraft operations at Walden-Jackson County Airport, Walden, CO.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9R, signed August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Walden-Jackson County Airport, Walden, CO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, and effective September 15, 2007 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO, E5 Walden, CO [New]

Walden-Jackson County Airport, CO
(Lat. 40°45′0″ N., long. 106°16′17″ W.)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Walden-Jackson County Airport, and within 4 miles each side of the 342° bearing from the airport extending from the 5-mile radius to V524 northwest of the airport.

* * * * *

Issued in Seattle, Washington, on January 3, 2008.

Clark Desing,

Manager, System Support Group, Western Service Area.

[FR Doc. E8–844 Filed 1–17–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1309

[Docket No. DEA–294P]

RIN 1117–AB09

Registration Requirements for Importers and Manufacturers of Prescription Drug Products Containing Ephedrine, Pseudoephedrine, or Phenylpropanolamine

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Combat Methamphetamine Epidemic Act of 2005 (CMEA), which was enacted on March 9, 2006, requires DEA to establish an assessment of annual need for the importation and manufacture of ephedrine, pseudoephedrine, and phenylpropanolamine. Because of the new CMEA mandates for importation, import quotas, and production quotas for these chemicals, DEA must revise its registration provisions. The changes made by the CMEA render current DEA regulations inadequate for two reasons. First, although DEA registers bulk manufacturers of the three chemicals in the United States and importers of the bulk chemicals, some of those chemicals are distributed to non-registered companies that process them into prescription drugs. Under the Controlled Substances Act, section 826, production quotas are available only to registered manufacturers. DEA cannot meet the CMEA mandate to establish annual need and import quotas, and then issue individual quotas for each of the chemicals unless all manufacturers manufacturing or procuring the chemicals and manufacturing drug products that contain the chemicals are registered as manufacturers, even if the distribution of the final drug products is not regulated. DEA also must know the quantity of prescription drug products containing the three chemicals being imported. Without this information, DEA would not be able to determine an assessment of annual need for these chemicals. Any person importing prescription drug products containing any of the three chemicals must register although the distribution of these products would not be subject to DEA regulation.

Second, persons currently registered to import, distribute, or dispense controlled substances who manufacture drug products using ephedrine, pseudoephedrine, or phenylpropanolamine, are not necessarily registered to do so. This must also be changed so that controlled substance registrants will only receive a waiver from the requirement of separate chemical registration if they engage in the same activity for both lawfully marketed drug products containing List I chemicals and controlled substances (as is already the case for bulk manufacture, imports, and exports.) In this way, any registrant that must obtain a quota to manufacture or procure one or more of the chemicals will be a registered manufacturer, as required by the CSA.

Were DEA not to issue this rule, it would have no mechanism to issue production or import quotas for persons handling prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine. If these persons were not required to register, there would be no mechanism by which they would be permitted to apply for production or import quotas. Therefore, these persons would have no means by which to acquire the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine necessary for them to conduct business.

Accordingly, DEA is proposing to amend its registration regulations to ensure that every location that manufactures or imports one of these chemicals or drug products that contain ephedrine, pseudoephedrine, or phenylpropanolamine is a DEA registered manufacturer or importer. These amendments will make it possible to establish the system of quotas and assessment of annual needs for the manufacturing that Congress

mandated for ephedrine, pseudoephedrine, and phenylpropanolamine.

DATES: Written comments must be postmarked, and electronic comments must be sent, on or before March 18, 2008.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. DEA–204'' on all written and electronic correspondence. Written comments being sent via regular mail should be sent to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/ODL. Written comments sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, VA 22301. Comments may be directly sent to DEA electronically by sending an electronic message to *dea.diversion.policy@usdoj.gov*. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file formats other than those specifically listed here.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Drug Enforcement Administration's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

FOR FURTHER INFORMATION CONTACT: Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington DC 20537 at (202) 307–7297.

SUPPLEMENTARY INFORMATION:

DEA's Legal Authority

DEA implements the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act (CSA) and the Controlled Substances Import and Export Act (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in Title 21 of the Code of Federal Regulations (CFR), Parts 1300 to 1399. These regulations are designed to ensure that there is a sufficient supply of controlled substances for legitimate medical, scientific, and industrial purposes and to deter the diversion of controlled substances to illegal purposes. The CSA mandates that DEA establish a closed system of control for manufacturing, distributing, and dispensing controlled substances. Any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances must register with DEA (unless exempt) and comply with the applicable requirements for the activity. The CSA as amended also requires DEA to regulate the manufacture, distribution, import, and export of chemicals that may be used to manufacture controlled substances illegally. Listed chemicals that are classified as List I chemicals are important to the manufacture of controlled substances. Those classified as List II chemicals may be used to manufacture controlled substances.

On March 9, 2006, the President signed the Combat Methamphetamine Epidemic Act of 2005 (CMEA), which is Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109–177). Much of CMEA is self-implementing; the provisions related to importation of ephedrine, pseudoephedrine, and phenylpropanolamine, import quotas, manufacturing quotas, and procurement quotas became effective on March 9, 2006.

CMEA Requirements and Impact on Registration

CMEA amended the CSA to include ephedrine, pseudoephedrine, and phenylpropanolamine in 21 U.S.C. 826 (Production quotas for controlled substances) and section 952(a) (Importation of controlled substances). Congress essentially imposed the same requirements for importation of ephedrine, pseudoephedrine, and phenylpropanolamine as are imposed on narcotic raw materials—crude opium, poppy straw, concentrate of poppy straw, and coca leaves. That is, imports of ephedrine, pseudoephedrine, and phenylpropanolamine are prohibited except for such amounts as the Attorney General (DEA by delegation) finds to be necessary to provide for medical, scientific, or other legitimate purposes. Congress also imposed the same requirements on the manufacture of ephedrine, pseudoephedrine, and phenylpropanolamine as are established for Schedule I and II controlled substances. That is, Congress mandated the establishment of a total need for ephedrine, pseudoephedrine, and phenylpropanolamine to be manufactured each calendar year to provide for the estimated medical, scientific, research, and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks. These requirements apply equally to products containing these three List I chemicals as they do to the List I chemicals themselves.

Controlled substances are subject to a closed system of controls that ensures that no person may manufacture, distribute, import, export, or dispense unless that person is a DEA registrant, or exempted from the requirement of registration. Production of Schedule I and II controlled substances is limited to the quantity that DEA has determined is required to meet the legitimate medical, scientific, research, and industrial needs of the United States; for

lawful export requirements; and for establishment and maintenance of reserve stocks (21 U.S.C. 826(a)). After DEA establishes the total annual need, DEA issues individual manufacturing and procurement quotas to manufacturers; under section 826, quotas may be issued only to registered manufacturers. Manufacturers may not produce or purchase more of a substance than is available under their individual quotas. Under the CSA, ''manufacture'' is defined to include all of the following:

- The manufacturing of a substance or chemical in bulk, either by extraction from raw materials, chemical synthesis, or a combination of extraction and chemical synthesis.
- The processing of the substance or chemical into products, such as drugs in dosage form.
- The packaging or repackaging of the processed substances or chemicals or labeling or relabeling of containers holding the chemicals.

Until the passage of CMEA, chemical importers were required to notify DEA of imports of ephedrine, pseudoephedrine, and phenylpropanolamine before or at the time of importation under 21 U.S.C. 971. DEA had no authority to limit the importation or manufacture of ephedrine, pseudoephedrine, and phenylpropanolamine, except the ability to suspend a proposed import under 21 U.S.C. 971 on the ground that it may be diverted to the clandestine manufacture of a controlled substance. Most of the ephedrine, pseudoephedrine, and phenylpropanolamine used in the United States is imported rather than manufactured domestically, although at least one company in the United States manufactures the chemicals in bulk. The three chemicals are used to produce drug products lawfully marketed under the Federal Food, Drug and Cosmetic Act (FFD&CA), many of which are prescription drugs. DEA has not subjected these prescription drug products to all List I chemical regulatory requirements because they are available only in response to a prescription and are stored in and dispensed at pharmacies. These chemicals are also used in over-the-counter (OTC) drug products (lawfully marketed under the FFD&CA). These products have been widely used in the illegal manufacture of methamphetamine and amphetamine. CMEA defined these OTC drug products as scheduled listed chemical products. DEA has regulated the distribution, import, and export of scheduled listed chemical products.

DEA, in 1995, first imposed registration requirements on firms that manufacture, distribute, import, and export List I chemicals. Although section 822 of the CSA states that any person who manufactures or distributes a controlled substance or List I chemical must register with DEA, DEA limited chemical registration for manufacturers to firms that manufacture to distribute List I chemicals. Some manufacturers were not required to register under the ''manufacture for distribution'' policy. Those that manufactured and chemically consumed and transformed all of the chemical in their own processes; those that purchased List I chemicals in bulk and manufactured prescription drug products that contain a List I chemical; and those that repackaged or relabeled prescription drug products that contain a List I chemical were not required to obtain a DEA chemical registration. Firms that manufacture a List I chemical in bulk and distribute to wholesalers or to other manufacturers were already required to register and file reports with DEA. Firms that manufacture scheduled listed chemical products (nonprescription/OTC drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine) also distribute those products, were already required to obtain a DEA chemical registration.

As a consequence of the ''manufacture for distribution'' policy, firms that manufactured prescription drugs containing ephedrine, pseudoephedrine, and phenylpropanolamine were not required to register because distributions of the prescription drug products were not regulated. DEA, in § 1309.22, listed only four activities involving List I chemicals that required registration: Retail distributing, non-retail distributing, importing, and exporting. On the application for registration form, firms were required to indicate whether they were seeking to be registered as manufacturers or distributors (e.g., wholesalers), but the regulation did not distinguish between those who manufacture to distribute and those who simply distribute. In addition, in § 1309.24, DEA waived the chemical distribution registration requirement for firms that manufacture or distribute drug products lawfully marketed under the FFD&CA containing the three chemicals for any firm that is registered to manufacture, distribute, or dispense a controlled substance. Note that this waiver (from the requirement to obtain a separate DEA chemical registration) was only provided for drug products containing a listed chemical which is in final packaged/labeled form which is lawfully marketed under the FFD&CA. Drug products not in final packaged/labeled form were not provided this waiver. For example, an importer of bulk tablets containing a listed chemical, intended for a drug product marketed in the United States, would still have to obtain a chemical importer registration, and would not be able to use their controlled substance registration for such activity.

The waiver does not apply in the reverse; a firm that handles controlled substances must register for the applicable controlled substance activity even if it is already registered to conduct the same activity with List I chemicals.

As a consequence of these decisions, there are firms manufacturing drug products lawfully marketed under the FFD&CA containing ephedrine, pseudoephedrine, or phenylpropanolamine that are not registered with DEA at all because they do not handle controlled substances and the only products they produce containing the three chemicals are prescription drugs. There are also firms that manufacture scheduled listed chemical products, but only distribute or dispense controlled substances. Because they are registered as controlled substance distributors or dispensers, they are not currently required to register as chemical manufacturers. Finally, there may be some firms that are not registered that import prescription drug products that contain the three chemicals.

Because of the new CMEA mandates for importation, import quotas, and production quotas for these chemicals, DEA is proposing to revise its registration provisions. The changes made by the CMEA render current DEA regulations inadequate for two reasons. First, although DEA registers bulk manufacturers of the three chemicals in the United States and importers of the bulk chemicals, some of those chemicals are distributed to non-registered companies that process them into prescription drugs. Under the CSA section 826, production quotas are available only to registered manufacturers. DEA cannot meet the CMEA mandate to establish an annual need and import quotas, and then issue individual quotas for each of the chemicals unless all manufacturers manufacturing or procuring the chemicals and manufacturing drug products that contain the chemicals are registered as manufacturers, even if the distribution of the final drug products is not regulated. DEA also must know the quantity of prescription drug products containing the three chemicals being

imported; without this information, DEA would not be able to determine an assessment of annual need for the chemicals. Any person importing prescription drug products containing any of the three chemicals must register although the distribution of these products would not be subject to DEA regulation.

The second inadequacy is that the existing language allows a controlled substance distributor or dispenser to avoid registration as a chemical manufacturer if they manufacture scheduled listed chemical products or other products containing a List I chemical that is described and included in the definition of ''regulated transaction'' in § 1300.02(b)(28)(i)(D). (DEA notes that there may be a limited number of drug products containing List I chemicals other than ephedrine, pseudoephedrine, and phenylpropanolamine which meet this description.) This provision must also be changed so that controlled substance registrants will not need to obtain a chemical registration only if they engage in the same activity for both drug products containing List I chemicals and controlled substances as is already the case for bulk manufacture, imports, and exports. In this way, any registrant that must obtain a quota to manufacture or procure one or more of the chemicals will be a registered manufacturer, as required by the CSA.

DEA recognizes that this change will require some manufacturers and locations to register that had not previously been subject to DEA regulations; other registrants will be required to obtain separate registrations for chemicals and controlled substances. The proposed new requirements, however, are both consistent with the statutory language on registration and the CMEA amendments and with the intent of the CMEA requirements to establish a system of quotas for the manufacture of these three chemicals and the products that contain them. Without these changes, DEA would not be able to meet the CMEA mandates. In addition, without these changes, companies that manufacture and import prescription drug products containing the three chemicals would not be able to purchase the chemicals legally nor would the assessment of annual needs reflect their requirements.

Explanation of DEA Categories of Registration and Effect of This Rule Regarding DEA Registration

As noted above, the CSA defines the term ''manufacture'' to include the physical manufacture of a chemical or product, as well as the packaging, labeling, repackaging, and relabeling of that product (21 U.S.C. 802(15)).

If this rule is finalized as proposed, persons who manufacture or import ephedrine, pseudoephedrine, or phenylpropanolamine, or who manufacture or import a product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or who plan to engage in such activities, would be required to register with DEA if they are not already registered for the appropriate business activity. As required by the CSA, registration is location-specific; a person must obtain a registration for each principal place of business at one general physical location where controlled substances or List I chemicals are handled. If a person manufactures controlled substances at one location and drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine at another location, the person would be required to obtain a separate registration for each location. Under the waiver previously described in this rulemaking, persons who are currently registered as controlled substances manufacturers at a location where drug products containing these List I chemicals are also manufactured would not be required to register separately to conduct the same activity, manufacturing, with these List I chemicals. A controlled substances registration for that one physical location would cover both the manufacturing of controlled substances and drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine, at that location. Controlled substances manufacturers would, however, be required to identify to DEA the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine they handle as part of their next registration renewal. DEA notes that the manufacture of bulk List I chemicals requires a separate chemical registration; this is not a change from existing regulations.

However, if a person manufactures a drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine at a location, but is registered to conduct other (nonmanufacturing) activities with controlled substances at that location (e.g., distribution), the person would need to obtain a List I chemical manufacturing registration for the location. The following table indicates the changes in registration requirements being proposed for various business activities.

Current	Proposed
Chemical Manufacturers (No Controlled Substances)	
All bulk manufacturers of List I chemicals must register unless all of the chemical produced is consumed internally and is not available for use in products.	No change.
Manufacturers of scheduled listed chemical products register if distribute. Manufacturers of prescription products ** containing List I chemicals do not register.	All manufacturers of drug products containing List I chemicals * would register.
Chemical Distributors	
Distributors of List I chemicals and scheduled listed chemical products register. Distributors of prescription products ** containing List I chemicals do not register.	No change.
Chemical Importers and Exporters	
Importers of List I chemicals and scheduled listed chemical products register. Importers of prescription products ** containing List I chemicals do not register.	Importers of List I chemicals and all drug products containing List I chemicals * would register.

Current	Proposed
Exporters of List I chemicals and scheduled listed chemical products register.	No change.
Exporters of prescription products ** containing List I chemicals do not register.	
Manufacturers and Distributors of Controlled Substances and Drug Products Containing List I Chemicals	
Manufacturers of both controlled substances and drug products containing List I chemicals may register as only controlled substance manufacturers.	No change.
Manufacturers of drug products containing any List I chemical * who distribute or dispense controlled substances may register for only their controlled substance activity. A separate registration for the chemical activity is permissible.	Manufacturers of drug products containing any List I chemical * would register as manufacturers. If they distribute or dispense controlled substances they would register separately for those activities.
Distributors of both controlled substances and drug products containing List I chemicals may register as only controlled substance distributors.	No change.
Importers/Exporters of Controlled Substances and Drug Products Containing List I Chemicals	
Importers of both controlled substances and drug products containing List I chemicals register as controlled substance importers.	No change.
Exporters of both controlled substances and drug products containing List I chemicals register as controlled substance exporters.	No change.
Manufacturers, Distributors, Importers, and Exporters of Bulk List I Chemicals	
Manufacturers, distributors, importers, and exporters of bulk List I chemicals register, regardless of whether they handle controlled substances.	No change.

* "Drug products containing List I chemicals" refers to scheduled listed chemical products or other products containing a List I chemical that is described and included in the definition of "regulated transaction" in § 1300.02(b)(28)(i)(D). Such drug products must be in packaged/labeled form as required under the FFD&CA for lawful marketing.

** "Prescription products," for purposes of this chart, refers to "any transaction in a List I chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act * * *" (21 U.S.C. 802(39)(a)(iv)). To comply with the marketing and distribution requirements of the Federal Food, Drug, and Cosmetic Act for prescription drugs, such drugs must be packaged and labeled in accordance with the Federal Food, Drug and Cosmetic Act as prescription drugs.

Proposed Requirements of This Rule

DEA is proposing that a person who manufactures or imports a prescription drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine would be required to comply with the following:

Registration. Any person who manufactures or imports a drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine, or proposes to engage in the manufacture or importation of a drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine, would be required to obtain a registration under the CSA (21 U.S.C. 822 and 958). Regulations describing registration for List I chemical handlers are set forth in 21 CFR part 1309.

A separate registration is required for manufacturing, distribution, importing, and exporting, except that a person registered to manufacture or import a List I chemical or a product containing ephedrine, pseudoephedrine, or phenylpropanolamine may distribute that List I chemical or drug product without obtaining a separate registration to do so. A separate registration is required for each principal place of business at one general physical location where the List I chemicals are manufactured, distributed, imported, or exported by a person (21 CFR 1309.23).

As a result of the change, any person manufacturing or importing a prescription drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine would become subject to the registration requirement under the CSA. DEA recognizes, however, that it is not possible for persons who would be newly subject to the registration requirement to complete and submit an application for registration and for DEA to issue registrations for those activities immediately. Therefore, to allow continued legitimate commerce, DEA is proposing to establish in § 1309.25 a temporary exemption from the registration requirement for persons desiring to engage in manufacturing or importing prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine, provided that DEA receives a properly completed application for registration on or before 30 days from the date of publication of a Final Rule in the **Federal Register**. The temporary exemption for such persons will remain in effect until DEA takes final action on their application for registration.

The temporary exemption applies solely to the registration requirement; all other chemical control requirements, including recordkeeping and reporting, will remain in effect. Additionally, the temporary exemption does not suspend applicable Federal criminal laws relating to these chemicals, nor does it supersede State or local laws or regulations. All manufacturers and importers of ephedrine, pseudoephedrine, or phenylpropanolamine, or any product containing any of these three List I chemicals, must comply with applicable State and local requirements in addition to the CSA regulatory controls.

Importation. All persons importing ephedrine, pseudoephedrine, or phenylpropanolamine, or drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine would be required to comply with all requirements regarding importation.

Records and Reports. The CSA (21 U.S.C. 830) requires certain records to be kept and reports to be made involving listed chemicals. Regulations describing recordkeeping and reporting

requirements are set forth in 21 CFR part 1310. A record must be made and maintained for two years after the date of a regulated transaction involving a List I chemical. Each regulated bulk manufacturer of a regulated mixture must submit manufacturing, inventory, and use data on an annual basis (21 CFR 1310.05(d)). Bulk manufacturers producing the chemicals solely for internal consumption are not required to submit this information; internal consumption does not include using the chemical to produce drug products. Existing standard industry reports containing the required information are acceptable, provided the information is readily retrievable from the report.

Under 21 CFR 1310.05, regulated persons are required to report to DEA any regulated transaction involving an extraordinary quantity, an uncommon method of payment or delivery, or any other circumstance that causes the regulated person to believe that the listed chemical will be used in violation of the CSA. Regulated persons are also required to report to DEA any proposed regulated transaction with a person whose description or other identifying information has been furnished to the regulated person. Finally, regulated persons are required to report any unusual or excessive loss or disappearance of a listed chemical.

Security. All applicants and registrants must provide effective controls against theft and diversion of chemicals as described in 21 CFR 1309.71.

Administrative Inspection. Places, including factories, warehouses, or other establishments and conveyances, where regulated persons may lawfully hold, manufacture, distribute, dispense, administer, or otherwise dispose of ephedrine, pseudoephedrine, or phenylpropanolamine, or products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or where records relating to those activities are maintained, are controlled premises as defined in 21 CFR 1316.02(c). The CSA (21 U.S.C. 880) allows for administrative inspections of these controlled premises as provided in 21 CFR part 1316, subpart A.

Section by Section Analysis of Proposed Rule Changes

DEA is proposing to amend §§ 1309.11 and 1309.12 to replace ''manufacture for distribution'' with ''manufacture.'' In addition, in both sections, DEA is proposing to remove references to retail distributors. In amendments to 21 U.S.C. 823(h) the CMEA expressly stated that distributors of scheduled listed chemical products at retail are not required to register under the Controlled Substances Act. To avoid confusion, DEA decided to address all registration revisions related to CMEA implementation in this rulemaking.

Section 1309.21 is proposed to be revised to state that every person who manufactures or proposes to manufacture a List I chemical or a drug product containing a List I chemical must register. The change would require manufacturers of prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine to register even though they are not required to register to distribute or export the products. DEA is also proposing to add a table to the section, similar to the table in § 1301.13 on controlled substance registration requirements, to summarize the requirements for each business activity. As discussed above, this revision would not alter the registration requirements for bulk manufacturers of List I chemicals and for manufacturers of scheduled listed chemical products.

Section 1309.22 is proposed to be revised to remove retail distributing as a registration activity and to add manufacturing. As explained above, CMEA explicitly states that retail distributors of scheduled listed chemical products are not required to register. DEA is also proposing to add a new paragraph to state that a person registered to manufacture a List I chemical is authorized to distribute that chemical under the manufacturing registration. The registrant may not distribute, under a manufacturer's registration, any List I chemical that is not covered in the manufacturing registration. This limitation parallels the existing limitation for importers.

In § 1309.24 paragraph (b) is proposed to be revised to clarify that a person who manufactures or distributes a scheduled listed chemical product or other product containing a List I chemical that is described and included in the definition of ''regulated transaction'' in § 1300.02(b)(28)(i)(D) is exempted from registration only if registered to conduct the same activity with controlled substances. Paragraph (c) is proposed to be revised to clarify that a person who imports or exports a scheduled listed chemical product or other product containing a List I chemical that is described and included in the definition of ''regulated transaction'' in § 1300.02(b)(28)(i)(D) is exempted from registration only if registered to conduct the same activity with controlled substances. Paragraph (e) waiving registration for retail distributors is proposed to be removed because CMEA statutorily does not require them to register. The remaining paragraphs (f) through (l) would be redesignated (e) through (k). DEA notes that the waiver of the requirement of registration continues for bulk manufacturers who manufacture and consume all of the List I chemical internally.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Combat Methamphetamine Epidemic Act of 2005 amended the Controlled Substances Act to require production quotas for manufacturers handling the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. CMEA also authorized the Attorney General (DEA by delegation), to establish import quotas for ephedrine, pseudoephedrine, and phenylpropanolamine. The Controlled Substances Act requires that quotas be issued to registrants. Were DEA not to issue this rule, it would have no mechanism to permit the registration of persons handling prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine. If these persons were not permitted to register, there would be no mechanism by which they would be permitted to apply for production or import quotas. Therefore, these persons would have no means by which to acquire the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine necessary for them to conduct business.

This rule proposes to codify provisions necessary for implementation of the Combat Methamphetamine Epidemic Act. As discussed further below, DEA has examined the potential impacts of this rule. DEA has no basis for estimating the number of firms that may be small, but given the definition of small entities, it is likely that a substantial number of the new registrants will be small. The cost of compliance, however, would not impose a significant economic burden. The only cost is the $2,293 registration fee for manufacturers, and the $1,147 registration fee for importers, respectively. The recordkeeping and reporting requirements can be met using existing business and manufacturing records. The security provisions are general and require the registrant to provide effective controls and procedures to guard against theft and and diversion of List I chemicals. Any

manufacturer approved by the FDA and complying with good manufacturing practices or currently registered to handle controlled substances will have internal controls that meet this requirement. The smallest pharmaceutical firms (with 1 to 4 employees) had an average value of shipments of $824,000 in 2002 ($886,000 in 2007 dollars, based on GDP). Even for these firms, which are unlikely to be producing the covered drug products, the $2,293 registration fee would represent less than 0.3 percent of sales and, therefore, is not a significant burden. Therefore, this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 section 1(b). It has been determined that this is ''a significant regulatory action.'' Therefore, this action has been reviewed by the Office of Management and Budget. As discussed above, this action is necessary to implement statutory provisions. DEA has, nonetheless, reviewed the potential costs.

DEA has a limited basis for determining the number of manufacturers of prescription drug products that will need to obtain a DEA registration for the first time. DEA reviewed a list of pseudoephedrine products and ephedrine prescription drug products and identified 230 firms based on their labeler codes. Of all firms identified, 164 do not appear to be registered with DEA as manufacturers and 95 are not registered as either manufacturers or controlled substance distributors. The firms currently registered to manufacture controlled substances may not manufacture List I chemical drugs at the same locations. Seventy firms are currently registered as controlled substance distributors. There may be some firms that import prescription drug products that are not now registered to import either controlled substances or List I chemicals. DEA estimates that approximately 200 firms may have to obtain a new DEA registration. As noted above, the only cost imposed by the rule is the registration fee of $2,293 for the registration of each manufacturing location, and $1,147 for each importing location. The total cost of these rule changes will be less than $500,000. The cost to individual firms is relatively small, compared with their revenues. The benefit of the rule is that it will make it possible for DEA to meet the statutory mandate to assess the annual need for the chemicals accurately and provide manufacturers with the quotas they need to continue to produce drug products containing the three chemicals. As DEA discussed throughout this rulemaking, the Controlled Substances Act provides that quotas may only be issued to registrants. Were DEA not to issue this rule, it would have no mechanism to permit the registration of persons handling prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine. If these persons were not permitted to register, there would be no mechanism by which they would be permitted to apply for production or import quotas. Therefore, these persons would have no means by which to acquire the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine necessary for them to conduct business.

Paperwork Reduction Act

This Notice of Proposed Rulemaking would require that certain persons who were not previously registered with DEA obtain a registration to handle the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine. Specifically, persons manufacturing prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine were not previously required to register, but now would be required to obtain a registration so that they may be eligible to apply for individual quotas for these List I chemicals. Additionally, importers of prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine who were not previously registered as List I chemical importers would be required to register so that they may be eligible to apply for import quotas for ephedrine, pseudoephedrine, and phenylpropanolamine. DEA estimates that approximately 200 firms may have to obtain a new DEA registration. DEA assumes that these firms complete the registration application electronically, with each application taking 15 minutes to complete. The receipt of these additional applications increases the hour burden by 50 hours annually. Therefore, DEA is proposing to revise an existing approved information collection, ''Application for Registration under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration Under Domestic Chemical Diversion Control Act of 1993'' (OMB # 1117–0031), to reflect the increase in population associated with this rule.

Further, DEA is proposing to amend the forms associated with the existing approved information collection ''Application for Registration (DEA Form 225) and Application for Registration Renewal (DEA Form 225a)'' (OMB # 1117–0012) to include a listing of all List I chemicals on the application forms. Currently, controlled substances registrant applicants, who use these forms to apply for DEA registration, are not required to identify the List I chemicals they handle. Without this identification, it is not possible for these persons to apply for individual quotas for these chemicals. The addition of the List I chemicals will allow persons to identify which chemicals they handle. New applicants would be required to identify the List I chemicals they handle upon their initial application; persons renewing their registration will identify the chemicals at the time of their renewal. This information must merely be verified for each succeeding renewal. Thus, the addition of this list will not have a measurable effect on the time needed to complete the application. Therefore, DEA is not proposing to revise the collection itself, but rather is proposing to make changes only to the application forms themselves.

The Department of Justice, Drug Enforcement Administration, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the information collection-related aspects of this rule are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 electronic submission of responses.

Overview of Information Collection 1117–0031

(1) *Type of information collection:* Revision of an existing collection.

(2) *Title of form/collection:* Application for Registration under Domestic Chemical Diversion Control Act of 1993 and Renewal Application for Registration Under Domestic Chemical Diversion Control Act of 1993.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Number: DEA Forms 510 and 510a.

Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: business or other for-profit.

Other: Not-for-profit, government agencies.

Abstract: The Domestic Chemical Diversion Control Act requires that manufacturers, distributors, importers, and exporters of List I chemicals which may be diverted in the United States for the production of illicit drugs must register with DEA. Registration provides a system to aid in the tracking of the distribution of List I chemicals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 2,776 persons respond to this collection annually. DEA estimates that it takes 30 minutes for an average respondent to respond when completing the application on paper, and 15 minutes for an average respondent to respond when completing an application electronically. This application is submitted annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates that this collection has a public burden of 927 hours annually.

Form	Number of respondents	Total burden hours
DEA–510 (paper)	286	143
DEA–510 (electronic)	478	119.5
DEA–510a (paper)	644	322
DEA–510a (electronic)	1,368	342
Total	2,776	926.5

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Executive Order 12988

This regulation meets the applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

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 $120,000,000 or more (adjusted for inflation) in any one year, and 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.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). 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 in 21 CFR Part 1309

Administrative practice and procedure; Drug traffic control; Exports; Imports; Security measures.

For the reasons set out above, 21 CFR part 1309 is proposed to be amended as follows:

PART 1309—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, IMPORTERS AND EXPORTERS OF LIST I CHEMICALS

1. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 886a, 958.

2. Section 1309.11 is revised to read as follows:

§ 1309.11 Fee amounts.

(a) For each application for registration or reregistration to manufacture the applicant shall pay an annual fee of $2,293.

(b) For each application for registration or reregistration to distribute, import, or export a List I chemical, the applicant shall pay an annual fee of $1,147.

3. Section 1309.12 is revised to read as follows:

§ 1309.12 Time and method of payment; refund.

(a) For each application for registration or reregistration to manufacture, distribute, import, or export, the applicant shall pay the fee when the application for registration or reregistration is submitted for filing.

(b) Payments should be made in the form of a credit card; a personal, certified, or cashier's check; or a money order made payable to ''Drug Enforcement Administration.'' Payments made in the form of stamps, foreign currency, or third party endorsed checks will not be accepted. These application fees are not refundable.

4. Section 1309.21 is revised to read as follows:

§ 1309.21 Persons required to register.

(a) Unless exempted by law or under §§ 1309.24 through 1309.26, the following persons must annually obtain a registration specific to the List I chemicals to be handled:

(1) Every person who manufactures or imports or proposes to manufacture or import a List I chemical or a drug product containing ephedrine, pseudoephedrine, or phenylpropanolamine.

(2) Every person who distributes or exports or proposes to distribute or export any List I chemical, other than those List I chemicals contained in a product exempted under § 1300.02(b)(28)(i)(D) of this chapter.

(b) Only persons actually engaged in the activities are required to obtain a

registration; related or affiliated persons who are not engaged in the activities are not required to be registered. (For example, a stockholder or parent corporation of a corporation distributing List I chemicals is not required to obtain a registration.)

(c) The registration requirements are summarized in the following table:

SUMMARY OF REGISTRATION REQUIREMENTS AND LIMITATIONS

Business activity	Chemicals	DEA forms	Application fee	Registration period (years)	Coincident activities allowed
Manufacturing	List I, Drug Products containing ephedrine, pseudoephedrine, phenylpropanolamine.	New—510 ..... Renewal—510a	$2,293 2,293	1	May distribute that chemical for which registration was issued; may not distribute any chemical for which not registered.
Distributing	List I, Scheduled listed chemical products.	New—510 ..... Renewal—510a	1,147 1,147	1	
Importing	List I, Drug Products containing ephedrine, pseudoephedrine, phenylpropanolamine.	New—510 ..... Renewal—510a	1,147 1,147	1	May distribute that chemical for which registration was issued; may not distribute any chemical for which not registered.
Exporting	List I, Scheduled listed chemical products.	New—510 ..... Renewal—510a	1,147 1,147	1	

5. Section 1309.22 is revised to read as follows:

§ 1309.22 Separate registration for independent activities.

(a) The following groups of activities are deemed to be independent of each other:

(1) Manufacturing of List I chemicals or drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine.

(2) Distributing of List I chemicals and scheduled listed chemical products.

(3) Importing List I chemicals or drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine.

(4) Exporting List I chemicals and scheduled listed chemical products.

(b) Except as provided in paragraphs (c) and (d) of this section, every person who engages in more than one group of independent activities must obtain a separate registration for each group of activities, unless otherwise exempted by the Act or §§ 1309.24 through 1309.26.

(c) A person registered to import any List I chemical shall be authorized to distribute that List I chemical after importation, but no other chemical that the person is not registered to import.

(d) A person registered to manufacture any List I chemical shall be authorized to distribute that List I chemical after manufacture, but no other chemical that the person is not registered to manufacture.

6. In § 1309.23 paragraph (a) is revised to read as follows:

§ 1309.23 Separate registration for separate locations.

(a) A separate registration is required for each principal place of business at one general physical location where List I chemicals are manufactured, distributed, imported, or exported by a person.

* * * * *

7. Section 1309.24 is revised to read as follows:

§ 1309.24 Waiver of registration requirement for certain activities.

(a) The requirement of registration is waived for any agent or employee of a person who is registered to engage in any group of independent activities, if the agent or employee is acting in the usual course of his or her business or employment.

(b) The requirement of registration is waived for any person who manufactures or distributes a scheduled listed chemical product or other product containing a List I chemical that is described and included in the definition of ''regulated transaction'' in § 1300.02(b)(28)(i)(D), if that person is registered with the Administration to engage in the same activity with a controlled substance.

(c) The requirement of registration is waived for any person who imports or exports a scheduled listed chemical product or other product containing a List I chemical that is described and included in the definition of ''regulated transaction'' in § 1300.02(b)(28)(i)(D), if that person is registered with the Administration to engage in the same activity with a controlled substance.

(d) The requirement of registration is waived for any person who only distributes a prescription drug product containing a List I chemical that is regulated pursuant to § 1300.02(b)(28)(i)(D) of this chapter.

(e) The requirement of registration is waived for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: another location operated by the same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste disposal.

(f) The requirement of registration is waived for any person whose distribution of red phosphorus or white phosphorus is limited solely to residual quantities of chemical returned to the producer, in reusable rail cars and intermodal tank containers which conform to International Standards Organization specifications (with capacities greater than or equal to 2,500 gallons in a single container).

(g) The requirement of registration is waived for any person whose activities with respect to List I chemicals are limited solely to the distribution of Lugol's Solution (consisting of 5 percent iodine and 10 percent potassium iodide in an aqueous solution) in original manufacturer's packaging of one fluid ounce (30 ml) or less.

(h) The requirement of registration is waived for any manufacturer of a List I chemical, if that chemical is produced solely for internal consumption by the manufacturer and there is no subsequent distribution or exportation of the List I chemical.

(i) If any person exempted under paragraph (b), (c), (d), (e), or (f) of this section also engages in the distribution, importation, or exportation of a List I chemical, other than as described in such paragraph, the person shall obtain a registration for the activities, as required by § 1309.21 of this part.

(j) The Administrator may, upon finding that continuation of the waiver would not be in the public interest, suspend or revoke a waiver granted under paragraph (b), (c), (d), (e), or (f) of this section pursuant to the procedures set forth in §§ 1309.43 through 1309.46 and §§ 1309.51 through 1309.55 of this part. In considering the revocation or suspension of a person's waiver granted pursuant to paragraph (b) or (c) of this section, the Administrator shall also consider whether action to revoke or suspend the person's controlled substance registration pursuant to 21 U.S.C. 824 is warranted.

(k) Any person exempted from the registration requirement under this section must comply with the security requirements set forth in §§ 1309.71 through 1309.73 of this part and the recordkeeping and reporting requirements set forth under parts 1310 and 1313 of this chapter.

8. Section 1309.25 is amended by adding a new paragraph (c) to read as follows:

§ 1309.25 Temporary exemption from registration for chemical registration applicants.

* * * * *

(c) Each person required by section 302 of the Act (21 U.S.C. 822) to obtain a registration to manufacture or import prescription drug products containing ephedrine, pseudoephedrine, or phenylpropanolamine is temporarily exempted from the registration requirement, provided that the person submits a proper application for registration on or before [DATE 30 DAYS AFTER PUBLICATION OF A FINAL RULE IN THE **Federal Register**]. The exemption will remain in effect for each person who has made such application until DEA has approved or denied the application. This exemption applies only to registration; all other chemical control requirements set forth in this part and parts 1310, 1313, and 1315 of this chapter remain in full force and effect.

Dated: January 11, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–127127–05]

RIN 1545–BE68

Guidance on Qualified Tuition Programs Under Section 529

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: This document invites comments from the public regarding rules under section 529 of the Internal Revenue Code (Code) that the IRS and the Treasury Department expect to propose in a notice of proposed rulemaking. The rules focus mainly on the transfer tax provisions applicable to accounts (section 529 accounts) in Qualified Tuition Programs (QTPs). It is anticipated that these rules will generally apply to section 529 accounts after the effective date of final regulations. All materials submitted will be available for public inspection and copying.

DATES: Written and electronic comments must be submitted by March 18, 2008.

ADDRESSES: Send written comments to: Internal Revenue Service, Attn: CC:PA:LPD:PR (REG–127127–05), room 5203, POB 7604 Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–127127–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS–REG–127127–05).

FOR FURTHER INFORMATION CONTACT: Concerning submissions, Richard A. Hurst at *Richard.A.Hurst@irscounsel.treas.gov* or, (202) 622–7180; concerning rules relating to estate, gift, and generation-skipping transfer tax issues, Mary Berman, (202) 622–3090; concerning other proposed rules, Monice Rosenbaum, (202) 622–6070 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Prior Administrative Guidance

A Notice of Proposed Rulemaking under section 529 was published in the **Federal Register** on August 24, 1998 (REG–106177–97; 63 FR 45019) (the 1998 proposed regulations). Additional guidance was published in Notice 2001–55 (2001–2 CB 299) and Notice 2001–81 (2001–2 CB 617). Notice 2001–55 provides guidance regarding the statutory restriction against investment direction. Notice 2001–81 provides guidance on recordkeeping, reporting and other requirements applicable to QTPs in light of certain amendments made to section 529 by the Economic Growth and Tax Relief Reconciliation Act of 2001 (Pub. L. 107–16, 115 Stat. 38) (EGTRRA). See § 601.601(d)(2)(ii)(*b*).

Although the 1998 proposed regulations and these notices provide rules regarding many issues arising under section 529, other issues remain unresolved. Current law regarding the transfer tax treatment of section 529 accounts is unclear and in some situations imposes tax in a manner inconsistent with generally applicable transfer tax provisions of the Code. In addition, current law raises the potential for abuse of section 529 accounts in certain situations.

Pension Protection Act of 2006

The Pension Protection Act of 2006 (Pub. L. 109–280, 120 Stat. 780) (the PPA) permanently extended the EGTRRA amendments to section 529, which previously were scheduled to expire at the end of 2010, including the provision that exempts from Federal income tax distributions made from section 529 accounts that are used to pay qualified higher education expenses (QHEEs). See section 1304(a) of the PPA. At the same time, section 1304(b) of the PPA enacted section 529(f). Section 529(f) provides that, notwithstanding any other provision of section 529, the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 529 and to prevent abuse of such purposes, including regulations under chapters 11, 12, and 13.

In discussing new section 529(f), the Technical Explanation prepared by the Joint Committee on Taxation provides two examples of how present law creates the opportunity for abuse of section 529 accounts. See Joint Committee on Taxation, Technical Explanation of H.R. 4, The ''Pension Protection Act of 2006,'' as Passed by the House on July 28, 2006 and as Considered by the Senate on August 3, 2006, (JCX–38–06), at 369. Abuse may arise because of the ability to change designated beneficiaries (DBs) in certain circumstances without triggering transfer tax. For example, taxpayers may seek to establish and contribute to multiple accounts (taking advantage of the 5-year rule of section 529(c)(2)(B))

with different DBs with the intention of subsequently changing the DBs of such accounts to a single, common beneficiary and distributing the entire amount to such beneficiary without further transfer tax consequences. Abuse may also arise because taxpayers seek to use section 529 accounts as retirement accounts, with all of the tax benefits but none of the restrictions and requirements of qualified retirement accounts.

Potential for Abuse of Section 529 Accounts

The IRS and the Treasury Department are aware of other situations where current law raises the potential for abuse of section 529 accounts. For example, abuse may also arise if a person contributes a large sum to an account for himself or herself and then changes the DB to a member of his or her family who is in the same or a higher generation (as determined in accordance with section 2651) as the contributor. The contributor's contributions to his or her own account would not trigger the gift tax because an individual cannot make a gift to himself or herself. The contributor may claim that the subsequent change of DB to a member of the contributor's family who is in the same or a higher generation avoids the gift tax under the special transfer tax rules of section 529. Abuse may also arise because contributions to accounts are treated as completed gifts to the DB even though the account owner (AO) may be able to withdraw the money at his or her discretion.

Overview of Proposed Regulations

Section 529(f) authorizes the IRS and the Treasury Department to promulgate regulations as needed to protect against these and other types of abuse. Accordingly, the IRS and the Treasury Department intend to issue a notice of proposed rulemaking to address the potential for abuse of section 529 accounts. The notice of proposed rulemaking will provide a general anti-abuse rule that will apply when section 529 accounts are established or used for purposes of avoiding or evading transfer tax or for other purposes inconsistent with section 529. In addition, the notice of proposed rulemaking will include rules relating to the tax treatment of contributions to and participants in QTPs, including rules addressing the inconsistency between section 529 and the generally applicable income and transfer tax provisions of the Code. The notice of proposed rulemaking also will include rules relating to the function and operation of QTPs and section 529 accounts.

With some exceptions, the 1998 proposed regulations will be reproposed in the notice of proposed rulemaking. The guidance published in Notice 2001–55, Notice 2001–81, and the instructions and publications related to Form 1099–Q, ''Payments from Qualified Education Programs (Under Sections 529 and 530),'' also will be included in the forthcoming notice of proposed rulemaking. Taxpayers and QTPs may continue to rely on the information provided in existing published guidance, including any effective dates therein. See § 601.601(d)(2)(ii)(*b*) of the regulations. The IRS and the Treasury Department anticipate that the forthcoming notice of proposed rulemaking also will address additional comments that have been received with regard to certain administrative, income tax, and other issues affecting QTPs and section 529 accounts.

The IRS and the Treasury Department anticipate that the new rules to be provided in the notice of proposed rulemaking will generally apply prospectively to all section 529 accounts. Transition rules will be provided if necessary. However, the anti-abuse rule may be applied on a retroactive basis pursuant to section 7805(b)(3).

The IRS and the Treasury Department also anticipate that the notice of proposed rulemaking may require some States (or agencies or instrumentalities thereof) and eligible educational institutions that have established and maintained QTPs to make changes to the terms and operating provisions of their programs in order to ensure that their programs remain qualified under section 529. The forthcoming notice of proposed rulemaking will provide a grace period of no less than 15 months to implement most changes.

The following discussion sets forth the rules expected to be included in the notice of proposed rulemaking and explains the rationale for these rules.

Explanation of Provisions

I. Anti-Abuse Rule

The IRS and the Treasury Department are aware that the inconsistency between the section 529 transfer tax provisions and the generally applicable transfer tax provisions of the Code create the potential for abuse of section 529 accounts.

As described above, the Technical Explanation accompanying new section 529(f) provides two examples in which present law creates the opportunity for abuse of section 529 accounts. Concern has also been raised as to the potential for abuse in other situations. For example, assume that in 2007, when the gift tax annual exclusion amount under section 2503(b) is $12,000, Grandparents wish to give more than $1 million to Child, free of transfer taxes. Grandparents open section 529 accounts for each of their 10 grandchildren, naming Child the AO of each account. Grandparents use the 5-year spread rule of section 529(c)(2)(B) to contribute $120,000 ($60,000 from each Grandparent) to each grandchild's account without triggering any gift or generation-skipping transfer (GST) tax liability. The earnings then accumulate on a tax-deferred basis in the accounts and Child may withdraw the balances at any time. If Grandparents survive for 5 years, the account balances will not be included in their gross estates at death. In effect, Grandparents have transferred $1.2 million to Child while claiming that no transfer taxes are due and claiming to use none of their applicable credit amount (formerly the unified credit). As discussed more fully below, similar concerns have been raised where there is a change from one AO to a new AO, thus giving the new AO all rights to and control over the section 529 account, including the right to completely withdraw the entire account for the new AO's benefit.

The forthcoming notice of proposed rulemaking will contain an anti-abuse rule designed to prevent opportunities for abuse of section 529 accounts such as those set forth above. The anti-abuse rule generally will deny the favorable transfer tax treatment under section 529 if contributions to those accounts are intended or used for purposes other than providing for the QHEEs of the DB (except to the extent otherwise allowable under section 529 or the corresponding regulations). The IRS and the Treasury Department anticipate that the anti-abuse rule will generally follow the steps in the overall transaction by focusing on the actual source of the funds for the contribution, the person who actually contributes the cash to the section 529 account, and the person who ultimately receives any distribution from the account. If it is determined that the transaction, in whole or in part, is inconsistent with the intent of section 529 and the regulations, taxpayers will not be able to rely on the favorable tax treatment provided in section 529. The anti-abuse rule will include examples such as those set forth above that provide clear guidance to taxpayers about the types of transactions considered abusive.

The IRS and the Treasury Department intend to monitor transactions involving section 529 accounts. If concerns regarding abuse continue, the IRS and

the Treasury Department will consider adopting broader rules including, for example, rules limiting the circumstances under which a QTP may permit AOs to withdraw funds from accounts; limiting the circumstances under which there may be a change in DB; and limiting the circumstances under which the AO may name a different AO. These rules may be adopted in addition or as an alternative to the general anti-abuse rule.

II. Rules Relating to the Tax Treatment of Contributions to and Participants in Section 529 Accounts

A. AO's Liability for Any Gift and/or GST Tax Imposed on a Taxable Change of DB

Section 529(c)(5)(B) provides that the gift and GST tax apply to a transfer by reason of a change in the DB of a section 529 account (or a rollover to the account of a new DB) unless the new DB is both: (1) Assigned to the same or a higher generation (determined in accordance with section 2651) as the former DB, and (2) a member of the family of the former DB. The statute does not identify the individual who would be liable for the gift and/or GST tax in such a situation.

Section 1.529–5(b)(3) of the 1998 proposed regulations, in accordance with the legislative history (H.R. Rep. No. 148 at 328), provides that, if the AO changes the DB, or directs a rollover of credits or account balances from the account of one beneficiary to the account of another beneficiary, and if the new DB is not both a member of the family of the former DB and in the same or a higher generation (as determined under section 2651) as the former DB, the change of DB by the AO is treated as a taxable gift by the former DB to the new DB. This result follows from generally applicable transfer tax provisions because each contribution to the section 529 account on behalf of the former DB was treated as a completed gift to the former DB. As a consequence, under the 1998 proposed regulations, the former DB is deemed to be the owner of the funds contributed to the account and, therefore, is the donor/transferor of the account to the new DB.

Because the AO rather than the DB has the power to change a beneficiary, several comments on the 1998 proposed regulations raised concerns about the imposition of tax on the former DB. In many cases, the DBs are minors who may not be aware of the existence of the account for their benefit.

The term ''account owner'' does not appear in section 529. The definition of account owner in § 1.529–1(c) of the 1998 proposed regulations was included to reflect practices used at that time to facilitate the establishment of accounts for minor beneficiaries. In practice, the AO retains control over the selection of the DB and has personal access to the funds in the account.

In order to assign the tax liability to the party who has control over the account and is responsible for the change of any beneficiary, the forthcoming notice of proposed rulemaking will provide that a change of DB that results in the imposition of any tax will be treated as a deemed distribution to the AO followed by a new gift. Therefore, the AO will be liable for any gift or GST tax imposed on the change of the DB, and the AO must file gift and GST tax returns if required. This position comports with the income tax provision under § 1.529–3(c)(1) of the 1998 proposed regulations that treats a change of DB to a new DB who is not a member of the family of the former DB as a distribution to the AO, provided the AO has the authority to change the DB. Special rules may be needed to address situations in which a trust or an entity such as a bank, rather than an individual, is the AO. The IRS and the Treasury Department welcome comments regarding such special rules and on possible alternative approaches to collecting any transfer taxes due upon a change of DB.

B. AO's Liability for Tax Imposed on Any Withdrawal by the AO From a Section 529 Account for the AO's Own Benefit and on a Change in AO

Section 529(c)(3)(A) provides that, in general, any distribution from a section 529 account is includible in the gross income of the distributee in the manner provided under section 72, to the extent not excluded from gross income under any other provision of chapter 1 of the Code. Section 529(c)(3)(A) does not limit the class of potential distributees.

As discussed previously in this preamble, the AO of a section 529 account is the party with control over the account. Concerns have been raised regarding the potential tax consequences in situations where the AO withdraws part or all of the funds from the section 529 account for the AO's own benefit. For example, a contributor might attempt to avoid gift tax by making contributions that do not exceed the gift tax annual exclusion amount under section 2503(b) to multiple accounts having the same AO. The AO could then withdraw some or all of those funds for the AO's own benefit. The AO, as distributee, would claim to owe only the income tax and a 10-percent additional tax on the earnings portion of the withdrawal, while the taxpayer who contributed those funds would claim to owe no gift or GST tax.

Concerns also have been raised regarding the possible tax consequences in situations where an AO transfers control of the account to a new AO, or names himself or herself (or the AO's spouse) as the DB. The IRS and the Treasury Department expect to develop additional rules to address these and other similar transactions by AOs, including (1) limiting AOs to individuals; and, (2) making the AO liable for income tax on the entire amount of the funds distributed for the AO's benefit except to the extent that the AO can substantiate that the AO made contributions to the section 529 account and, therefore, has an investment in the account within the meaning of section 72. The IRS and the Treasury Department welcome comments on such additional rules and on any alternative approaches to preventing misuse by AOs of section 529 accounts.

C. Application of Transfer Tax Where Permissible Contributors to Section 529 Accounts Include Persons Other Than Individuals

Under section 529(b)(1), a QTP is a program under which a person may purchase tuition credits or certificates on behalf of a DB which entitle the DB to the waiver or payment of QHEEs or, in the case of a program established and maintained by a State or agency or instrumentality thereof, may make contributions to an account which is established for the purpose of paying the QHEEs of the DB of the account. Section 1.529–1(c) of the 1998 proposed regulations provides that, for purposes of section 529, the term ''person'' has the same meaning as under section 7701(a)(1). Section 7701(a)(1) provides that, when the term ''person'' is used in the Code and not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the term shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

Since publication of the 1998 proposed regulations, this broad definition of ''person'' has raised questions concerning the application of the transfer tax and, in certain situations, the income tax and the employment tax.

With respect to transfer taxes, section 529(c)(2)(A) provides that any contribution to a section 529 account on behalf of a DB shall be treated as a completed gift of a present interest in property to the DB. Section 2501(a)

imposes a tax on the transfer of property by gift by an ''individual.'' Under § 25.2501–1(a) of the Gift Tax Regulations, the gift tax is not applicable to transfers by corporations or persons other than individuals, except as provided in § 25.2511–(1)(h)(1). Section 25.2511–(1)(h)(1) provides that a transfer of property by a corporation to an individual is a gift to the individual by the stockholders of the corporation. If the individual is a stockholder, the transfer is a gift to the individual by the other stockholders to the extent it exceeds the individual's own interest in such amount as a stockholder.

Because any contribution to a section 529 account is treated as a completed gift, and because the gift tax is imposed only on individuals, it can be argued that the definition of ''person'' in section 529(b)(1) should be limited to individuals. Nevertheless, the IRS and the Treasury Department believe it may be possible to interpret sections 529(b)(1) and 529(c)(2)(A) consistently without limiting the class of permissible contributors to individuals by providing special rules for contributions made by corporations, partnerships, estates, trusts, and other entities. For example, based on § 25.2511–1(h)(1), a contribution by a person other than an individual may be treated as a separate gift by each beneficiary, member, shareholder, partner, etc., in an amount representing that individual's allocable share of the contribution.

Accordingly, the forthcoming notice of proposed rulemaking will follow the 1998 proposed regulations in providing that the definition of ''person'' as used in section 529(b)(1) will have the same meaning as under section 7701(a)(1).

The IRS and the Treasury Department welcome comments on whether the definition of ''person'' in section 529(b)(1) should be limited to individuals and on rules necessary to ensure appropriate transfer tax consequences in situations where persons other than individuals make contributions to section 529 accounts. In addition, comments are welcome as to whether the complexity of any special rules would outweigh the benefit of allowing non-individual contributors.

Comments are also welcome regarding potential income tax consequences when contributions are made by non-individuals, such as a trust or estate, and whether the complexity of any special rules would outweigh the benefit. For example, if a trust makes contributions to a section 529 account, how should the trust treat the contributions to and distributions from the account for income tax purposes? If the trustee of the trust is the AO, would the income tax treatment be the same?

The IRS and the Treasury Department also have considered the possibility that employers may consider funding section 529 accounts for employees' children or that a debtor may fund an account for the lender's child. Section 529 does not override (or permit avoidance of) federal taxes otherwise applicable to payments that are not in the nature of gifts. The IRS and the Treasury Department believe that if such contributions are made, all necessary procedures and reporting mechanisms must be in place to ensure the assessment and collection of all appropriate income, employment, and gift taxes. The IRS and the Treasury Department welcome comments as to whether (and how) this could be accomplished without undue burden.

D. Special Rules Apply in the Case of Individuals Who Contribute to Section 529 Accounts for Their Own Benefit and in the Case of Uniform Gifts to Minors Act (UGMA) and Uniform Transfers to Minors Act (UTMA) Accounts That Contribute to Such Accounts for the Benefit of Their Minor Beneficiaries

The 1998 proposed regulations do not address situations in which individuals contribute to section 529 accounts for their own benefit, or where UGMA and UTMA accounts make contributions for the benefit of their minor beneficiaries. (This situation should be distinguished from a section 529 account established with the program as an UGMA or UTMA account.) The IRS and the Treasury Department believe guidance is needed regarding contributions by individuals for their own benefit and by UGMA and UTMA accounts for the benefit of their minor beneficiaries in order to ensure consistent tax treatment with section 529 accounts set up by persons for the benefit of other DBs.

As stated in the previous paragraph, section 2501(a) imposes a tax on the transfer of property by gift by an individual. Section 529(c)(2)(A) provides that any contribution to a section 529 account on behalf of any DB shall be treated as a completed gift of a present interest in property to the DB. A contribution to a section 529 account by the contributor for the contributor's own benefit cannot be treated as a completed gift because an individual cannot make a transfer of property to himself or herself, and a transfer of property is a fundamental requirement for a completed gift. Although there is no express statutory intent to prohibit the funding of a section 529 account for the contributor's own QHEEs, the transfer tax provisions of section 529 do not appear to contemplate such a result.

Minor beneficiaries of UGMA and UTMA accounts are the beneficial owners of the accounts. In this respect, contributions to a section 529 account from an UGMA or UTMA account would be considered to be contributions to the section 529 accounts by the minor beneficiaries for their own benefit.

The IRS and the Treasury Department recognize that individuals may want to save for their higher education expenses by contributing to section 529 accounts and that individuals might not have parents or other benefactors who are able or willing to make such contributions on their behalf. The IRS and the Treasury Department also acknowledge that section 529 accounts provide an efficient method for UGMA and UTMA accounts to provide for the higher education expenses of their minor beneficiaries.

Accordingly, it is anticipated that the notice of proposed rulemaking will allow contributions to section 529 accounts by individuals for their own benefit and by UGMA and UTMA accounts for the benefit of their minor beneficiaries. In order to ensure consistent transfer and income tax treatment under section 529 for these accounts and accounts created by persons for the benefit of other DBs, special rules will apply in cases of a subsequent change of the DB.

When contributors set up section 529 accounts naming themselves as DB (or UGMA and UTMA accounts set up such accounts for their minor beneficiaries) and subsequently change the DB, the change of DB from the contributor to any other person will be deemed to be a distribution to the contributor followed by a new contribution (as described in section 529(c)(2)) of the account balance by the contributor to a new section 529 account for the new DB. It is anticipated that the deemed distribution to the contributor, followed by the new contribution of the account balance to a new section 529 account for the new DB, will be treated as a rollover (as described in section 529(c)(3)(C)) and thus will not be subject to income tax or the 10-percent additional tax imposed by section 529(c)(6) if the new DB is a member of the family of the former DB. The new contribution by the contributor will be treated in the same way for transfer tax purposes as all other contributions to section 529 accounts under section 529(c)(2). If the change of DB in these situations results in any gift and/or GST tax, the contributor will be liable for the tax and must file gift and/or GST tax returns. However, the contributor may elect to take advantage of the special 5-year rule under section 529(c)(2)(B).

E. Circumstances Under Which the Account of a Deceased DB Will Be Distributed to, and Includible in, the Gross Estate of the Deceased DB for Estate Tax Purposes

Section 529(c)(4) provides that, with two exceptions, no amount shall be includible in the gross estate of any individual for purposes of the estate tax by reason of an interest in a section 529 account. The exception relevant to this discussion is for amounts distributed on account of the death of the DB.

Under section 529(c)(4)(B), amounts distributed on account of the death of a DB are subject to estate tax. The legislative history (H.R. Rep. No. 148 at 328) makes no reference to the term ''distributed'' but provides that the value of any interest in a section 529 account will be includible in the estate of a DB. Section 1.529–5(d)(3) of the 1998 proposed regulations adopts the position stated in the legislative history. This position has raised several concerns because, under generally applicable transfer tax provisions, the gross estate of a decedent does not include property in which the decedent has no interest, or over which the decedent has no power or control.

It is anticipated that the forthcoming notice of proposed rulemaking will provide the following rules regarding the tax consequences arising from the death of a DB.

Rule 1. If the AO distributes the entire section 529 account to the estate of the deceased DB within 6 months of the death of the DB, the value of the account will be included in the deceased DB's gross estate for federal estate tax purposes.

Rule 2. If a successor DB is named in the section 529 account contract or program and the successor DB is a member of the family of the deceased DB and is in the same or a higher generation (as determined under section 2651) as the deceased DB, the value of the account will not be included in the gross estate of the deceased DB for Federal estate tax purposes.

Rule 3. If no successor DB is named in the section 529 account contract or program, but the AO names a successor DB who is a member of the family of the deceased DB and is in the same or a higher generation (as determined under section 2651) as the deceased DB, the value of the account will not be included in the gross estate of the deceased DB for Federal estate tax purposes.

Rule 4. If no successor DB is named in the section 529 account contract or program, and the AO does not name a new DB but instead withdraws all or part of the value of the account, the AO will be liable for the income tax on the distribution, and the value of the account will not be included in the gross estate of the deceased DB for federal estate tax purposes.

Rule 5. If, by the due date for filing the deceased DB's estate tax return, the AO has allowed funds to remain in the section 529 account without naming a new DB, the account will be deemed to terminate with a distribution to the AO, and the AO will be liable for the income tax on the distribution. The value of the account will not be included in the gross estate of the deceased DB for Federal estate tax purposes.

III. Rules Governing the Function and Operation of QTPs and Section 529 Accounts

A. Rules for Making the Election Under Section 529(c)(2)(B) To Treat Contributions to a Section 529 Account as Being Made Over a 5-Year Period

The IRS and the Treasury Department have received numerous taxpayer inquiries regarding the operation of and the procedures for making the 5-year election provided in section 529(c)(2)(B). Section 529(c)(2)(B) provides that, if the aggregate amount of contributions to a section 529 account during the calendar year by a donor exceeds the gift tax exclusion amount for such year under section 2503(b), the donor may elect to have the aggregate amount taken into account, for purposes of section 2503(b), over the 5-year period beginning in such calendar year. The forthcoming notice of proposed rulemaking will provide the following rules that clarify the circumstances and manner in which the election may be made.

Rule 1. The election must be made on the last United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709) filed on or before the due date of the return, including extensions actually granted, or, if a timely return is not filed, on the first gift tax return filed by the donor after the due date. The election, once made, will be irrevocable, except that it may be revoked or modified on a subsequent return that is filed on or before the due date, including extensions actually granted.

Rule 2. The election applies to contributions to a section 529 account on behalf of a DB during a calendar year that exceed the gift tax exclusion amount for that year but are not in excess of five times the exclusion amount for the year. Any excess may not be taken into account ratably and is treated as a taxable gift in the calendar year of the contribution.

Rule 2 is illustrated by the following examples:

Example A. Assume the contributor makes contributions to a section 529 account on behalf of DB in 2007, when the gift tax annual exclusion amount under section 2503(b) is $12,000. If the contributor's aggregate contributions on behalf of DB in 2007 are $30,000, contributor may elect to account for the gift as 5 annual gifts of $6,000 to DB, beginning in 2007. Assuming the gift tax annual exclusion amount remains at $12,000 over the 5-year period covered by the election, the contributor could make additional gifts described in section 2503(b) of up to $6,000 in each of the 5 years to the same beneficiary without the imposition of any gift tax.

Example B. Assume the contributor makes contributions to a section 529 account on behalf of DB in 2007, when the gift tax annual exclusion amount under section 2503(b) is $12,000. If the contributor's aggregate contributions on behalf of DB in 2007 are $65,000, contributor may make the election under section 529(c)(2)(B) only with respect to that portion of the contributions that is not in excess of $60,000 ($5 \times \$12,000$). The $5,000 excess will be treated as a taxable gift by the contributor in 2007.

Rule 3. The election may be made by a donor and the donor's spouse with respect to a gift considered to be made one-half by each spouse under section 2513.

B. Income Tax Issues Related to Section 529 Accounts

The IRS and the Treasury Department have received numerous inquiries relating to several income tax issues that will be addressed in the forthcoming notice of proposed rulemaking. The following items are illustrative of these inquiries and the IRS and the Treasury Department anticipate addressing additional income tax matters raised by comments.

The notice of proposed rulemaking will provide formal guidance on how to recognize a loss in a section 529 account. Direction on this issue was first provided in Publication 970 (Tax Benefits for Education: For Use in Preparing 2002 Returns). Losses in section 529 accounts may be deducted as miscellaneous itemized deductions subject to the 2% of adjusted gross income limit. Taxpayers will continue to be able to rely upon this interpretation.

Section 529 is silent regarding whether distributions must be made from a section 529 account in the same tax year as QHEEs were paid or incurred. Concerns have been raised that individuals could allow the account to grow indefinitely on a tax-deferred basis before requesting reimbursement

or use distributions in earlier years to pay QHEEs in later years. Accordingly, the IRS and the Treasury Department propose to adopt a rule that, in order for earnings to be excluded from income, any distribution from a section 529 account during a calendar year must be used to pay QHEEs during the same calendar year or by March 31 of the following year. The IRS and the Treasury Department welcome comments on rules necessary to ensure that distributions from section 529 accounts are appropriately matched to the payment of QHEEs.

C. Recordkeeping Requirements and Administrative Procedures

The forthcoming notice of proposed rulemaking may contain recordkeeping requirements designed to facilitate the implementation of these new rules, including the proposed anti-abuse rule. QTPs may be required to collect and retain, and in some cases report to the IRS, certain information. Programs may also need to revise their program documents, administrative procedures, and promotional and required literature for AOs and DBs. The forthcoming notice of proposed rulemaking will provide a grace period of no less than 15 months to implement most changes.

The IRS and the Treasury Department welcome comments regarding the information that would be necessary to implement the proposed anti-abuse rule, including a discussion of how to minimize the burden on QTPs of collecting or reporting such information.

Request for Comments

Before the notice of proposed rulemaking is issued, consideration will be given to any written comments that are submitted timely (a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying.

Drafting Information

The principal authors of this advance notice of proposed rulemaking are Mary Berman of the Office of Chief Counsel (Passthroughs and Special Industries) and Monice Rosenbaum of the Office of Chief Counsel (Tax-Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in its development.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–859 Filed 1–17–08; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–1709; FRL–8509–3]

Approval and Promulgation of Air Quality Implementation Plans; Nevada; Washoe County 8-Hour Ozone Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Washoe County portion of the Nevada State Implementation Plan. Submitted by the State of Nevada on May 30, 2007, this plan revision consists of a maintenance plan prepared for the purpose of providing for continued attainment of the 8-hour ozone national ambient air quality standard in Washoe County through the year 2014 and thereby satisfying the related requirements under section 110(a)(1) of the Clean Air Act and EPA's phase 1 rule implementing the 8-hour ozone national ambient air quality standard. EPA is proposing this action pursuant to those provisions of the Clean Air Act that obligate the Agency to take action on submittals of state implementation plans and plan.

DATES: Any comments on this proposal must arrive by *February 19, 2008.*

ADDRESSES: Submit your comments, identified by EPA–R09–OAR–2007–1079, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail:* Eleanor Kaplan at *kaplan.eleanor@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Eleanor Kaplan, Planning Office (AIR–2), at fax number (415) 947–4147.
- *Mail or deliver:* Eleanor Kaplan, Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. Hand or courier deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: All comments 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.

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 Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105–3901. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, telephone (415) 947–4147; fax (415) 947–3579; e-mail address *kaplan.eleanor@epa.gov.*

SUPPLEMENTARY INFORMATION: On May 30, 2007, the Nevada Division of Environmental Protection (NDEP) submitted the *Maintenance Plan for the Washoe County 8-Hour Ozone Attainment Area (April 2007)* (''Washoe County Ozone Maintenance Plan'') to EPA for approval as a revision to the

Washoe County portion of the Nevada State Implementation Plan (SIP). The Washoe County Ozone Maintenance Plan was developed by the Washoe County District Health Department, Air Quality Management Division (Washoe County AQMD) and adopted by the Washoe County District Board of Health (District Board of Health) on April 26, 2007. Washoe County AQMD prepared the plan to provide for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) through 2014 and to thereby satisfy the requirements of section 110(a)(1) of the Clean Air Act (CAA or ''Act'') and EPA's phase 1 rule implementing the 8-hour ozone NAAQS. EPA is proposing to approve the Washoe County Ozone Maintenance Plan as a revision to the Washoe County portion of the Nevada SIP because we find that the submitted ozone maintenance plan meets all of the applicable requirements of CAA section 110(a)(1) and our phase 1 rule implementing the 8-hour ozone NAAQS.

In the Rules and Regulations section of this **Federal Register**, we are approving the Washoe County Ozone Maintenance Plan in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: November 29, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E8–746 Filed 1–17–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2006–0214; FRL–8514–8]

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Arizona; San Manuel Sulfur Dioxide State Implementation Plan and Request for Redesignation to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the maintenance plan for the San Manuel Area in Pinal and Pima Counties, Arizona, as a revision to the Arizona state implementation plan, and to grant the request submitted by the State to redesignate this area from nonattainment to attainment of the national ambient air quality standards for sulfur dioxide (SO_2) for the San Manuel SO_2 nonattainment area. EPA is proposing this action in accordance with the Clean Air Act.

DATES: Any comments on this proposal must arrive by *February 19, 2008*.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0580, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the on-line instructions.
2. *E-mail: robin.marty@epa.gov*.
3. *Mail or deliver:* Marty Robin (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Marty Robin, EPA Region IX, (415) 972–3961, *robin.marty@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this **Federal Register**, we are taking direct final action to approve the maintenance plan for the San Manuel SO_2 nonattainment area and to approve the State of Arizona's request to redesignate the San Manuel area from nonattainment to attainment. We are taking these actions without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final rule in this **Federal Register**.

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

Dated: December 20, 2007.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E8–804 Filed 1–17–08; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 73, No. 13

Friday, January 18, 2008

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

DEPARTMENT OF AGRICULTURE

Office of the Chief Economist; Federal Advisory Committee for the Expert Review of Synthesis and Assessment; Product 4.3

AGENCY: Office of the Chief Economist, U.S. Department of Agriculture.

ACTION: Notice of Meeting.

SUMMARY: The Federal Advisory Committee for the Expert Review of Synthesis and Assessment Product 4.3 (CERSAP) will be meeting in Washington, DC. The U.S. Department of Agriculture (USDA) is the lead agency for Climate Change Science Program Synthesis and Assessment Product 4.3 (SAP 4.3) titled, *The Effects of Climate Change on Agriculture, Land Resources, Water Resources, and Biodiversity.* CERSAP will provide advice to the Secretary of Agriculture on the conduct of this study.

DATES: CERSAP will convene from 9 a.m. Tuesday February 5, 2008 through 5 p.m. Wednesday February 6, 2008.

ADDRESSES: CERSAP will meet in Room 108 of the USDA Whitten Building in Washington, DC. The USDA Whitten Building is located at 12th Street, SW., and Jefferson Drive, and is accessible via the Smithsonian Metro stop. Please call Shirley Brown at 202–720–4164 upon entry for a mandatory escort. A photo ID is required. Written materials for CERSAP's consideration prior to the meeting must be received by Dr. Margaret Walsh no later than Monday January 28, 2008. Written materials may be sent to Dr. Walsh at *mwalsh@oce.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Margaret Walsh, Global Change Program Office, U.S. Department of Agriculture, 202–720–9978 or *mwalsh@oce.usda.gov.*

SUPPLEMENTARY INFORMATION: This is a public meeting. Written materials for CERSAP's consideration prior to the meeting must be received by Dr. Margaret Walsh no later than Monday January 28, 2008. Individuals may make oral presentations at the meeting venue. Those making oral presentations should register in person at the meeting site and must bring with them 20 copies of any materials they would like distributed. Photocopy facilities are not available on site. More information on CERSAP and on SAP 4.3 may be found online at *http://www.usda.gov/oce/global_change/index.htm, http://www.climatescience.gov/Library/sap/sap4–3/default.php,* and *http://www.sap43.ucar.edu/.*

Draft Meeting Agenda

Tuesday February 5, 2008

A. Welcome and Introduction.

B. Update on SAP 4.3.

C. Public Comment.

D. Discussion of SAP 4.3.

Wednesday February 6, 2008

A. Welcome.

B. Public Comment.

C. Discussion of SAP 4.3.

D. Adjourn.

Time will be reserved for public comment on each day. Individual presentations will be limited to five minutes. Updates to the meeting agenda can be found online at the URLs listed above.

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Dr. Margaret Walsh. USDA prohibits discrimination on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD). USDA is an equal opportunity provider and employer.

Joseph Glauber,

Acting Chief Economist.

[FR Doc. 08–189 Filed 1–17–08; 8:45 am]

BILLING CODE 3410–38–P

DEPARTMENT OF AGRICULTURE

Forest Service

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

AGENCY: Rocky Mountain Region, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Colorado Recreation Resource Advisory Committee will tentatively meet in Denver, CO. The purpose of the meeting is to continue to provide the new committee members with the information they need to be effective committee members and review several fee proposals. These fee proposals will tentatively include several new cabin rentals and fee changes for: The Green Mountain Reservoir/Cataract Lake Fee area, Indian Peaks Wilderness Camping permit fee, and the Arapaho National Recreation Area.

DATES: The meeting will be held February 27 from 9 a.m.–4:30 p.m. This meeting will only be held if a quorum is present.

ADDRESSES: The meeting will be at the REI Denver Flagship Store at 1416 Platte Street in Denver in their large conference room on the 3rd floor. Access prior to store opening is through Starbucks. Send written comments to Greg Griffith, Designated Federal Official, 740 Simms Street, Golden, CO 80401 or *ggriffith@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Pam DeVore, Colorado Recreation Resource Advisory Committee Coordinator, at 303–275–5043 or *pdevore@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service, Bureau of Land Management staff, and Committee members. Persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff. Written comments received at least a week before the meeting will be available for committee review. Written comments received less than a week before the meeting may not be available for committee referral. There will be time on the agenda for verbal comments and the Chairperson may ask for comments from the public at any time

during the meeting. All persons wishing to address the committee must sign in at the door.

Check for the status of the meeting, the final agenda and a final list of the fee proposals to be reviewed at: *http://www.fs.fed.us/r2/recreation*.

The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.reneescott

Dated: January 10, 2008.

Greg Griffith,

DFO, Colorado Recreation Resource Advisory Committee.

[FR Doc. 08–154 Filed 1–17–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

White River National Forest; Summit County, CO; Breckenridge Ski Resort—Peak 6 Terrain Development Proposal

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the anticipated environmental effects of the Breckenridge Ski Resort Peak 6 Terrain Development proposal. This proposal is designed to provide for an improved balance of services to meet the needs and expectations of guests.

DATES: Comments concerning the scope of the analysis must be received by February 17, 2008. The draft environmental impact statement is expected in November 2008 and the final environmental impact statement is expected in January 2009.

ADDRESSES: Send written comments to Maribeth Gustafson, Forest Supervisor, c/o Roger Poirier, Winter Sports Program Manager, White River National Forest, 900 Grand Avenue, Glenwood Springs, CO 81602–0948.

FOR FURTHER INFORMATION CONTACT: Shelly Grail—Snow Ranger, Dillon Ranger District, P.O. Box 620, Silverthorne, CO 80498, *sgrail@fs.fed.us*, or (970) 262–3484.

SUPPLEMENTARY INFORMATION: The proposed action addresses issues related to the quality of the recreational experience. Presently, alpine skiing/snowboarding and other resort activities are provided to the public through a Special Use Permit (SUP) issued by the White River National Forest. All elements of the proposal are within the existing SUP boundary area. The proposed improvements are consistent with the 2002 Revised White River National Forest Land and Resource Management Plan (Forest Plan).

Purpose and Need for Action

Given the current visitation rates, guest experiences, and terrain distribution concerns, the following needs are addressed by the proposed action:

1. Better accommodation of current daily visitation levels.
2. Reduced skier/rider congestion on BSR's existing Intermediate and Advanced Intermediate terrain network and associated lifts.
3. Reduced waiting time for lifts at BSR.
4. Efficient dispersal of Intermediate and Advanced Intermediate skiers/riders across the entire skiable terrain network.
5. Additional lift-served terrain to accommodate the existing terrain distribution deficit.
6. Additional hike-to access servicing advanced ability levels.
7. Sufficient infrastructure in pods to serve guests.

Proposed Action

All proposed projects are within Breckenridge Ski Resort's (BSR) existing SUP boundary. The proposed action includes:

- Developing terrain on Peak 6 that would encompass approximately 450 acres of traditional downhill and hike-to skiing accessed by a single lift.
- Installing a bottom-drive, high-speed, detachable, six-person lift to service the Peak 6 terrain with a slope length of 5,963 feet, a vertical rise of 1,537 and a design capacity of 3,000 people per hour.
- Constructing a food and beverage facility (including restrooms and associated infrastructure) at the bottom terminal of the proposed lift. The food and beverage facility would be approximately 1,800 square feet in size and seat approximately 150 guests.
- Constructing a ski patrol/warming hut at the proposed top terminal location on Peak 6.
- Rehabilitating and extending decommissioned roads within the South Barton timber sale patch cut areas to specific locations to gain access to Peak 6 for construction and future maintenance needs.
- Installing a power line to the proposed top terminal location in a corridor that minimizes impacts to environmentally sensitive areas.

Responsible Official

The responsible official is Maribeth Gustafson, Forest Supervisor for the White River National Forest, 900 Grand Ave., P.O. Box 948, Glenwood Springs, Colorado 81602. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR part 215 or part 251.

Nature of Decision To Be Made

Based on the analysis that will be documented in the forthcoming EIS, the responsible official will decide whether or not to implement, in whole or in part, the proposed action or another alternative developed by the Forest Service.

Scoping Process

Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Comments will be used to identify issues and develop alternatives to BSR's proposal. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Input provided by interested and/or affected individuals, organizations and governmental agencies will be used to identify resource issues that will be analyzed in the Draft EIS. The Forest Service will identify significant issues raised during the scoping process, and use them to formulate alternatives, prescribe mitigation measures and project design features, or analyze environmental effects.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is

meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Dated: January 8, 2008.

Maribeth Gustafson,

Forest Supervisor.

[FR Doc. E8–631 Filed 1–17–08; 8:45 am]

BILLING CODE 3410–11–P

ARCTIC RESEARCH COMMISSION

85th Meeting; Notice

January 7, 2008.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 85th meeting in Boulder, CO on February 6–8, 2008. The Business Session, open to the public, will convene at 8:30 a.m. Wednesday, February 6, 2008 in Boulder, CO. An Executive Session will follow adjournment of the Business Session.

The Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 84th Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Reports.

The focus of the meeting will be reports and updates on programs and research projects affecting the Arctic.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: John Farrell, Executive Director, U.S. Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

John Farrell,

Executive Director.

[FR Doc. 08–155 Filed 1–17–08; 8:45 am]

BILLING CODE 7555–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

ACTION: Proposed Addition to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received On Or Before: February 17, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the product listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Paper, Copying, Xerographic—Convenience Pack

NSN: 7530–00–NIB–0814—Reamless.
NSN: 7530–00–NIB–0826—Ream Wrapped.
NPA: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY.
Coverage: A-List for the total Government requirement as specified by the General Services Administration.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action should not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for deletion from the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Hat, Sun, Universal Camouflage, ACU

NSN: 8415–01–519–8678—Size 6.375.
NSN: 8415–01–519–8680—Size 6.5.
NSN: 8415–01–519–8681—Size 6.625.
NSN: 8415–01–519–8682—Size 6.75.
NSN: 8415–01–519–8684—Size 6.875.
NSN: 8415–01–519–8687—Size 7.
NSN: 8415–01–519–8696—Size 7.125.
NSN: 8415–01–519–8698—Size 7.25.
NSN: 8415–01–519–8699—Size 7.375.
NSN: 8415–01–519–8702—Size 7.5.
NSN: 8415–01–519–8704—Size 7.625.
NSN: 8415–01–519–8705—Size 7.75.
NSN: 8415–01–519–8706—Size 7.875.
NSN: 8415–01–519–8708—Size 8.
NPA: Human Technologies Corporation, Utica, NY.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Rochester Midland Envirocare Products

NSN: 7930–01–512–7170—LiquiBac.
NPA: Lighthouse for the Blind, St. Louis, MO.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Trunk Locker, Plastic

NSN: 8460–01–471–1024—Green (Olive drab), Small.
NSN: 8460–01–471–1035—Green (Olive drab), Large.
NPA: Walterboro Vocational Rehabilitation Center, Walterboro, SC.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E8–885 Filed 1–17–08; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT DECEMBER 1, 2007 THROUGH DECEMBER 31, 2007

Firm	Address	Date accepted for filing	Products
Electronic Systems, Inc.	600 E. 50th Street North, P.O. Box 5013, Sioux Falls, SD 57104.	12/1/2007	Printed circuit boards and other electronic component assemblies.
Machine Tool Automation Corp dba Bayer.	5150 N. 24th Street, Phoenix, AZ 95016	12/1/2007	Designs and manufactures machine tool accessories and workholding components. Products include automated and manual pallet switching systems, custom pallets and tooling designed to shorten setup time for vertical machining centers.
Williams & Hussey Machine Company, Inc.	70 Power Street, Milford, NH 03055	12/1/2007	Woodworking machinery as well as accessories and knives to accompany the machines.
Matador Tool & Die, Inc	1959 Will Street, NW., Grand, MI 49504	12/1/2007	Molds for metals and plastics.
JKK Machine & Engine, LLC	PO Box 13672, Alexandria, LA 71315	12/20/2007	Rebuilds diesel engines and custom parts for industry use.
John J Steuby Company	6002 N. Lindbergh, Hazelwood, MO 63042.	12/20/2007	Precision machined fittings/valves.
Cen-Tex Seed & Delinting, Inc	1301 N. Old Hwy 77 and 81 S., Hillsboro, TX 76645.	12/28/2007	

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: January 14, 2008.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. E8–869 Filed 1–17–08; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Certain Cut-to-Length Carbon Steel Plate From Romania: Amended Final Results of Antidumping Duty Administrative Review Pursuant to Final Court Decision

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

SUMMARY: On November 7, 2007, the United States Court of International Trade (CIT) affirmed the final remand results made by the Department of Commerce (the Department) pursuant to the CIT's remand of the final results of the antidumping duty administrative review of the antidumping order on certain cut-to-length carbon steel plate from Romania. *See Mittal Steel Galati S.A., Formerly Known as Ispat Sidex S.A.* v. *United States*, Slip Op. 07–110 (CIT July 18, 2007) (*Mittal Steel*). As the CIT's decision affirming the final remand results was not appealed to the Court of Appeals for the Federal Circuit, the CIT's decision is final, and we are amending the final results of the review in this matter. We will instruct U.S. Customs and Border Protection (CBP) to liquidate entries subject to these amended final results.

DATES: *Effective Date:* January 18, 2008.

FOR FURTHER INFORMATION: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 15, 2005, the Department published the final results of the administrative review for certain cut-to-length carbon steel plate from Romania covering the period August 1, 2002, through July 31, 2003. *See Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 12651 (March 15, 2005) (*Final Results*), and accompanying Issues and Decision Memorandum. On April 13, 2005, Mittal Steel Galati S.A. (Mittal) filed a summons at the CIT challenging the *Final Results*. On July 18, 2007, the Court issued its opinion in *Mittal Steel* remanding two issues to the Department (*i.e.*, the Department's decision to value iron scrap as a material input and the Department's choice of a surrogate value for limestone), and affirming the Department on a third issue (*i.e.*, the Department's rejection of the use of data from Mittal's Algerian affiliate in deriving surrogate financial ratios). The CIT also did not order the re-liquidation of certain entries of subject merchandise that were liquidated prior to the expiration of the statutory time limit for appeal, and prior to Mittal's application for a preliminary injunction, as Mittal had requested.

In accordance with the CIT's remand order, the Department filed its remand results on October 1, 2007. In those remand results, the Department provided an offset for scrap generated and re-used in the production process by Mittal, and reconsidered its valuation of the limestone input used to manufacture cut-to-length carbon steel plate for this proceeding. As a result, the Department recalculated the antidumping duty rate applicable to Mittal at 7.29 percent for the period of review.

On November 7, 2007, the CIT affirmed the Department's final results pursuant to remand. *See Mittal Steel Galati S.A., Formerly Known as Ispat Sidex S.A.* v. *United States,* Slip Op. 07–164 (CIT November 7, 2007) . There was no appeal of the CIT's decision to the U.S. Court of Appeals for the Federal Circuit filed within the appeal period. Therefore, the CIT's decision is now final and conclusive.

Amendment to Final Results

We are now amending the final results of this administrative review to reflect the final and conclusive decision of the CIT. The changes to our calculations with respect to Mittal resulted in a change in the weighted-average margin from 13.50 percent to 7.29 percent for the period of review. The Department will instruct CBP to liquidate entries of certain cut-to-length carbon steel plate from Romania produced by, exported to, or imported into the United States by Mittal during the review period at the assessment rates the Department calculated for these amended final results of review. We intend to issue the assessment instructions to CBP 15 days after the date of publication of these amended final results of review.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: January 11, 2008.

David Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–898 Filed 1–17–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894]

Certain Tissue Paper Products From the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the preliminary results of the administrative review of certain tissue paper products from the People's Republic of China (''PRC''). This review covers the period March 1, 2006, through February 28, 2007.

DATES: *Effective Date:* January 18, 2008.

FOR FURTHER INFORMATION CONTACT: Bobby Wong, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0409.

Background

On March 30, 2005, the Department published in the **Federal Register** an antidumping duty order covering certain tissue paper from the People's Republic of China (''PRC''). *See Notice of Amended Final Determination of*

Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China, 70 FR 16223 (March 30, 2005). On April 27, 2007, the Department published a notice of initiation of the administrative review of the antidumping duty order on certain tissue paper products from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 72 FR 20986 (April 27, 2007).

On November 20, 2007, the Department published a notice extending the time limit for preliminary results in this review by 61 days. *See Certain Tissue Paper Products from the People's Republic of China: Extension of Preliminary Results of Antidumping Duty Administrative Review,* 72 FR 65298 (November 20, 2007). The preliminary results of this review are currently due no later than January 31, 2008.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(h)(1) of the Department's regulations require the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and the final results of the review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245-day period to 365 days and the 120-day period to 180 days.

Pursuant to section 751(a)(3)(A) of the Act and section 351.213(h) of the Department's regulations, we determine that it is not practicable to complete this administrative review within the statutory time limit of 245 days. Given that the Office of Import Administration, Office 9, conducting this review is currently tasked with the conduct of multiple reviews with various conflicting deadlines, and given limited resources, the Department requires additional time to analyze questionnaire responses, issue supplemental questionnaires, and examine and analyze surrogate value information. Therefore, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is fully extending the time limit for the completion of these preliminary results by an additional 59 days. Since a 59-day extension would result in the deadline for the preliminary results falling on March 30, 2008, which is a Sunday, the new deadline for the final results will be the next business day, March 31, 2008.[1] The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to section 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 11, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–896 Filed 1–17–08; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808]

Stainless Steel Plate in Coils From Belgium: Notice of Extension of Time Limit for Preliminary Results of Administrative Review

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

DATES: *Effective Date:* January 18, 2008.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or George McMahon at (202) 482–3692 and (202) 482–1167, respectively; AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On June 29, 2007, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on stainless steel plate in coils from Belgium with respect to Ugine & ALZ, NV Belgium (U&A Belgium). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review,* 72 FR 35690 (June 29, 2007). The period of review (POR) is May 1, 2006 through April 30, 2007. The preliminary results of this review are currently due no later than January 31, 2008.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results by up to 120 days.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable for the following reasons. This review requires the Department to gather and analyze a significant amount of information pertaining to the company's sales practices, manufacturing costs and corporate relationships, which is complicated due to recent changes in its corporate structure. Furthermore, the company subject to this review recently converted its accounting system, which resulted in a request for additional time to submit its questionnaire response to the Department. Given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 120 days. Therefore, the preliminary results are now due no later than May 30, 2008. The final results continue to be due 120 days after publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 11, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–899 Filed 1–17–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF07

Availability of a Draft Environmental Assessment Considering the States of Oregon, Idaho, and Washington's Request for Lethal Removal Authority of California Sea Lions in Accordance with the Marine Mammal Protection Act

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

ACTION: Notice; availability of a draft Environmental Assessment and request for written comment.

SUMMARY: The NMFS is giving notice that we have prepared a draft Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) that analyzes impacts on the environment from the potential authorization to the States of Oregon, Idaho, and Washington (states) to lethally removal certain California sea lions that are feeding on at-risk salmon and steelhead stocks below Bonneville dam on the Columbia River. This authorization would be pursuant to Section 120 of the Marine Mammal Protection Act (MMPA). The states have requested authorization to lethally remove individually identifiable California sea lions having a significant negative impact on the decline or recovery of several populations of salmon and steelhead listed under the Endangered Species Act (ESA). This document serves to notify the public of the availability of the draft EA for review and comment before NMFS makes a final decision on whether to issue a Finding of No Significant Impact.

DATES: Written comments on the draft EA must be received at the appropriate address, email address, or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on February 19, 2008.

ADDRESSES: Written comments and requests for copies of the draft EA should be addressed to Garth Griffin, Protected Resources Division, 1201 NE Lloyd Boulevard, suite 1100, Portland, OR, 97232, or faxed to (503) 230–5441. Comments on this draft EA may be submitted by e-mail. The mailbox address for providing e-mail comments is *sea.lion.comments@noaa.gov*. Include in the subject line the following document identifier: ''California Sea Lion Lethal Removal''. The documents are also available on the Internet at *http://www.nwr.noaa.gov/Marine-Mammals/Seals-and-Sea-Lions/Sec–120–draft-EA.cfm*.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR, at phone number (503) 231–2005 or e-mail: *garth.griffin@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the following MMPA species:

California sea lion (*Zalophus californianus*)

and ESA species:

Chinook salmon (*Oncorhynchus tshawytscha*): endangered upper Columbia spring-run

Chinook salmon (*O. tshawytscha*): threatened Snake River spring/summer-run

Steelhead (*O. mykiss*): threatened Snake River Basin

Steelhead (*O. mykiss*): threatened Middle Columbia River.

Steelhead (*O. mykiss*): threatened lower Columbia River

Background

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment (42 U.S.C. 4321 *et seq.* & 40 CFR parts 1500–1508). Although not required for EAs, NMFS is seeking public input on the analysis and will consider all public comments received on the draft EA prior to making a decision to approve or disapprove the states' application.

In 1994, Congress amended the MMPA, adding Section 120, which establishes a process for authorizing intentional lethal removal of individually identifiable pinnipeds (seals and sea lions) that are having a significant negative impact on salmonids that are either listed or approaching listing under the Endangered Species Act. On December 5, 2006, the states applied to the Secretary of Commerce (Secretary) for authority to lethally remove, by intentional means, individually identifiable California sea lions at Bonneville Dam on the Columbia River in accordance with the Section 120 process.

The Secretary, acting through the Assistant Administrator for NMFS, determined that the states' Section 120 application provided sufficient evidence to warrant establishing a pinniped-fishery interaction task force (task force). In a **Federal Register** notice on January 30, 2007, NMFS announced receipt of the states' application and solicited public comments on the application and any additional information that should be considered. In an August 9, 2007, **Federal Register** notice, NMFS announced establishment of the task force and provided information about its first public meeting. Convened in September 2007, the task force reviewed the states' application, public comments on the application, and other information related to sea lion predation on salmon and steelhead at Bonneville dam.

The task force considered criteria contained in Section 120(d) and additional questions posed by NMFS in determining whether to recommend approval or disapproval of the states' application. The task force met three times and provided its final report and recommendations to NMFS on November 5, 2007. The Marine Mammal Commission commented on both the states' application and the task force's report.

We have developed a proposed action in response to the states' application and prepared a draft EA considering the environmental impacts of the proposed action and three alternatives. We developed this proposal and analysis after reviewing and considering all available information in the states' application, public comments on the application, internal scoping, task force recommendations, comments and information provided by the Marine Mammal Commission, and applicable law. The available document proposes to authorize the states to lethally remove individually identifiable California sea lions below Bonneville Dam under certain conditions. The analysis considers the environmental consequences of the proposed action and alternative actions aimed at reducing California sea lion predation on salmonids listed as threatened and endangered under the ESA below Bonneville dam. The general effects on the environment considered include the impacts on the physical, biological, and socioeconomic environments of the lower Columbia River below Bonneville dam, particularly between Columbia River miles 140 to 146.

We are requesting public comment on the proposed action and alternatives considered. In particular, we seek comment on:

Our application of the statutory phrase ''individually identifiable pinnipeds that are having a significant negative impact'' on salmonids.

The likely impact of the proposed action and alternatives on listed salmonids.

The likely impact of the proposed action and alternatives on marine mammals.

The likely impact of the proposed action and alternatives on public safety.

The analysis and public comments will inform NMFS' decision on actions to reduce pinniped predation below Bonneville dam, specifically approval or disapproval of the states' request under Section 120 of the MMPA, and any conditions that may apply in the event the states' request is approved.

Comments or questions concerning this proposed action and the environmental review should be directed to NMFS at the address or telephone numbers provided above. All comments and materials received, including names and addresses, will

become part of the administrative record and may be released to the public.

Dated: January 14, 2008.

David Cottingham,

Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–893 Filed 1–17–08; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, February 1, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–190 Filed 1–16–08; 10:06 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, February 8, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–191 Filed 1–16–08; 10:06 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, February 15, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–192 Filed 1–16–08; 10:06 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Wednesday, February 20, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–193 Filed 1–16–08; 10:06 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, February 22, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–195 Filed 1–16–08; 10:06 am]

BILLING CODE 6351–01–P

Commodity Futures Trading Commission

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, February 29, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 08–196 Filed 1–16–08; 10:06 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before February 19, 2008.

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

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

the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 14, 2008.

Angela C. Arrington,

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

Institute of Education Sciences.

Type of Review: Revision.

Title: Program for International Students Assessment (PISA) 2008 Field Test, 2009 Full Scale.

Frequency: One time.

Affected Public:

Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,270.

Burden Hours: 998.

Abstract: The Program for International Student Assessment (PISA) is a new system of international assessments that focus on 15-year-olds' capabilities in reading literacy, mathematics literacy, and science literacy. PISA 2000 was the first cycle of PISA, which will be conducted every three years, with a primary focus on one area for each cycle. PISA 2000 focuses on reading literacy; mathematics literacy was the focus in 2003, science literacy was the focus in 2006. In 2009 the focus will again be on reading literacy. In addition to assessment data, PISA provides background information on school context and student demographics to benchmark performance and inform policy.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3521. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E8–890 Filed 1–17–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before March 18, 2008.

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

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

Dated: January 14, 2008.

Angela C. Arrington,

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

Federal Student Aid

Type of Review: Revision.

Title: Federal Direct Stafford/Ford Loan and Federal Direct Unsubsidized Stafford/Ford Loan Master Promissory Note.

Frequency: On Occasion.

Affected Public:

Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 774,306.

Burden Hours: 387,153.

Abstract: The Federal Direct Stafford/Ford Loan (Direct Subsidized Loan) and Federal Direct Unsubsidized Stafford/Ford Loan (Direct Unsubsidized Loan) Master Promissory Note (MPN) serves as the means by which an individual agrees to repay a Direct Subsidized Loan and/or Direct Unsubsidized Loan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3566. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E8–891 Filed 1–17–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–430–000]

Kinder Morgan Interstate Gas Transmission, LLC; Notice of Availability of the Environmental Assessment for the Proposed Colorado Lateral Expansion Project

January 11, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Kinder Morgan Interstate Gas Transmission, LLC (Kinder Morgan) in the above-referenced docket. Kinder Morgan's proposal (the Colorado Lateral Expansion Project) is to construct about 41.4 miles of 12-inch-diameter pipeline in Weld County, Colorado.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act of 1969. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed Colorado Lateral Expansion Project, as well as five lateral distribution pipelines totaling 10.8 miles, also in Weld County, Colorado.

The purpose of the Colorado Lateral Expansion Project is to provide an additional reliable source of natural gas to Greeley, Colorado. This project would add 57 million cubic feet per day of pipeline capacity from the Cheyenne Hub to distribution points in the Greeley market area.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426.

Copies of the EA have been mailed to federal, state, and local agencies; public interest groups; newspapers and libraries in the project area; parties to the proceeding; and those who have expressed an interest in this project by returning the August 30, 2007 *Notice of Intent to Prepare an Environmental Assessment for the Proposed Colorado Lateral Expansion Project and Request for Comments on Environmental Issues.*

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments as specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1;
- Reference Docket No. CP07–430–000; and
- Mail your comments so that they will be received in Washington, DC on or before February 11, 2008.

The Commission strongly encourages electronic filing of any comments, interventions, or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions of the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision. Anyone may intervene in this proceeding based on this EA. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the docket number field (*i.e.*, CP07–430). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notifications of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet website.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–864 Filed 1–17–08; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion of filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2436–235; 2447–226; 2448–229; 2449–194; 2450–190; 2451–189; 2452–199; 2453–223; 2468–204; 2580–255; 2599–222]

Consumers Energy Company; Notice of Filing of Projects Retirement Study Report and Soliciting Comments, Motions To Intervene, and Protests

January 11, 2008.

Take notice that the following report has been filed with the Commission and is available for public inspection:

a. *Filing Type:* Projects Retirement Study Report.

b. *Project Nos:* 2436–235, 2447–226, 2448–229, 2449–194, 2450–190, 2451–189, 2452–199, 2453–223, 2468–204, 2580–255, and 2599–222.

c. *Date Filed:* June 4, 2007.

d. *Applicant:* Consumers Energy Company.

e. *Name of Projects:* Foote, Alcona, Mio, Loud, Cooke, Rogers, Hardy, Five Channels, Croton, Tippy, and Hodenpyl.

f. *Location:* on the Au Sable, Manistee, and Muskegon Rivers in Iosco, Alcona, Oscoda, Manistee, Wexford, Newaygo and Mecosta Counties, Michigan.

g. *Filed Pursuant to:* Articles 204 and 205 of the licenses.

h. *Applicant Contact:* William A. Schoenlein, Director of Hydro Generation, Consumers Energy Company, 330 Chestnut Street, Cadillac, MI 49601–1821, (231) 779–5504.

i. *FERC Contact:* Jake Tung, Telephone (202) 502–8757, and e-mail: *hong.tung@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protest: February 11, 2008. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of the Report:* Consumers Energy Company filed the Retirement Study Report, pursuant to Articles 204 and 205 of the licenses. Consumers prepared the report in accordance with the Retirement Study Plans, which was approved by the Commission on April 7, 2005 (111 FERC ¶ 62,029).

l. *Locations of the Report:* A copy of the report is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing 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 field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the report.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described report. A copy of the report may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–863 Filed 1–17–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–54–000; CP06–55–000]

Broadwater Energy LLC; Broadwater Pipeline LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Broadwater LNG Project

January 11, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) in cooperation with the U.S. Coast Guard (Coast Guard); U.S. Environmental Protection Agency; U.S. Army Corps of Engineers (COE); National Oceanic and Atmospheric Administration, National Marine Fisheries Service; and the New York Department of State has prepared a final Environmental Impact Statement (EIS) for a liquefied natural gas (LNG) import terminal and natural gas pipeline (referred to as the Broadwater LNG Project) proposed by Broadwater Energy LLC and Broadwater Pipeline LLC (jointly referred to as Broadwater) in the above-referenced dockets. Broadwater Energy LLC is jointly owned by TCPL USA LNG, Inc. (a subsidiary of TransCanada Corporation) and Shell Broadwater Holdings LLC (a subsidiary of Shell Oil Company). Broadwater Pipeline LLC is owned by Broadwater Energy LLC.

The proposed LNG terminal would be located in New York State waters of Long Island Sound, approximately 9 miles from the nearest shoreline of Long Island, and about 10 miles from the nearest shoreline in Connecticut. The terminal would be a floating storage and regasification unit (FSRU) that would be attached to a yoke mooring system (YMS) that includes a mooring tower embedded in the seafloor. The FSRU would look like a marine vessel and would remain moored in place for the duration of the Project (expected to be 30 years or more). The YMS would allow the FSRU to pivot or ''weathervane'' around the YMS, enabling the FSRU to orient in response to the prevailing wind, tide, and current conditions.

LNG would be delivered to the FSRU by LNG carriers, temporarily stored, vaporized (regasified), and then transported in a new subsea natural gas pipeline that would extend from the seafloor beneath the FSRU approximately 21.7 miles to an offshore connection with the existing Iroquois Gas Transmission System (IGTS) pipeline in Long Island Sound.

Natural gas would be routed from the FSRU to the subsea pipeline and into the IGTS pipeline for delivery at an average flow rate of about 1.0 billion cubic feet per day. LNG would be delivered to the FSRU by 2 to 3 LNG carriers per week to meet the Project's planned send-out volumes of natural gas. LNG carriers would transit from the Atlantic Ocean to either the Point Judith Pilot Station (northeast of Block Island) or the Montauk Pilot Station (southwest of Block Island). From the Point Judith Pilot Station, carriers would transit Block Island Sound north of Block Island, head generally west to enter Long Island Sound at its eastern end (an area known as the Race), and then proceed to the FSRU. From the Montauk Pilot Station, carriers would head generally northwest to approach the Race, then proceed to the FSRU.

The final EIS addresses the potential environmental effects of the construction and operation of the following LNG and natural gas pipeline facilities:

- A double-hulled FSRU approximately 1,215 feet long and 200 feet wide, with a closed-loop shell-and-tube vaporization system and a total

storage capacity of 350,000 cubic meters (approximately 8 billion cubic feet);

- A berthing facility at the FSRU for receiving LNG ships with capacities up to 250,000 cubic meters;
- A YMS embedded in the seafloor to moor the FSRU;
- Approximately 2 to 3 LNG carriers per week that would call at the FSRU;
- LNG carriers that would transit through waters subject to federal jurisdiction as well as waters under the jurisdiction of the state of New York, and in some cases, may transit waters under the jurisdiction of the states of Rhode Island and Connecticut;
- Approximately 21.7 miles of 30-inch-diameter natural gas pipeline, a pig launcher and receiver facility, and a meter station at the interconnect with the IGTS pipeline; and
- Onshore facilities at either Greenport or Port Jefferson, New York, including administrative offices, a warehouse, guardhouse, and an existing commercial pier.

Broadwater proposes to construct the Project in two phases. The first phase would include installation of the subsea pipeline between October 2009 and April 2010. The second phase would include installation of the YMS, hookup of the FSRU, and connection of the project components between September and December 2010. Broadwater anticipates that the Project would be in service by the end of December 2010.

As part of this evaluation, FERC staff has prepared a final EIS to assess the environmental impacts of the Project. The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA).

The Coast Guard has assessed potential risks to navigation safety and port security associated with the proposed Project. The Coast Guard's safety and security assessment is documented in the Captain of the Port Long Island Sound's Waterways Suitability Report (WSR). The final EIS includes an analysis of the environmental impacts related to the Coast Guard's Letter of Recommendation regarding the suitability of the involved waterways for LNG carrier operations.

The Coast Guard Captain of the Port Long Island Sound will issue a Letter of Recommendation to Broadwater Energy and the appropriate federal, state and local agencies, in accordance with 33 CFR 127.009. The Letter of Recommendation, which will be based on the Coast Guard's WSR, is an official determination regarding the suitability or unsuitability of Long Island Sound to support the proposed FSRU and associated LNG marine traffic. The Coast Guard intends to adopt all or portions of the EIS being prepared by FERC to serve as the NEPA analysis for the Letter of Recommendation. The Letter of Recommendation will not be issued until after the NEPA process has been completed.

The final EIS also evaluates alternatives to the proposal, including alternative energy sources, system alternatives, alternative sites for the LNG import terminal, alternative designs, pipeline alternatives, and alternatives to the Coast Guard Letter of Recommendation action. Based on the analysis included in the final EIS, the FERC staff concludes that approval of the proposed Project with appropriate mitigating measures as recommended, would have limited adverse environmental impacts.

The final EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of hard copies and CDs are available at the Public Reference Room identified above. CD copies of the final EIS have been mailed to federal, state, and local agencies; public interest groups; and individuals who requested a copy of the final EIS or provided comments during scoping; libraries and newspapers in the Project area; and parties to this proceeding. Hard copy versions of the final EIS were mailed to those specifically requesting them.

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–868 Filed 1–17–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–33–000]

Dominion Transmission, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Dominion Hub I Project and Request for Comments on Environmental Issues

January 11, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Dominion Hub I Project, involving construction and operation of natural gas facilities by Dominion Transmission, Inc. (Dominion) in Westmoreland County, Pennsylvania. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on February 11, 2008. Details on how to submit comments are provided in the Public Participation section of this notice.

If you are a landowner receiving this notice, you may be contacted by a Dominion representative about the acquisition of an easement to construct, operate, and maintain the proposed project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Dominion could initiate condemnation proceedings in accordance with Pennsylvania state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need

To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

With this notice, we [1] are asking other federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

Summary of the Proposed Project

Dominion seeks authorization to construct a new compressor station housing two 2,370-horsepower (hp) reciprocating gas compressor units, totaling 4,740 hp. Dominion would also install about 2 miles of 20-inch-diameter pipeline (in two sections) and a meter and regulator station (meter station). All facilities would be constructed in Westmoreland County, Pennsylvania. The project would receive about 200,000 dekatherms of natural gas per day (Dth/d) in summer months and 150,000 Dth/d in winter months from Rockies Express Pipeline, LLC's proposed REX East Pipeline (currently under Commission review in Docket No. CP07–208–000) and deliver this gas to BP Energy Company. No non-jurisdictional facilities are proposed as a part of the Hub I Project.

Appendix A presents a detailed map identifying all facilities associated with this project.[2]

Land Requirements for Construction

Dominion would disturb about 15.7 acres to construct the new compressor station, 26.2 acres to construct the 2 miles of pipeline, and either 1.4 acres or 2.2 acres to construct the new meter station (depending on final site selection). Dominion would also construct a pig launcher/receiver [3] within the proposed meter station site.

Dominion would construct its 20-inch-diameter pipeline in a 75-foot-wide construction right-of-way. Dominion would maintain a 50-foot-wide permanent right-of-way for operation and maintenance of its pipeline. Between the proposed compressor station and the meter station, 25 feet of the permanent right-of-way would overlap an existing Dominion right-of-way.

The EA Process

We are preparing this EA to comply with the National Environmental Policy Act of 1969 (NEPA) which requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, we are requesting public comments on the scope of the issues to be addressed in the EA. All comments received will be considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under the following general headings:

- Geology and soils.
- Water resources.
- Wetlands.
- Vegetation, fisheries, and wildlife (including threatened and endangered species).
- Cultural resources.
- Land use and visual quality.
- Air quality and noise.
- Reliability and safety.

We note that the proposed compressor station would be adjacent to an historic park. Additionally, we will evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published for distribution and mailed to federal, state, and local agencies; public interest groups; interested individuals; affected landowners; newspapers and libraries in the project area; and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. Your comments should focus on the potential environmental effects of the proposal, reasonable alternatives (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE.; Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1;
- Reference Docket No. CP08–33–000;
- Mail your comments so that they will be received in Washington, DC on or before February 11, 2008.

Please note that the Commission strongly encourages electronic filing of comments. See 18 Code of Federal Regulations (CFR) 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''eFiling'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your computer's hard drive. Before you can file comments you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference Room at (202) 502–8371. For instructions on connecting to eLibrary, refer to the ''Additional Information'' section at the end of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Dominion.

[3] A pipeline ''pig'' is a device designed to internally clean or inspect the pipeline. A pig launcher/receiver is an aboveground facility where pigs are inserted or retrieved from the pipeline.

for this proceeding. If you want to become an intervenor, you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix B).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. We encourage government representatives to notify their constituents of this proposed project and encourage them to comment on their areas of concern. If you do not return the form included as Appendix C, you will be removed from the Commission's environmental mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.*, CP08–33), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ ferc.gov.* The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission such as orders, notices, and rule makings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, any public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. You can also request additional information by calling Dominion at (804) 819–2064.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–865 Filed 1–17–08; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG08–18–000]

Langdon Wind, LLC; Notice of Filing

January 11, 2008.

Take notice that on November 20, 2007, Langdon Wind, LLC, tendered for filing a notice of self-certification of its status as an exempt wholesale generator.

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. On or before the comment date, it is not necessary to 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 on January 18, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–867 Filed 1–17–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–50–000]

Trunkline Gas Company, LLC; Notice of Request Under Blanket Authorization

January 14, 2008.

Take notice that on January 9, 2008, Trunkline Gas Company (Trunkline), P.O. Box 4967, Houston, Texas 77210–4967, filed in Docket No. CP08–50–000 a prior notice request pursuant to sections 157.205, 157.208 and 157.212 of the Commission's regulations under the Natural Gas Act (NGA) and Trunkline's blanket certificate issued January 10, 1983 in Docket No. CP83–84–000, for authorization to construct and operate a new interconnect with Kinder Morgan Louisiana Pipeline, LLC to receive revaporized liquefied natural gas in Jefferson Davis Parish, Louisiana, 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.

The estimated cost of constructing the proposed facilities is $950,000.

Any questions regarding the application should be directed to Stephen T. Veach, Regulatory Affairs, Trunkline Gas Company, 5444 Westheimer Road, Houston, Texas 77056, or fax (713) 989–1158, or e-mail *stephen.veach@sug.com.*

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 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 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: February 4, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–866 Filed 1–17–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8517–8; Docket ID No. EPA–HQ–ORD–2007–1083]

Draft Toxicological Review of 1,2,3-Trichloropropane: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing that Versar, Inc., an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer-review meeting to review the external review draft document titled, ''Toxicological Review of 1,2,3-Trichloropropane: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (NCEA–S–1669). EPA previously announced the 60-day public comment period (ending January 15, 2008) for the draft document in the **Federal Register** on November 16, 2007 (72 FR 64626). EPA will consider public comments and recommendations from the expert panel meeting as EPA finalizes the draft document.

The public comment period and the external peer-review meeting are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward public comments submitted in accordance with **Federal Register** (72 FR 64626) to Versar, Inc., for consideration by the external peer-review panel prior to the meeting.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

Versar, Inc., invites the public to register to attend this meeting as observers. In addition, Versar, Inc., invites the public to give brief oral comments at the meeting regarding the draft document under review. The draft document and EPA's peer-review charge are available via the Internet on NCEA's home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* When finalizing the draft document, EPA intends to consider Versar's report of the comments and recommendations from the external peer-review meeting and any public comments that EPA receives in accordance with 72 FR 64626, November 16, 2007. Public comments that were submitted during the 60-day public comment period ending January 15, 2008 may be observed at *http://www.regulations.gov* under Docket ID No. EPA–HQ–ORD–2007–1083.

DATES: The peer-review panel meeting will begin on February 20, 2008, at 8:30 a.m. and end at 5 p.m. Register by February 15, 2008, if you wish to provide brief oral comments at the meeting.

ADDRESSES: The peer-review meeting will be held at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202. Versar, Inc., is organizing, convening, and conducting the peer-review meeting. To attend the meeting, register by February 15, 2008, via the Internet at *http://epa.versar.com/123TCP/.*

The draft ''Toxicological Review of 1,2,3-Trichloropropane: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available via the Internet on the National Center for Environmental Assessment's (NCEA) home page under the Recent Additions and the Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Staff, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title. Copies are not available from Versar, Inc.

FOR FURTHER INFORMATION CONTACT: For information on the peer review meeting, contact Stephanie Sarraino, Versar, Inc.; telephone: 703–750–3000 ext. 316; e-mail: *ssarraino@versar.com.*

If you have questions about the document, contact Martin Gehlhaus, IRIS Staff, National Center for Environmental Assessment, (8601P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8579; facsimile: 713–347–8689; e-mail: *gehlhaus.martin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of Information About the Integrated Risk Information System (IRIS)

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 500 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

II. Meeting Information

Members of the public may attend the meeting as observers, and there will be a limited time for oral comments from the public. Please let Versar, Inc. know if you wish to make comments during the meeting by registering on the Web site at *http://epa.versar.com/123TCP/* and indicating your intent to make oral comments. Space is limited, and reservations will be accepted on a first-come, first-served basis.

Dated: January 11, 2008.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E8–887 Filed 1–17–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6695–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20070421, ERP No. D–BLM–K60039–NV, Toqoup Energy Project, Construction and Operation a 750 Megawatt Coal-Fired Generation Facility, Right-of-Way Grant, Lincoln and Clark Counties, NV.

Summary: EPA expressed environmental concerns about potential adverse impacts to aquatic resources, uncertainty of groundwater availability, and carbon dioxide emissions. We recommend further discussion on renewable energy resources, groundwater protection, and issues associated with greenhouse gas emissions and climate change. Rating EC2.

EIS No. 20070422, ERP No. D–FHW–E40817–TN, U.S. 127/TN 28 Improvements, from 1–40 at Crossville to TN 62 at Clarkrange, Funding, U.S. Army COE Section 10 and 404 Permits, Cumberland and Fentress Counties, TN.

Summary: EPA expressed environmental concerns about potential water quality impacts associated with construction and future operation. Rating EC1.

EIS No. 20070439, ERP No. D–BOP–E81040–AL, Aliceville, Alabama Area, Proposed Federal Correctional Complex, To Address the Growing Federal Inmate Population, Pickens County, AL.

Summary: EPA expressed environmental concerns about wetland and water quality impacts, and requested that the project incorporate resource conservation and pollution strategies into the design, siting, and operation of the facility. Rating EC1.

EIS No. 20070492, ERP No. D–DHS–G11050–TX, Rio Grande Valley Sector Project, Construction, Maintenance, and Operation of Tactical Infrastructure, U.S./Mexico International Border in Southernmost Portions of Starr, Hidalgo and Cameron Counties, TX.

Summary: EPA expressed environmental concerns about natural resource impacts, and requested additional information on this issue as well as, cumulative impacts, endangered species and environmental justice. Rating EC2.

Final EISs

EIS No. 20070474, ERP No. F–COE–E39070–TN, Center Hill Dam and Lake Project, Changes to Operational Guide Curves Pool Elevations, Chancey Fork River and Cumberland River, Dekalb County, TN.

Summary: EPA continues to have environmental concerns about water quantity and water quality impacts. EIS No. 20070478, ERP No. F–AFS–L61323–AK, Helicopter Access to Conduct Forest Inventory and Analysis (FIA) in Wilderness, in Tongass and Chugach National Forest, AK.

Summary: EPA does not object to the proposed action.

EIS No. 20070501, ERP No. F–BLM–K65289–NV, Ely District Resource Management Plan, Implementation, White Pine, Lincoln Counties and a Portion of Nye County, NV.

Summary: No formal comment letter was sent to the lead agency.

EIS No. 20070502, ERP No. F–FHW–H40185–00, U.S. Highway 34, Plattsmouth Bridge Study, over the Missouri River between U.S. 75 and I–29, Funding, Coast Guard Permit, U.S. Army COE 10 and 404 Permits, Cass County, NE and Mills County, IA.

Summary: EPA does not object to the preferred alternative.

EIS No. 20070507, ERP No. F–BLM–K65326–CA, Eastern San Diego County Resource Management Plan, Implementation, El Centro Field Office, San Diego County, CA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070543, ERP No. F–AFS–K65330–00, Sierra Nevada Forests Management Indicator Species Amendment (MIS), Proposes to Adopt a Common List of Management Indicator Species (MIS), and Amending Land & Resource Management Plans for Following Ten Forests: Eldorado, Inyo, Lassen, Modoc, Plumas, Sequoia, Sierra, Stanislaus and Tahoe National Forests and Lake Tahoe Basin Management Unit, Several Counties, CA and Douglas, Esmeralda, Mineral Counties, NV.

Summary: EPA continues to have environmental concerns. EPA recommended the ROD identify clear thresholds that trigger management evaluation and changes, redirect saved resources to monitoring and management of at-risk species and sensitive habitats. In addition, the ROD should describe how the effects of historical disturbances will be measured, include periodic field assessment and recalibration or validation of monitoring and assessment models, and make at-risk watersheds and those with unique and sensitive habitats a management priority for more frequent field-verification.

EIS No. 20070558, ERP No. F–NPS–D61057–VA, Great Falls Park General Management Plan, Implementation, George Washington Parkway, Fairfax County, VA.

Summary: EPA does not object to the selected action.

EIS No. 20070515, ERP No. FS–FHW–H40088–IA, IA–100 Extension Around Cedar Rapids, Edgewood Road to U.S. 30, Reevaluation of the Project Corridor and Changes in Environmental Requirements, Funding and U.S. Army COE 404 Permit Issuance, Linn County, IA.

Summary: EPA's previously expressed concerns have been adequately addressed; therefore, EPA does not object to the proposed action.

Dated: January 15, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–877 Filed 1–17–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6695–1]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements Filed 01/07/2008 through 01/11/2008. Pursuant to 40 CFR 1506.9.

EIS No. 20080008, Draft EIS, NPS, NY, Governors Island National Monument, General Management Plan, Implementation, New York Harbor, NY, Comment Period Ends: 03/18/2008, Contact: Christine Gobrial 215–597–1572.

EIS No. 20080009, Final EIS, AFS, WY, Lower Valley Energy (LVE) Natural Gas Pipeline Project, Construction and Operation of a Pressurized Natural Gas Pipeline, Special-Use-Authorization, Big Piney and Jackson Ranger Districts, Bridger-Teton National Forest, Sublette and Teton Counties, WY, Wait Period Ends: 02/19/2008, Contact: Greg Clark 307–276–3375.

EIS No. 20080010, Draft EIS, FHW, 00, US–231/I–10 Connector Project HPP–1602–(507), Proposal to Build Limited Access Facility from U.S. 231 North of Dothan to the Alabama/Florida State Line, Dale, Houston, Geneva Counties, AL, Comment Period Ends: 03/03/2008, Contact: Mark D. Bartlett 334–223–7370.

EIS No. 20080011, Final EIS, FHW, AK, Knik Arm Crossing Project, To Provide Improved Access between the Municipality of Anchorage and Matanuska-Susitna Borough, AK, Wait Period Ends: 02/19/2008, Contact: Edrie Vinson 907–586–7464.

EIS No. 20080012, Final EIS, NAS, 00, Programmatic—Constellation Program, Develop the Flight Systems and Earth-based Ground Infrastructure for Future Missions, International Space Station, The Moon, Mars, and Beyond, Brevard and Volusia Counties, FL; Hancock County, MS; Orlean Parish, LA; Harris County, TX; Madison County, AL; Cuyahoga and Erie Counties, OH; Hampton, VA; Santa Clara County, CA; Dona Ana and Otero Counties, NM; and Box Elder and Davis Counties, UT, Wait Period Ends: 02/19/2008, Contact: Kathleen Callister 202–358–1953.

EIS No. 20080013, Draft EIS, AFS, NM, Santa Fe National Forest Project, Settlement Land Transfers: Pueblo de San lldefonso, Pueblo of Santa Clara and Los Alamos County, Implementation, Santa Fe National Forest, Los Alamos, Rio Arriba and Santa Fe Counties, NM, Comment Period Ends: 03/03/2008, Contact: Sandy Hurlocked 505–753–7331.

EIS No. 20080014, Draft EIS, NPS, WA, San Juan Island National Historical Park, General Management Plan, Implementation, WA, Comment Period Ends: 03/17/2008, Contact: Cheryl Teaque 206–220–4112.

EIS No. 20080015, Draft EIS, BLM, WY, Westside Land Conveyance Project, Congressionally-Mandated Transfer of 16,500 Acres of Public Land to the Westside Irrigation District, Big Horn and Washakie Counties, WY, Comment Period Ends: 03/03/2008, Contact: Don Ogaard 307–347–5160. This document is available on the Internet at: *http://www.blm.gov/wy/st/en/info/NEPA/wfodocs/westside.html.*

EIS No. 20080016, Draft EIS, FHW, ID, Three Cities River Crossing Project, New Roadway Crossing of the Boise River at the Juncture of the Cities of Boise, Eagle and Garden, Ada County Highway District (ACHD), Ada County, ID, Comment Period Ends: 03/03/2008, Contact: Ross Blanchard 208–334–9180.

EIS No. 20080017, Final EIS, COE, CA, San Clemente Dam Seismic Safety Project, Increase Dam Safety to Meet Current Design Standards, Monterey County, CA, Wait Period Ends: 02/19/2008, Contact: Robert Smith 415–503–6792.

EIS No. 20080018, Draft EIS, FHW, CA, Phase I—CA 11 Corridor Location and Route Adoption and Location Identification of the Otay Mesa East Port of Entry (POE) on Otay Mesa, Presidential Permit for the POE and Acquisition of Right-of-Way Permit, San Diego County, CA, Comment Period Ends: 03/03/2008, Contact: Cesar Perez 916–498–5065.

EIS No. 20080019, Draft EIS, MMS, 00, Cape Wind Energy Project, Construction, Operation and Maintenance, and Decommissioning of a Electric Generation Facility, Barnstable, Nantucket and Duke County, MA and Washington County, RI, Comment Period Ends: 03/20/2008, Contact: Dr. Rodney E. Cluck 703–787–1087.

EIS No. 20080020, Final EIS, FRC, NY, Broadwater Liquefied Natural Gas (LNG) Project, Construction and Operation a Natural Gas Pipeline Facilities, (Docket Nos. CP06–54, et al.), Long Island Sound, NY, Wait Period Ends: 02/19/2008, Contact: Andy Black 1–866–208–3372.

Amended Notices

EIS No. 20070508, Draft EIS, AFS, 00, Wild and Scenic River Suitability Study for National Forest System Lands on the Ashley, Dixie, Fishlake, Manti-La Sal, Uinta and Wasatch-Cache National Forests in UT and Portion of National Forests extend into Colorado and Wyoming, several counties, UT, Montrose County, CO and Uinta County, WY, Wait Period Ends: 02/15/2008, Contact: Catherine Kahlow 435–783–4338. Revision of FR Notice Published 12/07/2007: Extending Comment Period from 01/22/2008 to 02/15/2008.

Dated: January 15, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–881 Filed 1–17–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CAXXX–NOA; FRL–8517–9]

Official Release of EMFAC2007 Motor Vehicle Emission Factor Model for Use in the State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: EPA is approving and announcing the availability of the latest version of the California EMFAC model for use in state implementation plan (SIP) development in California. EMFAC2007 is the latest update to the EMFAC model for use by California state and local governments to meet Clean Air Act (CAA) requirements. The new model, which is based on new and improved data, calculates air pollution emission factors for passenger cars, trucks, motorcycles, motor homes and buses. Today's notice also sets the date after which EMFAC2007 is required to be used statewide in all new regional emissions analyses and carbon monoxide (CO) hot-spot analyses for transportation conformity determinations in California. EPA also intends to approve EMFAC2007 in the future for particulate matter (PM_{10} and $PM_{2.5}$) hot-spot analyses in California, once EPA issues quantitative hot-spot modeling guidance for such analyses. Since the EMFAC model is used only in California, EPA's approval of the model does not affect MOBILE model users in other states.

DATES: This determination is effective *January 18, 2008.* EMFAC2007 must be used for all new regional emissions

analyses and CO hot-spot analyses that are started on or after April 18, 2008.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, *oconnor.karina@epa.gov*, (775) 833–1276, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105–3901. For questions regarding the future development of quantitative PM_{10} and $PM_{2.5}$ hot-spot modeling guidance, contact Meg Patulski, *patulski.meg@epa.gov*, (734) 214–4842, Transportation and Regional Programs Division, U.S. EPA's Office of Transportation and Air Quality, 2000 Traverwood Road, Ann Arbor, MI 48105.

SUPPLEMENTARY INFORMATION: Copies of the official version of the EMFAC2007 model are available on the California Air Resources Board (CARB) Web site: *http://www.arb.ca.gov/msei/onroad/latest_version.htm* (model, technical support documents, etc).

I. Background

A. What Is the EMFAC Model?

The EMFAC model (short for EMission FACtor) is a computer model that can estimate emission rates for on-road mobile sources (''motor vehicles'') for calendar years from 1970 to 2040 operating in California. Pollutant emissions for hydrocarbons (HC), CO, nitrogen oxides (NO_X), PM_{10}, $PM_{2.5}$, lead, and sulfur oxides are output from the model. Emissions are calculated for thirteen different vehicles classes comprised of passenger cars, various types of trucks and buses, motorcycles, and motor homes. The EMFAC2007 model is operated with a user-friendly graphical user interface (GUI) which facilitates data input and allows the development of alternative emissions scenarios through a What If Scenarios (WIS) generator. The WIS interface can be used to incorporate updated vehicle data, adjust ambient conditions or make changes to potential emission control programs in a specific area.

EMFAC is used to calculate current and future inventories of motor vehicle emissions at the state, air district, air basin, or county level. EMFAC contains default vehicle activity data, and the option of modifying that data, so it can be used to estimate a motor vehicle emission inventory in tons/day for a specific year, month, or season, and as a function of ambient temperature, relative humidity, vehicle population, mileage accrual, miles of travel and speeds. Thus the model can be used to make decisions about air pollution policies and programs at the local or state level. Inventories based on EMFAC are also used to meet the federal CAA's SIP and transportation conformity requirements. Transportation conformity is required under CAA section 176(c) to ensure that federally supported transportation plans, transportation improvement programs (TIPs), and highway and transit projects are consistent with (''conform to'') the purpose of the SIP.

B. What Versions of EMFAC Are Currently in Use in California?

Most SIPs in California were developed using EMFAC2002 (released by CARB in October 2002) or EMFAC2000 (released by CARB in May 2000). EPA approved use of EMFAC2000 in January 2002 only for the San Francisco Bay Area (67 FR 1464). EPA approved EMFAC2002 in April 2003 (68 FR 15720) for all areas in California.

EMFAC2002 was considered a major update to previous versions of EMFAC and most SIPs in California were updated with EMFAC2002 in the 2003–2006 timeframe. EMFAC2002 included significant changes to its model interface, new data and methodologies regarding calculation of motor vehicle emissions, revision to implementation data for control measures, and corrections to technical errors mentioned in our prior approval of EMFAC2000. Areas with SIP motor vehicle emissions budgets developed using earlier versions of EMFAC were required to use EMFAC2002 for regional conformity analyses at the end of the grace period provided by 40 CFR 93.111(b).

C. Why Is EPA Announcing Its Approval of the EMFAC Model?

CAA section 172(c)(3) and 40 CFR 51.112(a)(1) require that SIP inventories be based on the most current, accurate, and applicable models that are available at the time the SIP is developed. CAA section 176(c)(1) requires that the latest emissions estimates be used in conformity analyses. EPA approves models that fulfill these requirements.

Under 40 CFR 93.111(a), EPA must approve new versions of EMFAC for SIP purposes before they can be used in transportation conformity analyses. In an April 18, 2007 letter, CARB requested that EPA approve EMFAC2007 for use in developing SIPs and in determining conformity in California. EMFAC2007 is a significant change from previous EMFAC models and is capable of calculating motor vehicle emissions for all California areas. EMFAC2007 is being approved as the latest emissions model for statewide use in SIP development. Since the EMFAC model is only used in California, EPA's statewide approval of the model does not affect MOBILE emissions factor model users in other states.

D. Why Have Transportation Agencies Stopped Using EMFAC2002 for Regional Conformity Emissions Analyses?

On February 1, 2007, the Federal Highway Administration (FHWA) sent a letter to all of the Metropolitan Planning Organizations in California and Caltrans Districts indicating that, after August 1, 2007, they would not be able to start any new transportation conformity determinations that require a new regional emissions analysis, unless the analysis incorporates more recent vehicle data consistent with the latest planning assumptions requirements in the conformity rule (40 CFR 93.110). The letter indicated that updated vehicle data was available in EMFAC2007, which was released to the public in November 2006. The letter indicated that FHWA, the Federal Transit Administration (FTA), and EPA were providing agencies with a 6-month transition period, beginning on February 1, 2007 before the new vehicle fleet data was required in conformity determinations. Consistent with the EPA/USDOT January 18, 2001, guidance on latest planning assumptions and EPA's July 1, 2004 final rule (69 FR 40052–40056), new vehicle registration data must be used when it is available at the start of new conformity analyses. Since newer vehicle data was available but was not included in the older version of EMFAC, EMFAC2002 has not been used in any new regional emissions analyses that were started since August 1, 2007.

II. EPA Action

A. What Version of EMFAC Is EPA Approving?

In this notice, EPA is approving and announcing that EMFAC2007 is available to use in statewide California SIP development and for regional emissions analyses and carbon monoxide (CO) hot-spot analyses for transportation conformity analyses. EMFAC2007 was developed by CARB and transmitted for approval to EPA on April 18, 2007.

On January 28, 2003, CARB also transmitted a methodology (''Recommended Methods for Use of EMFAC2002 to Develop Motor Vehicle Emission Budgets and Assess Conformity'') to adjust vehicle activity data used by EMFAC2007 when updated data is available. EPA previously approved this CARB

methodology on April 1, 2003 (68 FR 15720, at 15721) for use with EMFAC2002, since the transportation conformity rule (40 CFR 93.110) requires areas to use the latest information for estimating vehicle activity. With EMFAC2007, CARB has not made any changes to the methodology to adjust vehicle activity data, and therefore the existing approved methodology will continue to be approved with no change. However, the methodology has been included in the updates to Chapter 8 of the EMFAC user's guide. Therefore, CARB's methodology should continue to be used to update vehicle activity data in EMFAC2007, as described in the EMFAC user's guide.

B. What Analyses Can EMFAC2007 Be Used For?

EPA is approving the model to estimate regional emissions of HC, CO, NO_X, PM_{10}, $PM_{2.5}$, lead, and sulfur oxides. However, EMFAC2007 will only be used in transportation conformity for pollutants and precursors that affect transportation emissions, e.g., HC, NO_X, CO, PM_{10} and $PM_{2.5}$.

EPA is also approving EMFAC2007 to estimate CO emissions for hot-spot analyses involving individual transportation projects. A hot-spot analysis is defined in 40 CFR 93.101 as an estimation of likely future localized pollutant concentrations resulting from a new transportation project and a comparison of those concentrations to the relevant air quality standard. This analysis is conducted on a smaller scale, e.g., for a congested roadway intersection.

EPA also notes that today's approval action does not impact what methodology is required for calculating re-entrained road dust or ammonia emissions for regional PM_{10} and $PM_{2.5}$ SIP and transportation conformity analyses. EMFAC2007's PM_{10} and $PM_{2.5}$ estimates do not include such emissions. When applicable, PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas are required to use EPA's AP–42 road dust method for calculating road dust emissions, unless a local method is approved by EPA.[1] EMFAC2007 does not estimate ammonia emissions; air quality and transportation agencies should contact the regional office if ammonia emission estimates are needed.

C. Is EMFAC2007 Being Approved for PM_{10} and $PM_{2.5}$ Hot-spot Analyses At This Time?

On March 10, 2006, EPA published a final rule that established the transportation conformity procedures for analyzing PM_{10} and $PM_{2.5}$ hot-spot impacts of new projects involving significant levels of on-road diesel traffic (71 FR 12468). Quantitative PM_{10} and $PM_{2.5}$ hot-spot analyses have not yet been required for the projects of local air quality concern described in 40 CFR 93.123(b)(1) due to the need to develop EPA modeling guidance and appropriate methods (71 FR at 12498–12502). Section 93.123(b)(4) of the conformity rule states that the requirements for quantitative PM_{10} and $PM_{2.5}$ hot-spot analyses will not take effect until EPA releases modeling guidance and announces in the **Federal Register** that these requirements are in effect. At present, project sponsors are currently following EPA and FHWA's qualitative hot-spot modeling guidance for conformity determinations involving projects of local air quality concern.[2] EMFAC2007 is capable of assessing project-level emissions for PM_{10} and $PM_{2.5}$ hot-spot analyses, but as described in the March 2006 final rule and 40 CFR 93.123(b)(4), EPA believes that quantitative PM hot-spot modeling guidance is also necessary before quantitative PM hot-spot analyses can be required. Therefore, since such guidance is currently not available, EPA is not approving EMFAC2007 for PM_{10} and $PM_{2.5}$ hot-spot conformity analyses at this time.

Over the next year, EPA intends to develop quantitative PM_{10} and $PM_{2.5}$ hot-spot modeling guidance, which will contain information on how to use EMFAC2007 and how to apply the appropriate dispersion models for such analyses in California. EPA will announce the availability of the guidance and approval of EMFAC2007 for quantitative PM hot-spot analyses when the guidance is completed for California. EPA will consult with FHWA, FTA, CARB, the California state department of transportation (Caltrans), other stakeholders, and the public in the development of this guidance, as described in the March 2006 final rule. Please see the **FOR FURTHER INFORMATION CONTACT** section if you have questions regarding the development of conformity guidance for quantitative PM_{10} and $PM_{2.5}$ hot-spot analyses in California.

D. Why Does EPA Consider EMFAC2007 as a Major Update to EMFAC?

EMFAC2007 includes new data and methodologies regarding calculation of motor vehicle emissions and revisions to implementation data for control measures. EMFAC2007 includes updated data supporting new emission factors and speed correction factors for estimating emissions from heavy-heavy duty diesel trucks. The model includes modifications to the algorithms for inspection and maintenance as well as corrections for heavy-duty truck gas cap benefits from the inspection and maintenance program. Impacts of ethanol permeation and updates to fuel correction factors are included as well as revisions to particulate brake wear emissions. EMFAC2007 incorporates new temperature and humidity profiles. In addition to these changes, which impact emission factors for each area in California, EMFAC incorporates new mileage accrual rates and speed distributions, a redistribution of heavy-duty diesel truck vehicle miles traveled (VMT) and updated VMT for all vehicle classes. CARB's web site describes these and other model changes at: *http://www.arb.ca.gov/msei/workshops.htm#work20061115.*

E. How Were Stakeholders and the Public Involved in the EMFAC Development Process?

Since 2005, CARB has held a series of public workshops to discuss proposed model updates and receive comments on interim versions of the new model. Three workshops were held to solicit input from stakeholders and the public in March of 2005. Then, in workshops held on September 11 and November 15 and 16, 2006, CARB described the latest EMFAC changes under consideration and sought public input. Those changes are reflected in the final EMFAC2007 model submitted to EPA in April 2007. One additional public information briefing was held on December 15, 2006, to share the emissions estimates resulting from use of the final model with updated travel activity, as well as plans for transmittal of EMFAC2007 to U.S. EPA. CARB has also discussed both the model and the impact of the changes to emission totals for the state at the workshops.

CARB also released a series of technical memos that describe each update to the model, and public presentations that summarize the changes from earlier versions of the model. The technical memos are available on CARB's Web site at: *http://www.arb.ca.gov/msei/supportdocs.htm.* Each memo describes the model update,

[1] For further information, see EPA's August 2, 2007 memorandum entitled, ''Policy Guidance on the Use of the November 1, 2006, Update to AP–42 for Re-entrained Road Dust for SIP Development and Transportation Conformity.''

[2] ''Transportation Conformity Guidance for Qualitative Hot-Spot Analyses in $PM_{2.5}$ and PM_{10} Nonattainment and Maintenance Areas'' jointly published by EPA and FHWA in March 2006.

the reason for the change, how the change was incorporated into the EMFAC model, and the resulting emissions impact. All presentations from the public workshops are available on the CARB Web site at: *http://www.arb.ca.gov/msei/workshops.htm#work200612*. These presentations summarize the major changes to the EMFAC model and contain tables showing the impacts of the changes both statewide and by county for HC, CO, NO_X, PM_{10}, and $PM_{2.5}$.

F. Will a Transportation Conformity Grace Period Be Set by This Approval?

Yes. The transportation conformity rule (40 CFR part 93.111) requires that conformity analyses be based on the latest motor vehicle emissions model approved by EPA for SIP purposes for a state or area. Section 176(c)(1) of the CAA states that ''* * * [t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates. * * *'' When EPA approves a new emissions model such as EMFAC2007, a grace period is established before the model is required for conformity analyses. However, areas have the option of using the new model prior to the end of the grace period. The conformity rule provides for a grace period for new emissions models of between 3 to 24 months. In consultation with FHWA and FTA, EPA considers many factors in establishing the length of the grace period, including the degree of change in emissions models and the effects of the new model on the transportation planning process (40 CFR 93.111).

Upon consideration of all of these factors, EPA is establishing a 3-month grace period before EMFAC2007 is required for the following conformity analyses:

- All new HC, NO_X, PM_{10}, $PM_{2.5}$ and CO regional emissions analyses (e.g., supporting transportation plan and TIP conformity determinations); and
- All new CO hot-spot analyses supporting project-level conformity determinations.

The grace period begins today and ends on *April 18, 2008*. As discussed earlier in the notice, the last version of EMFAC (EMFAC2002) is no longer used in California for new regional emissions analyses for transportation plan and TIP conformity determinations. Therefore it is appropriate to set a short grace period since all areas in California will need to use EMFAC2007 to begin any new regional conformity analyses. A longer grace period would provide no practical benefit for transportation plan and TIP conformity determinations, since older EMFAC models cannot be used in new regional analyses due to the latest planning assumptions requirements in the conformity rule (40 CFR 93.110).

When the grace period ends on *April 18, 2008*, EMFAC2007 will become the only approved motor vehicle emissions model for all new regional and CO hot-spot transportation conformity analyses across California. In general, this means that all new HC, NO_X, PM_{10}, $PM_{2.5}$, and CO regional conformity analyses and CO hot-spot analyses started after the end of the 3-month grace period must be based on EMFAC2007, even if the SIP is based on an earlier version of the EMFAC model.

G. Can Areas Use Any Other Models During the Grace Period?

Yes, in limited cases. CO hot-spot analyses for project-level conformity determinations can be based on EMFAC2002 if the analysis was begun before the end of the grace period, started before August 1, 2007 and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document (see 40 CFR 93.111(c)). The interagency consultation process should be used if it is unclear whether an EMFAC2002 based analysis is covered by the circumstances described above.

H. Future Updates to EMFAC

On January 31, 2006, CARB submitted a letter to EPA and to the California Division of the FHWA indicating the State's intention to update future revisions to EMFAC. These EMFAC updates would reflect, among other new information, updated vehicle fleet data every three years. In California, Metropolitan Planning Organizations and Air Districts have not been able to update vehicle fleet data embedded into EMFAC. The EPA/USDOT January 18, 2001, guidance on latest planning assumptions and EPA's July 2004 final rule, indicate that new vehicle registration data must be used when it is available prior to the start of new conformity analyses and that states should update the data at least every five years. The State reaffirmed their commitment to keeping the latest planning assumptions included in EMFAC updated on a three year cycle in the April 18, 2007 EMFAC submittal letter. The next update to the planning assumptions in EMFAC is expected in 2010, which would most likely also include updates to the emissions factors of the model as well.

III. Summary of EPA Actions

EPA is approving EMFAC2007 as submitted by CARB on April 18, 2007 with the following limitations and conditions:

(1) The approval is limited to California.

(2) The approval is Statewide and applies to estimation of emissions of hydrocarbon, carbon monoxide, nitrogen oxides, particulate matter (PM_{10} and $PM_{2.5}$), lead, and sulfur oxides. However, EMFAC2007 will only be used in transportation conformity analyses for pollutants and precursors that affect regional on-road mobile emissions and are applicable in a given nonattainment or maintenance area. EPA is also approving EMFAC2007 to estimate hot-spot emissions for carbon monoxide conformity analyses.

(3) A 3-month statewide transportation conformity grace period will be established beginning *January 18, 2008* and ending *April 18, 2008* for the transportation conformity uses described in (2) above.

Dated: January 10, 2008.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E8–876 Filed 1–17–08; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting; Cancellation

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 73 FR 1343, Tuesday, January 8, 2008.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Tuesday, January 15, 2008, 3 p.m. (Eastern Time).

CHANGE IN THE MEETING: The meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Executive Officer on (202) 663–4070.

Dated: January 15, 2008.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. 08–187 Filed 1–17–08; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Wednesday, January 23, 2008 at 10 a.m.

PLACE: 999 E. Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, January 24, 2008 at 10 a.m.

PLACE: 999 E. Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Election of Vice Chairman.

Advisory Opinion 2007–32: SpeechNow.org by counsel, Bradley A. Smith, Stephen M. Hoersting, William H. ''Chip'' Mello, Steven Simpson, and Paul M. Sherman.

Advisory Opinion 2007–33: Club for Growth by counsel, Carol A. Laham and D. Mark Renaud.

Advisory Opinion 2007–35: FreeCause, Inc. by counsel, Joseph E. Sandler, Neil P. Reiff, and Jonathan Zucker.

Advisory Opinion 2007–36: People for Pete Domenici by counsel, Donald F. McGahn II, Management and Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Robert Biersack, Press Officer, *Telephone:* (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 08–226 Filed 1–16–08; 2:36 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–06BU]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Acting Reports Clearance Officer at 404–639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Notice of Correction to Burden Table

Proposed Project

The Effectiveness of Teen Safe Driving Messages and Creative Elements on Parents and Teens—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Description of Correction

The previous 30-day **Federal Register** Notice published on December 26, 2007, Volume 72, No. 246, Page 73022–73023, was submitted with an error showing the number of respondents for the Pre/Post Intervention Survey Screener as 900 and the number of respondents for the Pre/Post Survey as 400. This correction increases the number of respondents to 1800 and 800 respectively.

Background and Brief Description

Car crashes are the number one killer of teens, accounting for approximately one-third of all deaths within this age group. The National Center for Health Statistics reports that in 2004, a total of 3,620 young drivers were killed and an additional 303,000 were injured in motor vehicle crashes. In order to reduce these preventable deaths and injuries, parental awareness and education about Graduated Driver's Licensing (GDL) laws and the ways that parents can influence their children's safe driving are necessary. In preparation for a national campaign to educate parents about their role in their teens' driver education, it is necessary to determine the most effective messages and channels through which to communicate with parents. Ogilvy Public Relations Worldwide, PerformTech, International Communications Research (ICR) Survey and Fieldwork Network, on behalf of CDC, will conduct two studies to assess the appropriateness and impact of messages and creative materials intended to (a) increase parental involvement in their teen's driving education and experience, and (b) encourage teens to adopt safer driving practices.

The first information collection will be accomplished through focus group testing of campaign messages and materials with representatives from our target audiences, parents and teens, in two cities in the U.S. The findings will provide valuable information regarding parents' and teens' levels of awareness and concern about safe driving; motivators for behavior change, especially GDL compliance; and message/channel preferences. The information collected will be used to develop final creative materials to implement the teen safe driving campaign in pilot cities. The second information collection will be accomplished through pilot city testing, which will evaluate knowledge, attitude, and behaviors of intended audiences both pre- and post communications campaign. The campaign will target parents of newly licensed drivers. It will encourage parents to understand state regulations regarding new drivers, talk with their teens about safe driving practices, and both manage and monitor their teens' driving behavior. Testing will be conducted through brief telephone surveys intended to assess knowledge, attitudes, and behaviors of parents and teens related to safe driving practices, GDL laws, and parental management of new drivers before and after the campaign; with the goal of observing a marked increase in parental management at the time of the post campaign survey.

There is no cost to the respondents other than their time. The total estimated annualized burden hours are 292.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)
Parents	Parent Focus Group Screener	70	1	1/60
Teens	Teen Focus Group Screener	35	1	1/60
Parents	Parent Focus Group Questions	20	1	2
Teens	Teen Focus Group Questions	10	1	2
Parents	Pre/Post Intervention Survey Screener	1800	1	1/60
Parents	Pre/Post Intervention Survey	800	1	15/60

Dated: January 9, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers of Disease Control and Prevention.

[FR Doc. E8–842 Filed 1–17–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10239 and CMS–R–48]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Conditions of Participation for Critical Access Hospitals; *Use:* With this submission, we are creating a new information collection request for critical access hospitals (CAH). Currently, the information collection requirements associated with the critical access hospital (CAH) conditions of participation (CoPs) are included with the hospital CoPs reported under CMS–R–48 (0938–0328). Because the CAH program has grown in scope of services and the number of providers, we have removed the CAH burden from the CMS–R–48 with the exception of the burden associated with the 101 CAHs that have distinct part units (DPUs), and created a separate information collection request for OMB review and approval. Section 1820(c)(2)(E)(i) of the Social Security Act states that if a CAH operates a distinct part psychiatric or rehabilitation unit it must have 10 beds or less in the DPU and it must comply with the hospital requirements specified in 42 CFR Subpart A, B, C, and D of part 482. Based on 2007 data from HRSA, 81 CAHs have psychiatric distinct part units (DPUs) and 20 CAHs have rehabilitation DPUs. The burden associated with the 101 CAHs with DPUs is reported in CMS–R–48. *Form Number:* CMS–10239 (OMB#: 0938-New); *Frequency:* Yearly; *Affected Public:* Private sector—Business or other for-profit; *Number of Respondents:* 1,189; *Total Annual Responses:* 137,990; *Total Annual Hours:* 23,291.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Hospital Conditions of Participation and Supporting Regulations in 42 CFR 482.12, 482.13, 482.21, 482.22, 482.23, 482.24, 482.27, 482.30, 482.41, 482.43, 482.45, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, and 485.616 and 485.631; *Use:* The information collection requirements described in this information collection request are needed to implement the Medicare and Medicaid conditions of participation (CoP) for 4,890 accredited and non-accredited hospitals and an additional 101 critical access hospitals (CAHs) that have distinct part psychiatric or rehabilitation units (DPUs). CAHs that have DPUs must comply with all of the hospital CoPs on these units. Thus, this package reflects the paperwork burden for a total of 4,991 (that is, 4,890 hospitals and 101 CAHs which include 81 CAHs that have psychiatric DPUs and 20 CAHs that have rehabilitation DPUs). The information collection requirements for the remaining 1,183 CAHs have been reported in a separate package under CMS–10239.

The CoPs and accompanying requirements specified in the regulations are used by our surveyors as a basis for determining whether a hospital qualifies for a provider agreement under Medicare and Medicaid. CMS and the health care industry believe that the availability to the facility of the type of records and general content of records, which this regulation specifies, is standard medical practice and is necessary in order to ensure the well-being and safety of patients and professional treatment accountability. *Form Number:* CMS–R–48 (OMB#: 0938–328); *Frequency:* Yearly; *Affected Public:* Private sector—Business or other for-profit; *Number of Respondents:* 4,991; *Total Annual Responses:* 1,120,817; *Total Annual Hours:* 9,151,200.57.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *February 19, 2008.*

OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: January 11, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–909 Filed 1–17–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–185]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Granting and Withdrawal of Deeming Authority to Private Nonprofit Accreditation Organizations and of State Exemption Under State Laboratory Programs and Supporting Regulations in 42 CFR 493.551—493.557. *Form Number:* CMS–R–185 (OMB# 0938–0686); *Frequency:* On occasion; *Affected Public:* Private sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 8; *Total Annual Responses:* 96; *Total Annual Hours:* 384.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on *March 18, 2008.*

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—A, Attention: Melissa Musotto, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 10, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–911 Filed 1–17–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2008N–0004]

Draft Guidance for Industry on Acute Bacterial Otitis Media: Developing Drugs for Treatment; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Acute Bacterial Otitis Media: Developing Drugs for Treatment.'' The purpose of this draft guidance is to assist clinical trial sponsors and investigators in the development of antimicrobial drug products for the treatment of acute bacterial otitis media (ABOM). The agency's thinking in this area has evolved in recent years, and this draft guidance, when finalized, will inform sponsors of the changes in our recommendations. In addition, it will fulfill a statutory requirement to publish such a guidance enacted in the Food and Drug Administration Amendments Act of 2007 (FDAAA).

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by April 17, 2008.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to either *http://www.fda.gov/dockets/ecomments* or *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: John Alexander, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6134, Silver Spring, MD 20993–0002, 301–796–1400.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Acute Bacterial Otitis Media: Developing Drugs for Treatment.'' The purpose of this draft guidance is to assist clinical trial sponsors and investigators in the development of antimicrobial drug products for the treatment of ABOM. This guidance revises the draft guidance regarding ABOM published in 1998. Section 911 of FDAAA (Public Law 110–85) adds section 511 to the Federal Food, Drug, and Cosmetic Act that directs the Secretary of Health and Human Services to ''issue guidance for the conduct of clinical trials with respect to antibiotic drugs, including antimicrobials to treat * * * acute bacterial otitis media * * *.'' This draft guidance will fulfill this statutory requirement.

The design of clinical trials for ABOM was the subject of an Anti-Infective Drugs Advisory Committee meeting on July 11, 2002. In addition, other advisory committee meetings have focused on the development of specific drug products for this indication. As a result of these public discussions, as well as review of pending applications at FDA, the agency's thinking in this area has evolved in recent years, and this guidance informs sponsors of the changes in our recommendations. Specifically, this draft guidance recommends that ABOM clinical trials be designed as superiority rather than noninferiority trials, and discusses some possible study designs that might be employed in an ABOM trial designed to show superiority. This draft guidance

also recommends that microbiological information be obtained in at least one of the controlled studies. This draft guidance discusses patient-reported outcome instruments for assessing clinical response, and the use of time to resolution as a possible approach to assessing the primary endpoint in clinical studies.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on developing drugs for the treatment of acute bacterial otitis media. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 have been approved under 0910–0014; the collections of information in 21 CFR part 314 have been approved under 0910–0001; and the collections of information referred to in the guidance Establishment and Operation of Clinical Trial Data Monitoring Committees have been approved under 0910–0581.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that in January 2008, the FDA Web site is expected to transition to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. After the transition date, electronic submissions will be accepted by FDA through the FDMS only. When the exact date of the transition to FDMS is known, FDA will publish a **Federal Register** notice announcing that date.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: January 11, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8–835 Filed 1–17–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Ryan White HIV/AIDS Program Core Medical Services Waiver Application Requirements (OMB No. 0915–0307): Extension

Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Modernization Act of 2006 (Ryan White HIV/AIDS Program) requires that grantees expend 75 percent of Parts A, B, and C funds on core medical services, including antiretroviral drugs, for individuals with HIV/AIDS identified and eligible under the legislation, effective fiscal year 2007. In order for grantees under Parts A, B, and C to be exempted from the 75 percent core medical services requirement, they must request and receive a waiver from HRSA, as required in the Act.

Grantees must submit a waiver request with the annual grant application containing the information and documentation which will be utilized by HRSA in making determinations regarding waiver requests.

The estimated annual burden is as follows:

Application	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Waiver Request	20	1	20	6.5	130
Total	20		20		130

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: January 14, 2008.

Caroline Lewis,

Associate Administrator for Management.

[FR Doc. E8–879 Filed 1–17–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Genome Research Review Committee.

Date: March 6, 2008.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH/NHGRI Twinbrook Conference Room, 5635 Fisher's Lane, Suite 4076, MSC 9306, Bethesda, MD 20852 (Telephone Conference Call).

Contact Person: Rudy Pozzatti, PhD., Scientific Review Officer, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, (301) 402–0838.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, SEP ZHG1 HGR–P (M1).

Date: March 7, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, Double Tree Name Changed, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Rudy O. Pozzatti, PhD., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS).

Dated: January 11, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–160 Filed 1–17–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense Therapeutics.

Date: February 11–13, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ellen S. Buczko, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 310–451–2676, *ebuczko1@niaid.nih.gov.*

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases B Subcommittee.

Date: February 13–14, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Gary S. Madonna, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–3528, *gm12w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 11, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–156 Filed 1–17–08: 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel.

Date: February 15, 2008.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca Wagenaar Miller, PhD, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm 4AN 32G, Bethesda, MD 20892, (301) 594–0652, *rwagenaa@mail.nih.gov.*

Name of Committee: NIDCR Special Grants Review Committee.

Date: February 21–22, 2008.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Raj K Krishnaraju, PhD, MS, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm 4AN 32J, Bethesda, MD 20892, (301) 594–4864, *kkrishna@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 11, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–157 Filed 1–17–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; HB Conflict.

Date: February 13, 2008.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, National Institute for Child Health, and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20812–7510, (301) 435–8382, *hindialm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 11, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–159 Filed 1–17–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Notice is hereby given of the first Clinical Trials Working Group of the National Library of Medicine's (NLM) Board of Regents.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The Working Group was established to advise the NLM Board of Regents on issues associated with the expansion of the Clinicaltrials.gov registry and the addition of a results database. It will consider new legislative mandates, in particular Public Law 110–85, and consult as necessary with relevant stakeholders and potential users of the ClinicalTrials.gov system to provide advice on initial implementation issues and longer-term strategies for enhancing the content and operation of the database.

Name of Committee: Clinical Trials Working Group.

Date: February 11, 2008.

Time: 9 a.m. to 3 p.m.

Agenda: To review clinical trials registration and results reporting.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Christine Ireland, Committee Management Officer, National Library of Medicine, 6705 Rockledge Drive, Rockledge 1, Suite 301, Bethesda, MD 20892, 301–594–4929, *irelanc@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Dated: January 11, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–158 Filed 1–17–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–03]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, Room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable

law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Veronica Rines, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–ZS, Rm. 8536, 2511 Jefferson Davis Hwy., Arlington, VA 22202; (703) 601–2545; *Energy:* Mr. John Watson, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–0072; *GSA:* Mr. John Smith, Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Navy:* Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: January 10, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program—Federal Register Report

Suitable/Available Properties

Building

Alaska

Bldg. 00105.
Ft. Richardson.
Ft. Richardson, AK.
Landholding Agency: Army.
Property Number: 21200740040.
Status: Excess.
Comments: 4992 sq. ft., most recent use—housing, off-site use only.

4 Bldgs.
Ft. Richardson.
00112, 00113, 00114, 00115.
Ft. Richardson, AK.
Landholding Agency: Army.
Property Number: 21200740041.
Status: Excess.
Comments: 5184 sq. ft., most recent use—housing, off-site use only.

Bldgs. 00120, 00129.
Ft. Richardson.
Ft. Richardson, AK.
Landholding Agency: Army.
Property Number: 21200740042.
Status: Excess.
Comments: 4766 sq. ft., most recent use—housing, off-site use only.

Suitable/Available Properties

Building

Alaska

Bldg. 00136.
Ft. Richardson.
Ft. Richardson, AK.
Landholding Agency: Army.
Property Number: 21200740043.
Status: Excess.
Comments: 2383 sq. ft., most recent use—housing, off-site use only.

Bldgs. 00139, 00148.
Ft. Richardson.
Ft. Richardson, AK.
Landholding Agency: Army.
Property Number: 21200740044.
Status: Excess.
Comments: 4766 sq. ft., most recent use—housing, off-site use only.

6 Bldgs.
Ft. Richardson.
00366, 00367, 00369, 00371, 00372, 00373.
Ft. Richardson AK.
Landholding Agency: Army.
Property Number: 21200740045.
Status: Excess.
Comments: 13743/12642 sq. ft., most recent use—housing, off-site use only.

Bldgs. 00392, 00394.
Ft. Richardson.
Ft. Richardson, AK.
Landholding Agency: Army.
Property Number: 21200740046.
Status: Excess.
Comments: 18496 sq. ft., most recent use—housing, off-site use only.

Suitable/Available Properties

Building

Alaska

6 Bldgs.
Ft. Richardson.
00413, 00414, 00415, 00416, 00417, 00418.
Ft. Richardson, AK.
Landholding Agency: Army.
Property Number: 21200740047.
Status: Excess.
Comments: 13056 sq. ft., most recent use—housing, off-site use only.

6 Bldgs.
Ft. Richardson.
00424, 00425, 00427, 00428, 00429, 00431.
Ft. Richardson, AK.
Landholding Agency: Army.
Property Number: 21200740048.
Status: Excess.
Comments: 13056 sq. ft., most recent use—housing, off-site use only.

Arkansas

7 Bldgs.
Pine Bluff Arsenal.
Jefferson, AR 71602.
Landholding Agency: Army.
Property Number: 21200740176.
Status: Unutilized.
Directions: 12300, 12302, 12304, 12306, 12308, 12310, 12312.
Comments: 2400 sq. ft., major repairs, lead base paint abatement required, most recent use housing, off-site use only.

Suitable/Available Properties

Building

Arkansas

Bldgs. 13700 thru 13709.
Pine Bluff Arsenal.
Jefferson, AR 71602.
Landholding Agency: Army.
Property Number: 21200740177.
Status: Unutilized.
Comments: 2328 sq. ft., major repairs, lead base paint abatement required, most recent use housing, off-site use only.

California

Bldg. 07180.
Moffett Field.
Santa Clara, CA 94035.
Landholding Agency: Army.
Property Number: 21200740049.
Status: Unutilized.
Comments: 10256 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only.

Bldgs. 5, 6, 7.
Bell AFRC.
Bell, CA 90201.
Landholding Agency: Army.
Property Number: 21200740050.
Status: Unutilized.
Comments: 198,000 sq. ft., warehouses, presence of asbestos/lead paint, need major repairs, off-site use only

Suitable/Available properties

Building

California

Defense Fuel Support Pt.
Estero Bay Facility.
Morro Bay, CA 93442,
Landholding Agency: GSA.
Property Number: 54200810001.
Status: Surplus.
GSA Number: 9–N–CA–1606.
Comments: Former 10 acre fuel tank farm w/ associated bldgs/pipelines/equipment, possible asbestos/PCBs.

Colorado

Cabins 1, 2, 4.
Gunnison National Forrest.
Grand Junction, CO.
Landholding Agency: GSA.

Property Number: 54200810002.
Status: Surplus.
GSA Number: 7–A–CO–0668.
Comments: 424–1685 sq. ft., off-site use only.

Georgia

4 Bldgs.
Fort Benning.
8642, 8643, 8649, 8656.
Ft. Benning, GA 31905.
Landholding Agency: Army.
Property Number: 21200740051.
Status: Unutilized.
Comments: various sq. ft., most recent use—range support facility, off-site use only.

Suitable/Available Properties

Building

Georgia

Bldg. 00100.
Hunter Army Airfield.
Chatham, GA 31409.
Landholding Agency: Army.
Property Number: 21200740052.
Status: Excess.
Comments: 10893 sq. ft., most recent use—battalion hdqts., off-site use only.

Bldg. 00129.
Hunter Army Airfield.
Chatham, GA 31409.
Landholding Agency: Army.
Property Number: 21200740053.
Status: Excess.
Comments: 4815 sq. ft., presence of asbestos, most recent use—religious education facility, off-site use only.

Bldg. 00145.
Hunter Army Airfield.
Chatham, GA 31409.
Landholding Agency: Army.
Property Number: 21200740054.
Status: Excess.
Comments: 11590 sq. ft., presence of asbestos, most recent use—post chapel, off-site use only.

Bldg. 00811.
Hunter Army Airfield.
Chatham, GA 31409.
Landholding Agency: Army.
Property Number: 21200740055.
Status: Excess.
Comments: 42853 sq. ft., most recent use—co hq bldg, off-site use only.

Suitable/Available Properties

Building

Georgia

Bldg. 00812.
Hunter Army Airfield.
Chatham, GA 31409.
Landholding Agency: Army.
Property Number: 21200740056.
Status: Excess.
Comments: 1080 sq. ft., most recent use—power plant, off-site use only.

Bldg. 00850.
Hunter Army Airfield.
Chatham, GA 31409.
Landholding Agency: Army.
Property Number: 21200740057.
Status: Excess.
Comments: 108,287 sq. ft., presence of asbestos, most recent use—aircraft hangar, off-site use only.

Bldg. 00860.
Hunter Army Airfield.
Chatham, GA 31409.
Landholding Agency: Army.
Property Number: 21200740058.
Status: Excess.
Comments: 10679 sq. ft., presence of asbestos, most recent use—maint. hangar, off-site use only.

Bldg. 01028, Hunter Army Airfield.
Chatham, GA 31409.
Landholding Agency: Army.
Property Number: 21200740059.
Status: Excess.
Comments: 870 sq ft., most recent use—storage, off-site use only.

Suitable/Available Properties

Building

Georgia

Bldg. 00955.
Fort Stewart.
Hinesville, GA 31314.
Landholding Agency: Army.
Property Number: 21200740060.
Status: Excess.
Comments: 120 sq. ft., most recent use—storage, off-site use only.

Bldg. 00957.
Fort Stewart.
Hinesville, GA 31314.
Landholding Agency: Army.
Property Number: 21200740061.
Status: Excess.
Comments: 6072 sq. ft., most recent use—recycling facility, off-site use only.

Bldg. 00971.
Fort Stewart.
Hinesville, GA 31314.
Landholding Agency: Army.
Property Number: 21200740062.
Status: Excess.
Comments: 4000 sq. ft., most recent use—vehicle maint., off-site use only.

Bldg. 01015.
Fort Stewart.
Hinesville, GA 31314.
Landholding Agency: Army.
Property Number: 21200740063.
Status: Excess.
Comments: 7496 sq. ft., most recent use—storage, off-site use only.

Suitable/Available Properties

Building

Georgia

Bldg. 01209.
Fort Stewart.
Hinesville, GA 31314.
Landholding Agency: Army.
Property Number: 21200740064.
Status: Excess.
Comments: 4786 sq. ft., presence of asbestos, most recent use—vehicle maint., off-site use only.

Bldg. 07335.
Fort Stewart.
Hinesville, GA 31314.
Landholding Agency: Army.
Property Number: 21200740065.
Status: Excess.
Comments: 4400 sq. ft., most recent use—chapel, off-site use only.

Bldg. 245.
Fort Benning.
Ft. Benning, GA 31905.
Landholding Agency: Army.
Property Number: 21200740178.
Status: Unutilized.
Comments: 1102 sq. ft., most recent use—fld ops, off-site use only.

Bldg. 2580.
Fort Benning.
Ft. Benning, GA 31905.
Landholding Agency: Army.
Property Number: 21200740179.
Status: Unutilized.
Comments: 1943 sq. ft., most recent use—org. str., off-site use only.

Suitable/Available Properties

Building

Georgia

Bldg. 2748.
Fort Benning.
Ft. Benning, GA 31905.
Landholding Agency: Army.
Property Number: 21200740180.
Status: Unutilized.
Comments: 3990 sq. ft., most recent use—office, off-site use only.

Bldg. 3819.
Fort Benning.
Ft. Benning, GA 31905.
Landholding Agency: Army.
Property Number: 21200740181.
Status: Unutilized.
Comments: 4241 sq. ft., most recent use—gen. str., off-site use only.

Bldg. 3866
Fort Benning
Ft. Benning, GA 31905.
Landholding Agency: Army.
Property Number: 21200740182.
Status: Unutilized.
Comments: 944 sq. ft., most recent use—office, off-site use only.

Bldg. 8682.
Fort Benning.
Ft. Benning, GA 31905.
Landholding Agency: Army.
Property Number: 21200740183.
Status: Unutilized.
Comments: 780 sq. ft., most recent use—admin., off-site use only.

Suitable/Available Properties

Building

Georgia

Bldg. 10800.
Fort Benning.
Ft. Benning, GA 31905.
Landholding Agency: Army.
Property Number: 21200740184.
Status: Unutilized.
Comments: 16,628 sq. ft., off-site use only.

Bldgs. 11302, 11303, 11304.
Fort Benning.
Ft. Benning, GA 31905.
Landholding Agency: Army.
Property Number: 21200740185.
Status: Unutilized.
Comments: Various sq. ft., most recent use—ACS center, off-site use only.

Illinois

Bldgs. 634, 639.

Fort Sheridan.
Ft. Sheridan, IL 60037.
Landholding Agency: Army.
Property Number: 21200740186.
Status: Unutilized.
Comments: 3731/3706 sq. ft., most recent use—classroom/storage, off-site use only.

Suitable/Available Properties

Building

Kansas

Bldg. 00393.
Fort Leavenworth.
Leavenworth, KS.
Landholding Agency: Army.
Property Number: 21200740066.
Status: Unutilized.
Comments: 63 sq. ft., most recent use—maint. facility, off-site use only.

Bldg. 00423.
Fort Leavenworth.
Leavenworth, KS 66027.
Landholding Agency: Army.
Property Number: 21200740067.
Status: Unutilized.
Comments: 8200 sq. ft., most recent use—maint. facility, off-site use only.

Bldg. 00426.
Fort Leavenworth.
Leavenworth, KS 66027.
Landholding Agency: Army.
Property Number: 21200740068.
Status: Unutilized.
Comments: 480 sq. ft., most recent use—dog kennel, off-site use only.

Bldg. 00449.
Fort Leavenworth.
Leavenworth, KS 66027.
Landholding Agency: Army.
Property Number: 21200740069.
Status: Unutilized.
Comments: 997 sq. ft., most recent use—access control, off-site use only.

Suitable/Available Properties

Building

South Dakota

Bldg. 03001.
Jonas H. Lien AFRC.
Sioux Falls, SD 57104.
Landholding Agency: Army.
Property Number: 21200740187.
Status: Unutilized.
Comments: 33282 sq. ft., most recent use—training center.

Bldg. 03003.
Jonas H. Lien AFRC.
Sioux Falls, SD 57104.
Landholding Agency: Army.
Property Number: 21200740188.
Status: Unutilized.
Comments: 4675 sq. ft., most recent use—vehicle maint. Shop.

Texas

Bldg. 04249.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740080.
Status: Excess.
Comments: 2741 sq. ft., presence of asbestos, most recent use—admin, off-site use only.

Bldg. 06987.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740090.
Status: Excess.
Comments: 192 sq. ft., presence of asbestos, most recent use—access control, off-site use only.

Suitable/Available Properties

Building

Texas

5 Bldgs.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740195.
Status: Excess.
Directions: 56541, 56546, 56547, 56548, 56638.
Comments: 1120/1133 sq. ft., presence of asbestos, most recent use—lavatory, off-site use only.

Utah

Bldg. 00001.
Borgstrom Hall USARC.
Ogden, UT 84401.
Landholding Agency: Army.
Property Number: 21200740196.
Status: Excess.
Comments: 16543 sq. ft., most recent use—training center, off-site use only.

Bldg. 00002.
Borgstrom Hall USARC.
Ogden, UT 84401.
Landholding Agency: Army.
Property Number: 21200740197.
Status: Excess.
Comments: 3842 sq. ft., most recent use—vehicle maint. shop, off-site use only.

Suitable/Available Properties

Building

Utah

Bldg. 00005.
Borgstrom Hall USARC.
Ogden, UT 84401.
Landholding Agency: Army.
Property Number: 21200740198.
Status: Excess.
Comments: 96 sq. ft., most recent use—storage, off-site use only.

Wisconsin

Bldg. 05018.
Fort McCoy.
Monroe, WI 54656.
Landholding Agency: Army.
Property Number: 21200740199.
Status: Unutilized.
Comments: 192 sq. ft., most recent use—wellhouse, off-site use only.

Bldgs. 07012, 07022, 07033.
Fort McCoy.
Monroe, WI 54656.
Landholding Agency: Army.
Property Number: 21200740200.
Status: Unutilized.
Comments: 384 sq. ft., most recent use—garage, off-site use only.

Suitable/Unavailable Properties

Building

Texas

Bldg. 1345.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740070.
Status: Excess.
Comments: 240 sq. ft., presence of asbestos, most recent use—oil storage, off-site use only.

Bldgs. 1348, 1941.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740071.
Status: Excess.
Comments: 640/900 sq. ft., presence of asbestos, most recent use—admin., off-site use only.

Bldg. 1919.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740072.
Status: Excess.
Comments: 80 sq. ft., presence of asbestos, most recent use—pump station, off-site use only.

Bldg. 1943.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740073.
Status: Excess.
Comments: 780 sq. ft., presence of asbestos, most recent use—rod & gun club, off-site use only.

Suitable/Unavailable Properties

Building

Texas

Bldg. 1946.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740074.
Status: Excess.
Comments: 2880 sq. ft., presence of asbestos, most recent us—storage, off-site use only.

Bldg. 4205.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740075.
Status: Excess.
Comments: 600 sq. ft., presence of asbesos, most recent use—storage, off-site use only.

Bldg. 4207.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740076.
Status: Excess.
Comments: 2240 sq. ft., presence of asbestos, most recent use—maint. shop, off-site use only.

Bldg. 4208.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.

Property Number: 21200740077.
Status: Excess.
Comments: 9464 sq. ft., presence of asbestos, most recent use—warehouse, off-site use only.

Suitable/Unavailable Properties

Building

Texas

Bldgs. 4210, 4211, 4216.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740078.
Status: Excess.
Comments: 4625/5280 sq. ft., presence of asbestos, most recent use—maint., off-site use only.

Bldg. 4219A.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740079.
Status: Excess.
Comments: 446 sq. ft., presence of asbestos, most recent use—storage, off-site use only.

Bldg. 04252.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army
Property Number: 21200740081
Status: Excess.
Comments: 9000 sq. ft., presence of asbestos, most recent use—storage, off-site use only.

Bldg. 4255.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740082.
Status: Excess.
Comments: 448 sq ft., presence of asbestos, off-site use only.

Suitable/Unavailable Properties

Building

Texas

Bldg. 04480.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army
Property Number: 21200740083
Status: Excess.
Comments: 2700 sq. ft., presence of asbestos, most recent use—storage, off-site use only.

Bldg. 04485.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740084.
Status: Excess.
Comments: 640 sq. ft., presence of asbestos, most recent use—maint., off-site use only.

Bldgs. 04487, 04488.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740085.
Status: Excess.
Comments: 48/80 sq. ft., presence of asbestos, most recent use—utility bldg., off-site use only.

Bldg. 04489.
Fort Hood.
Ft. Hood, TX 76544.
Landholding Agency: Army.
Property Number: 21200740086.
Status: Excess.
Comments: 880 sq. ft., presence of asbestos, most recent use—admin., off-site use only.

Suitable/Unavailable Properties

Building

Texas

Bldgs. 4491, 4492.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740087.
Status: Excess.
Comments: 3108/1040 sq. ft., presence of asbestos, most recent use—maint., off-site use only.

Bldgs. 04902, 04905.
Fort Hood, Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740088.
Status: Excess.
Comments: 2575/6136 sq. ft., presence of asbestos, most recent use—vet bldg., off-site use only.

Bldgs. 04914, 04915, 04916.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740089.
Status: Excess.
Comments: 371 sq. ft., presence of asbestos, most recent use—animal shelter, off-site use only.

Bldg. 20102.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740091.
Status: Excess.
Comments: 252 sqa. ft., presence of asbestos, most recent use—recreation services, off-site use only.

Suitable/Unavailable Properties

Building

Texas

Bldg. 20118.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740092.
Status: Excess.
Comments: 320 sq. ft., presence of asbestos, most recent use—maint.,off-site use only.

Bldg. 29027.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740093.
Status: Excess.
Comments: 2240 sq. ft., presence of asbestos, most recent use—hdqts bldg, off-site use only.

Bldg. 56017.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740094.
Status: Excess.
Comments: 2592 sq. ft., presence of asbestos, most recent use—admin., off-site use only.

Bldg. 56202.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740095.
Status: Excess.
Comments: 1152 sq. ft., presence of asbestos, most recent use—training, off-site use only.

Suitable/ Unavailable Properties

Building

Texas

Bldg. 56224.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740096.
Status: Excess.
Comments: 80 sq. ft., presence of asbestos, off-site use only.

Bldg. 56305.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740097.
Status: Excess.
Comments: 2160 sq. ft., presence of asbestos, most recent use—admin., off-site use only.

Bldg. 56311.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740098.
Status: Excess.
Comments: 480 sq. ft., presence of asbestos, most recent use—laundry, off-site use only.

Bldg. 56327.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740099.
Status: Excess.
Comments: 6000 sq. ft., presence of asbestos, most recent use—admin., off-site use only.

Suitable/Unavailable Properties

Building

Texas

Bldg. 56329.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740100.
Status: Excess.
Comments: 2080 sq. ft., presence of asbestos, most recent use—officers qtrs., off-site use only.

9 Bldgs.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740101.
Status: Excess.
Directions: 56526, 56527, 56528, 56530, 56531, 56536, 56537, 56538, 56540.
Comments: Various sq. ft., presence of asbestos, most recent use—lavatory, off-site use only.

Bldg. 92043.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740102.
Status: Excess.

Comments: 450 sq. ft., presence of asbestos, most recent use—storage, off-site use only.

Suitable/Unavailable Properties

Building

Texas

Bldg. 92072.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740103.
Status: Excess.
Comments: 2400 sq. ft., presence of asbestos, most recent use—admin., off-site use only.

Bldg. 92083.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740104.
Status: Excess.
Comments: 240 sq. ft., presence of asbestos, most recent use—utility bldg., off-site use only.

Bldgs. 04213, 04227.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740189.
Status: Excess.
Comments: 14183/10500 sq. ft., presence of asbestos, most recent use—admin., off-site use only.

Bldg.4404.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740190.
Status: Excess.
Comments: 8043 sq ft., presence of asbestos, most recent use—training bldg., off-site use only.

Suitable/Unavailable Properties

Building

Texas

Bldg. 56607.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740191.
Status: Excess.
Comments: 3552 sq. ft., presence of asbestos, most recent use—chapel, off-site use only.

Bldg. 91041.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740192.
Status: Excess.
Comments: 1920 sq. ft., presence of asbestos, most recent use—shed, off-site use only.

5 Bldgs.
Fort Hood.
93010, 93011, 93012, 93014.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740193.
Status: Excess.
Comments: 210/800 sq. ft., presence of asbestos, most recent use—private club, off-site use only.

Bldg. 94031.
Fort Hood.
Bell, TX 76544.
Landholding Agency: Army.
Property Number: 21200740194.
Status: Excess.
Comments: 1008 sq. ft., presence of asbestos, most recent use—training, off-site use only.

Unsuitable Properties

Building

Maine

Bldg. 93.
Portsmouth Naval Shipyard.
Kittery, ME 03804.
Landholding Agency: Navy.
Property Number: 77200810001.
Status: Unutilized.
Reasons: Extensive deterioration. Secured Area.

South Carolina

Facility 151–1R,
Savannah River Site,
Aiken, SC 29802.
Landholding Agency: Energy.
Property Number: 41200810001.
Status: Underutilized.
Reasons: Secured Area.

Unsuitable Properties

Building

Virginia

Bldgs. 375, 502, 502A.
Naval Weapons Station.
Yorktown, VA 23691.
Landholding Agency: Navy.
Property Number: 77200810002.
Status: Excess.
Reasons: Extensive deterioration. Secured Area.

Bldgs. 503, 503A, 504.
Naval Weapons Station.
Yorktown, VA 23691.
Landholding Agency: Navy.
Property Number: 77200810003.
Status: Excess.
Reasons: Extensive deterioration. Secured Area.

Bldgs. 505, 505A.
Naval Weapons Station.
Yorktown, VA 23691.
Landholding Agency: Navy.
Property Number: 77200810004.
Status: Excess.
Reasons: Secured Area. Extensive deterioration.

Unsuitable Properties

Building

Virginia

Bldgs. 1213, 1979.
Naval Weapons Station.
Yorktown, VA 23691.
Landholding Agency: Navy.
Property Number: 77200810005.
Status: Excess.
Reasons: Secured Area. Extensive deterioration.

Bldgs. 2007, 2008.
Naval Weapons Station.
Yorktown, VA 23691.
Landholding Agency: Navy.
Property Number: 77200810006.
Status: Excess.
Reasons: Extensive deterioration. Secured Area.

Land

Oregon

0.66 acre.
Kingsley Field.
Klamath Falls, OR 97601.
Landholding Agency: GSA.
Property Number: 54200810003.
Status: Excess.
GSA Number: 9–GR–OR–728D.
Reasons: Within 2000 ft. of flammable or explosive material.

[FR Doc. E8–665 Filed 1–17–08; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings; Board Meeting

TIME AND DATE: January 28, 2008
9 a.m.–2:30 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the October 1, 2007, Meeting of the Board of Directors
- President's Report
- Program Update
- Operations Update
- Congressional Affairs
- External Affairs
- Advisory Council

PORTIONS TO BE OPEN TO THE PUBLIC:

- Approval of the Minutes of the October 1, 2007, Meeting of the Board of Directors
- President's Report
- Program Update
- Operations Update
- Congressional Affairs
- External Affairs
- Advisory Council

CONTACT PERSON FOR MORE INFORMATION: Jennifer R. Hodges, General Counsel, (703) 306–4320.

Dated: January 14, 2008.

Jennifer R. Hodges,

General Counsel.

[FR Doc. 08–197 Filed 1–16–08; 11:03 am]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Construction of a Single-Family Home in Charlotte County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) and Habitat Conservation Plan (HCP). Bruce Barth (Applicant) request an ITP pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant anticipates taking about 0.34 acre of foraging and sheltering habitat occupied by the threatened Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) incidental to lot preparation for the construction of a single-family home and supporting infrastructure in Charlotte County, Florida (Project). The Applicant's HCP describes the mitigation and minimization measures proposed to address the effects of the Project on the Florida scrub-jay.

DATES: We must receive your written comments on the ITP application and HCP on or before February 19, 2008.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section below for information on how to submit your comments on the ITP application and HCP. You may obtain a copy of the ITP application and HCP by writing to: South Florida Ecological Services Field Office, Attn: Permit number TE171477–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida, 32960–3559. In addition, we will make the ITP application and HCP available for public inspection by appointment during normal business hours at the South Florida Ecological Services Office at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Trish Adams, Fish and Wildlife Biologist, South Florida Ecological Services Office (see **ADDRESSES**), telephone: 772/562–3909, ext. 232.

SUPPLEMENTARY INFORMATION: If you wish to comment on the ITP application and HCP, you may submit comments by any one of several methods. Please reference permit number TE171477–0 in such comments. You may mail comments to the Service's South Florida Ecological Services Office (see **ADDRESSES**). You may also e-mail your comments to *trish_adams@fws.gov*. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Finally, you may hand deliver comments to the South Florida Ecological Service Office (see **ADDRESSES**).

Before including your address, phone number, email address, or other personal identifying information in your comments, 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.

Residential construction for the Barth HCP will take place within section 11, Township 41, Range 20, Englewood, Charlotte County, Florida, at 7185 Rosemont Drive. This lot is within scrub-jay occupied habitat.

The lot encompasses about 0.34 acre, and the footprint of the home, infrastructure, and landscaping precludes retention of scrub-jay habitat on this lot. In order to minimize take onsite the Applicant proposes to mitigate for the loss of 0.34 acre of scrub-jay habitat by contributing a total of $70,722.72 to the Florida Scrub-jay Conservation Fund administered by The Nature Conservancy or acquire 0.68 acre of credit in a Service approved conservation bank. The Conservation Fund is earmarked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management.

The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If it is determined that those requirements are met, the ITP will be issued for the incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Authority: This notice is provided pursuant to section 10 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: December 18, 2007.

Paul Souza,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. E8–825 Filed 1–17–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW155132]

Notice of Competitive Coal Lease Sale, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale.

SUMMARY: Notice is hereby given that certain coal resources in the Eagle Butte West Coal Tract described below in Campbell County, WY, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.).

DATES: The lease sale will be held at 10 a.m., on Wednesday, February 20, 2008. Sealed bids must be submitted on or before 4 p.m., on Tuesday, February 19, 2008.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107C), of the Bureau of Land Management (BLM) Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Julie Weaver, Land Law Examiner, or Robert Janssen, Coal Coordinator, at 307–775–6260, and 307–775–6206, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by RAG Coal West, Inc. RAG finalized the sale of the Eagle Butte Mine to Foundation Coal West, Inc., a directly held subsidiary of Foundation Coal Holdings, Inc. in August 2004. The coal resource to be offered consists of all reserves recoverable by surface mining methods in the following-described land located in northern Campbell County, approximately 4 miles north of Gillette and is crossed by U.S. Highway 14/16 along its eastern edge.

T. 51 N., R. 72 W., 6th P.M., Wyoming, Section 19: Lots 13, 14, 19, and 20;

Section 20: Lots 10 (NW¼ and S½) and 11through 15;
Section 29: Lots 1 (W½), 2 through 7, 8 (W½ and SE¼), and 9 through 16;
Section 30: Lots 5, 6, 11 through 14, 19, and 20.

Containing 1,427.77 acres more or less.

The tract is adjacent to an existing Federal coal lease along the western boundary of the Eagle Butte Mine. It is adjacent to additional unleased Federal coal to the north, west, and south. All of the acreage offered has been determined to be suitable for mining since current plans include moving U.S. Highway 14/16. However, BLM has excluded approximately 80 acres along the northeastern portion of the tract from its economic analysis to provide a blasting buffer between the mining activity and existing residences. Other features such as pipelines, utilities, and Little Rawhide Creek can be relocated to permit coal recovery. In addition, oil and/or gas wells have been drilled on the tract. The estimate of the bonus value of the coal lease will include consideration of depletion and any future production from these wells. An economic analysis of any future income stream will determine whether a well is bought out and plugged prior to mining or re-established after mining is completed. The surface estate of the tract is owned by Foundation Coal West, Inc.

The tract contains surface mineable coal reserves primarily in the Wyodak seam with minor additions from up to four lower splits. The Wyodak is generally mined as two separate seams, the Roland and the Smith, in the area and on the LBA. The total coal thickness ranges from about 95–115 feet thick with the overburden thickness ranging from about 250–450 feet thick on the LBA. The tract contains approximately 255 million tons of mineable coal. This estimate of mineable reserves is primarily from the Roland and the Smith seams and does not include any tonnage from localized seams or splits containing less than 5 feet of coal. It does not include any tonnage from the existing, adjacent Federal coal lease although additional reserves are expected to be recovered in conjunction with the LBA once the highway is moved. The total mineable stripping ratio (BCY/Ton) of the LBA coal is about 2.9:1. Potential bidders for the LBA should consider the recovery rate expected from multiple seam mining.

The Eagle Butte West LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 8434 BTU/lb with about 0.4% sulfur. These quality averages place the coal reserves near the lower end of the range of coal quality currently being mined in the Wyoming portion of the Powder River Basin.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Tuesday, February 19, 2008, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale. The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and of a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at the addresses above. Case file documents, WYW155132, are available for inspection at the BLM Wyoming State Office.

Dated: January 11, 2008.

Larry Claypool,

Acting Deputy State Director, Minerals and Lands.

[FR Doc. E8–882 Filed 1–17–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Deemed Approved Amended Tribal—State Class III Gaming Compact.

SUMMARY: This notice publishes the Deemed Approved Amendment to the Tribal—State Compact between the State of California and the San Manuel Band of Mission Indians.

DATES: *Effective Date:* January 18, 2008.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal—State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The compact allows for an increase in gaming devices and any devices or games authorized under State law to the State lottery. Finally, the term of the compact is until December 31, 2030. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, is publishing notice that the Amendment between the State of California and the San Manuel Band of Mission Indians is now in effect.

Dated: December 31, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E8–894 Filed 1–17–08; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–100–1430–EU; MTM 95676]

Notice of Realty Action; (Non-Competitive) Direct Sale of Public Land; Granite County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: A 1.08-acre parcel of public land in Granite County, Montana, is being considered for sale under the provisions of the Federal Land Policy Management Act of 1976 (FLPMA), at no less than the appraised fair market value, to resolve a longstanding, inadvertent unauthorized use.

DATES: Interested parties may submit comments regarding the proposed sale until March 3, 2008.

ADDRESSES: Send written comments to the Missoula Field Manager, BLM, Missoula Field Office, 3255 Ft. Missoula Road, Missoula, Montana 59804–7293.

FOR FURTHER INFORMATION CONTACT: Jim Ledger, Realty Specialist, at the above address or phone (406) 329–3914.

SUPPLEMENTARY INFORMATION: The following described public land is being considered for possible disposal by direct sale under Sections 203 and 209 of FLPMA, 43 U.S.C. 1713 and 1719.

Principal Meridian, Montana

T. 12 N., R. 14 W.
Sec. 15, lot 17.

The area described contains 1.08 acres, more or less, in Granite County, Montana.

The parcel will be offered by direct sale at no less than the appraised fair market value of $5,800 to Robert C. Nylund and Sandra J. Nylund. The Nylunds are the owners of an adjoining parcel and improvements which lie partially on the subject parcel. The sale meets the disposal criteria in Section 203(a)(3) of FLPMA and 43 CFR 2710.0–3(a)(2). Sale of the parcel also conforms to the criteria of the Garnet Resource Management Plan (RMP) approved January 10, 1986. Disposal by direct sale will protect existing equities in the land and resolve the longstanding, inadvertent unauthorized occupancy of the parcel and is provided for in 43 CFR 2710.0–6(c)(3)(iii).

As proposed, the land will be conveyed subject to:

1. A right-of-way for ditches and canals reserved by the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945);
2. All valid existing rights.

The land will not be offered for sale until at least 60 days after the date of publication in the **Federal Register**. Unreserved mineral interests will be conveyed simultaneously with the sale of the land. These unreserved mineral interests have been determined to have no known mineral value pursuant to 43 CFR 2720.2(a). Acceptance of the sale offer will constitute an application for conveyance of those unreserved mineral interests.

On January 18, 2008, the above-described land will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. Until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or January 19, 2010, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

To be considered, comments must be received at the BLM Missoula Field Office on or before March 3, 2008. 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. Only written comments submitted by postal service or overnight mail to the Field Manager, BLM Missoula Field Office will be considered properly filed. E-mail, facsimile or telephone comments will not be considered properly filed.

(Authority: 43 CFR 2711.1–2)

Dated: January 9, 2008.

Nancy T. Anderson,

Field Manager.

[FR Doc. 08–149 Filed 1–17–08; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1430–ES; WYW–158818]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease or conveyance under the provisions of the Recreation and Public Purposes Act, 1.54 acres of public land in Carbon County, Wyoming. Carbon County proposes to use the land for a historic cemetery.

DATES: Comments must be received by March 3, 2008.

ADDRESSES: Comments should be sent to the BLM, Rawlins Field Office, 1300 North 3rd Street, Rawlins, Wyoming 82301, Attn: Janelle Wrigley. Detailed information concerning this action, including appropriate environmental documentation, is available for review at the above address.

FOR FURTHER INFORMATION CONTACT: Janelle Wrigley, Realty Specialist, at the above address or at (307) 328–4279.

SUPPLEMENTARY INFORMATION: In response to an application from the Carbon County Commissioners, Wyoming, the following public lands have been examined and found suitable for classification for lease and/or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

Sixth Principal Meridian, Wyoming

T. 22 N., R. 80 W.,
Sec. 26, Lot 4 (metes and bounds survey)
The area described contains 1.54 acres more or less.

The lands are not needed for Federal purposes. Lease and/or conveyance is consistent with the Great Divide RMP, dated November 9, 1990, and would be in the public interest. The patent, if issued, will be subject to the following reservations, terms, and conditions:

(1) Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

(2) The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances (hazardous substances as defined in 40 CFR part 302.)

(3) If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

(4) A right-of-way thereon for ditches and canals constructed by authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

(5) A reservation of all mineral deposits in the land so patented, and a right of the United States, or persons authorized by the United States, to prospect for, mine, and remove such deposits from the same under applicable laws and regulations as the Secretary of the Interior may prescribe.

(6) Any other valid and existing rights and encumbrances of record.

(7) Such other provisions as may be required by law.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act. The segregative effect shall terminate upon issuance of a patent, upon final rejection of the application, or 18 months from the date of this notice, whichever occurs first.

Classification Comments: Interested parties may submit comments involving the suitability of the land for historical cemetery purposes. Comments on the classification are restricted to whether the land is physically suited for the proposed use, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development and management, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the proposed use.

For a period until *March 3, 2008*, interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to the Field Manager, BLM Rawlins Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this Notice. Comments transmitted via e-mail or fax, will not be accepted.

Any objections will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, regarding this realty action, it will become the final determination of the Department of the Interior. In the absence of any adverse comments, regarding the classification action, it will become effective March 18, 2008.

Comments, including names and street addresses of respondents, will be available for public review at the Rawlins Field Office during regular business hours, except holidays. 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.

(Authority: 43 CFR 2741.4(h)(1)–(4))

Dated: January 4, 2008.

Patrick Madigan,

Rawlins Field Manager.

[FR Doc. E8–874 Filed 1–17–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Cape Wind Energy Project

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Availability (NOA) of Draft Environmental Impact Statement and Public Hearings for the Cape Wind Energy Project, Nantucket Sound, Massachusetts.

SUMMARY: The Minerals Management Service (MMS) is announcing the availability of a draft environmental impact statement (EIS) for the Cape Wind Energy Project. Cape Wind Associates, LLC (CWA) has requested a lease, easement or right-of-way pursuant to section 8(p) of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C 1337) as amended, and proposes to construct and operate a wind energy facility on the Outer Continental Shelf (OCS) in Nantucket Sound, Massachusetts. The purpose of the proposed project is to provide a renewable energy facility that utilizes the unique wind resources offshore of New England, using a technology that is currently available, technically feasible, and economically viable. The project ostensibly is designed to interconnect with and deliver electricity to the New England Power Pool (NEPOOL) grid, making a substantial contribution to enhancing the region's electrical reliability and achieving renewable energy requirements under the Massachusetts and regional renewable portfolio standards (RPS). The draft EIS is intended to inform the public of the proposed action and alternatives, including the ''no action'' alternative; address public comment received during the scoping period; analyze the direct, indirect, and cumulative environmental effects of the proposed action and each of the reasonable alternatives; and provide information to support decision-making. The MMS invites comment on the draft EIS.

Authority: This NOA and notice of public hearings is published pursuant to the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321 *et seq.* (1988)) and regulations (40 CFR 1506.6) implementing the provisions of NEPA.

SUPPLEMENTARY INFORMATION: The MMS has received a request from CWA for a lease, easement or right-of-way to construct and operate a wind energy project on Horseshoe Shoal on the OCS in Nantucket Sound, Massachusetts. The proposed project would consist of 130 offshore wind turbine generators arranged to maximize the project's full potential electric output of approximately 468 megawatts. Each turbine would be 440 feet high. The array would occupy 25 square miles approximately 5 miles off shore, in a grid where the distance between each turbine is proposed to be one-third mile from north to south and one-half mile from east to west. The wind-generated electricity from each of the turbines would be transmitted via a 33 kilovolt submarine transmission cable system to a centrally located electric service platform. This platform would transform and transmit electric power via two 115 kilovolt lines extending over 12 miles to the Cape Cod mainland, where it would ultimately connect with the existing power grid.

In November 2001, CWA filed a permit application with the U.S. Army Corps of Engineers (USACE), New England District, under section 10 of the Rivers and Harbors Act of 1899, in anticipation of constructing a wind project located on Horseshoe Shoal in Nantucket Sound, Massachusetts. The USACE released a draft EIS concerning issuance of the section 10 permit in November 2004.

Subsequently, section 388 of the Energy Policy Act of 2005 (EPAct) amended the OCSLA to give the Department of the Interior authority for issuing leases, easements, or rights-of-way for alternative energy projects on the OCS. Additional information on the MMS Renewable Energy and Alternate Use Program can be found at *http://www.mms.gov/offshore/RenewableEnergy/RenewableEnergyMain.htm.*

After reviewing the draft EIS prepared by the USACE, which was completed prior to the EPAct amendment of the OCSLA, the MMS prepared its own EIS analyzing the potential impacts of the project under the broader authority granted to it under the OCSLA, as amended. The MMS launched a renewed scoping process by publishing in the **Federal Register** (71 FR 30693) on May 30, 2006, a notice of intent (NOI) to prepare this draft EIS. The 1,321 public comments received in response to that notice were considered and are taken into account in the draft EIS. The MMS also considered and took into account over 5000 public comments made during the review period for the USACE draft EIS, as well as those made at USACE public hearings held in Yarmouth, Martha's Vineyard, Cambridge and Nantucket, Massachusetts.

Alongside the application of NEPA, the Massachusetts Environmental Policy Act (MEPA) applies to the proposed project's upland and submarine cable system components in Nantucket Sound out to the 3 nautical-mile State/Federal boundary. On February 15, 2007, the applicant filed its Final Environmental Impact Review (FEIR) with Massachusetts under MEPA procedures. On March 29, 2007, the Massachusetts Secretary of Environmental Affairs

certified that the FEIR adequately and properly complies with MEPA.

Contents of the Draft EIS: The draft EIS considers all reasonable alternatives to the proposed action, including other sites in the New England region, non-geographic alternatives at the proposed Horseshoe Shoal site made up of a smaller project alternative, a condensed configuration, phased development, and the no-action alternative. Seven alternatives—the proposed action, no action, a smaller project, condensed configuration, phased development, and alternative sites at Monomoy Shoals and south of Tuckernuck Island—are subjected to detailed analysis in this draft EIS, including an analysis of direct, indirect, and cumulative environmental effects.

EIS Availability: To obtain a single printed or CD-ndash;ROM copy of the draft EIS, you may contact the Minerals Management Service, Environmental Assessment Branch (MS 4042), 381 Elden Street, Herndon, Virginia 20170. An electronic copy of the draft EIS is available at the MMS's Internet Web site at *http://www.mms.gov/offshore/RenewableEnergy/CapeWind.htm,* as are electronic copies of attachments to the draft EIS and reports used in its preparation. For a list of libraries in Massachusetts that were provided copies of the draft EIS, visit MMS's Internet Web site at *http://www.mms.gov/library/* or contact MMS at the coordinates indicated below under the heading ''Further Information.''

Public Hearings: The MMS will hold public hearings to receive comments on the draft EIS. The public hearings are scheduled as follows:

- Monday, March 10, 2008, at Mattacheese Middle School Auditorium, 400 Higgins-Crowell Road, West Yarmouth, Massachusetts, 6 p.m.
- Tuesday, March 11, 2008, at Nantucket High School Auditorium, 10 Surfside Road, Nantucket, Massachusetts, 5 p.m.
- Wednesday, March 12, 2008, at Martha's Vineyard Regional High School Auditorium, 100 Edgartown-Vineyard Haven Road, Oak Bluffs, Massachusetts, 5 p.m.
- Thursday, March 13, 2008, at Campus Center Ballroom, University of Massachusetts, Boston, 100 Morrissey Boulevard, South Boston, Massachusetts, 6 p.m.

If you wish to testify at a hearing, you should register at the site of the hearing as soon as you arrive or pre-register by calling 703–787–1300. Written statements submitted at a hearing will be considered part of the hearing record. If you are unable to attend the hearings, you may submit written statements (see below).

Comments: Federal, state, local government agencies, and other interested parties are requested to provide their written comments on the draft EIS in one of the following three ways:

1. Electronically using MMS's on-line commenting system at *http://ocsconnect.mms.gov/pcs-public/.* This is the preferred method for commenting.
2. In written form, mailed or delivered to MMS Cape Wind Energy Project, TRC Environmental Corporation, Wannalancit Mills, 650 Suffolk Street, Lowell, Massachusetts 01854.
3. In person at the public hearings.

Comments should be submitted no later than insert date 60 days after date of publication of NOA.

Public Comment Policy: Be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Bennett, Minerals Management Service, Environmental Assessment Branch, 381 Elden Street, Mail Stop 4042, Herndon, Virginia 20710, or by phone at (703) 787–1656, or Dr. Rodney E. Cluck, Minerals Management Service, Alternative Energy Program, 381 Elden Street, Mail Stop 4080, Herndon Virginia 20170, or by phone at (703) 787–1300.

Dated: January 14, 2008.

Chris C. Oynes,

Associate Director for Offshore Minerals Management.

[FR Doc. E8–845 Filed 1–17–08; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–599]

In the Matter of Certain Lighting Control Devices Including Dimmer Switches and/Or Switches and Parts Thereof; Notice of Commission Decision Not To Review Initial Determinations Granting Motions To Terminate Investigation As to All Respondents and to Terminate the Investigation In Its Entirety

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 9) granting the joint motion of complainant Lutron Electronics Co., Inc. (''Lutron'') and Leviton Manufacturing Company, Inc. (''Leviton'') to terminate the investigation as to Leviton on the basis of a settlement agreement, and the ALJ's ID (Order No. 10) granting the motion of Lutron to terminate the investigation as to Control 4 Corporation (''Control4'') based on withdrawal of the complaint and terminating the investigation in its entirety.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3112. Copies of the ALJ's IDs and all other non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On April 5, 2007, the Commission instituted this investigation, based on a complaint filed by Lutron Electronics Co., Inc. (''Lutron'') of Coopersburg, Pennsylvania. Lutron's amended Complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain lighting control devices including dimmer switches and/or switches and parts thereof by reason of infringement of claims 1, 36, 65, 83, 85, 89, 90, 94, 112, 114, 116, 118, 119, 123, 149, 178, 193, 195, 197, 199, and 200 of U.S. Patent No. 5,637,930 (''the '930 patent''); claims 44, 47, and 49 of U.S. Patent No. 5,248,919 (''the '919 patent''); claims 1–5, 8–10, 12, and 22 of U.S. Patent No. 5,982,103 ('' the '103 patent''); claims 151, 152, and 155–157 of U.S. Patent No. 5,905,442 (''the '442 patent''); and claims 1, 3, and 14

of U.S. Patent No. 5,736,965 (''the '965 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainant requested that the Commission issue a limited exclusion order and a cease and desist order. The complaint named two firms as respondents: Leviton Manufacturing Company, Inc. (''Leviton'') of Little Neck, New York, and Control4 Corporation (''Control4'') of Salt Lake City, Utah.

On September 24, 2007, a joint motion between Lutron and Respondent Leviton was filed seeking termination of this investigation based upon a settlement agreement. On October 2, 2007, Lutron moved to terminate the investigation as to respondent Control4 based on withdrawal of the complaint. Control4 did not oppose Lutron's motion.

On November 15, 2007 the ALJ issued Order No. 9, terminating the investigation as to Leviton and Order No. 10, terminating the investigation with respect to Control4 and, inasmuch as no respondent remains, terminating the investigation in its entirety. The Commission has determined not to review the IDs.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR § 210.42).

Issued: December 10, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–822 Filed 1–17–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1112–1113 (Final)]

Glycine From Japan and Korea

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Japan and Korea of glycine, provided for in subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States,[3] that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective March 30, 2007, following receipt of a petition filed with the Commission and Commerce by GEO Specialty Chemicals, Inc., Lafayette, IN. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of glycine from Japan and Korea were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 28, 2007 (72 FR 55247). The hearing was held in Washington, DC, on November 28, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on January 11, 2008. The views of the Commission are contained in USITC Publication 3980 (January 2008), entitled *Glycine from Japan and Korea: Investigation Nos. 731-TA–1112–1113 (Final).*

Issued: January 11, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–862 Filed 1–17–08; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Irving A. Williamson and Dean A. Pinkert dissenting.

[3] The imported products subject to investigation also include sodium glycinate which is provided for in subheading 2922.49.80 of the HTS.

DEPARTMENT OF JUSTICE

[OMB Number 1122–0006]

Office on Violence Against Women; Agency Information Collection Activities: Revision of a Currently Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 218, pages 63927–63928 on November 12, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 19, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–0006, U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 200 grantees of the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (Arrest Program) whose eligibility is determined by statute. The Arrest Program was authorized through the Violence Against Women Act (VAWA) and reauthorized and amended by the Violence Against Women Act of 2000 (VAWA 2000) and by the Violence Against Women Act of 2005 (VAWA 2005). The Arrest Program promotes mandatory or pro-arrest policies and encourages jurisdictions to treat domestic violence and sexual assault as a serious crime, establish coordinated community responses and facilitate the enforcement of protection orders. By statute, eligible grantees for the Arrest Program are States, Indian tribal governments, State and local courts including juvenile courts, tribal courts, and units of local government. For the purpose of this Program, a unit of local government is any city, county, township, town, borough, parish, village, or other general-purpose political subdivision of a State; an Indian tribe that performs law enforcement functions as determined by the Secretary of Interior; or, for the purpose of assistance eligibility, any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia, and any Trust Territory of the U.S.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that it will take the 200 respondents (Arrest Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in, i.e., training or developing a protection order registry, and the different types of grantees that receive funds, i.e., law enforcement agencies, prosecutors' offices, courts, victim services agencies, etc. An Arrest Program grantee will only be required to complete those sections of the form that pertain to their own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 400 hours, that is 200 grantees completing a form twice a year with an estimate completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: January 14, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–847 Filed 1–17–08; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–NEW]

Office on Violence Against Women; Agency Information Collection Activities: New Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Semi-Annual Progress Report for the Grants to Indian Tribal Governments Program.

The Department of Justice, Office on Violence Against Women (OVW), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, pages 63928–63929 on November 13, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 19, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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 electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grants to Indian Tribal Governments Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* none. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 85 grantees of the Grants to Indian Tribal Governments Program (Tribal Governments Program), a new grant program authorized by the Violence Against Women Act of 2005. This discretionary grant program is

designed to enhance the ability of tribes to respond to violent crimes against Indian women, enhance victim safety, and develop education and prevention strategies. Eligible applicants are recognized Indian tribal governments or their authorized designees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 85 respondents (Tribal Governments Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Tribal Governments Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 170 hours, that is 85 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: January 14, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–848 Filed 1–17–08; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0223]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day Notice of Information Collection Under Review: Crime Mapping Survey.

The Department of Justice (DOJ), Office of Justice Programs, National Institute of Justice (NIJ) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 210, pages 616809–61681 on October 31, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until February 19, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement with change.

(2) *Title of the Form/Collection:* Crime Mapping Survey.

(3) *Agency form number, if any, and the applicable component of the department sponsoring the collection:* Office of Research and Evaluation, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law Enforcement Agencies. *Other:* None. This national survey is designed to do three things. One is to determine the extent to which police departments, specifically crime analysts, are utilizing computerized crime mapping since the first survey. Two is to understand to what extent crime mapping has been adopted since the first survey. Three is to expand the survey to understand the new ways that computerized crime mapping is being utilized, including the technologies adopted. Surveys will be mailed to a randomly selected sample of police departments. The questionnaire will determine the level of crime mapping within those departments, both in terms of hardware and software resources as well as the data used and types of maps that are produced and how they are used. The information collected from this survey will be used to advise the Mapping and Analysis for Public Safety (formerly the Crime Mapping Research Center) on what resources we need to provide to law enforcement who use, and want to use, crime mapping.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 112,123 respondents will complete each form within approximately 6 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* We estimate this survey will take 45 minutes per respondent, with the demographic section taking 10 minutes and the questions regarding crime mapping taking 35 minutes. Based on the expected sample of 2,630 respondents, the total estimated burden is 1,972 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 14, 2008.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E8–851 Filed 1–17–08; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1477]

Meeting of the Department of Justice's (DOJ's) Global Justice Information Sharing Initiative Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), DOJ.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of DOJ's Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *http://www.it.ojp.gov/global*.

DATES: Thursday, April 10, 2008, 8:30 a.m. to 4 p.m., ESTD.

ADDRESSES: Westin Tysons Corner Hotel, 7801 Leesburg Pike, Falls Church, Virginia 22043, Phone: (703) 893–1340.

FOR FURTHER INFORMATION CONTACT: J. Patrick McCreary, Global Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; Phone: (202) 616–0532 [note: this is not a toll-free number]; E-mail: *James.P.McCreary@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Due to security measures, however, members of the public who wish to attend this meeting must register with Mr. J. Patrick McCreary at the above address at least (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should notify Mr. McCreary at least seven (7) days in advance of the meeting.

Purpose

The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information sharing capability.

Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

J. Patrick McCreary,

Global DFE, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. E8–897 Filed 1–17–08; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,417]

Avery Dennison Corporation, Information and Brand Management, RVL Packaging; Including On-Site Leased Workers from Adecco and Workforce Logic, Greensboro, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 5, 2007, applicable to workers of Avery Dennison Corporation, Information and Brand Management, including on-site leased workers from Adecco and Workforce Logic, Greensboro, North Carolina. The notice was published in the **Federal Register** on December 19, 2007 (72 FR 71964).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of printed and heat transfer labels for the apparel industry.

New information provided to the Department shows that some of the workers' wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for RVL Packaging.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Avery Dennison Corporation, Information and Brand Management who were adversely affected by a shift in production to Mexico and El Salvador.

The amended notice applicable to TA–W–62,417 is hereby issued as follows:

All workers of Avery Dennison Corporation, Information and Brand Management, RVL Packaging, including on-site leased workers from Adecco and Workforce Logic, Greensboro, North Carolina, who became totally or partially separated from employment on or after November 19, 2006, through December 5, 2009, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of January 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–841 Filed 1–17–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,223; TA–W–62,223A;TA–W–62,223B]

Bodine Corporation; Including Workers Whose Wages Were Paid by ATW Bodine, Bridgeport, Connecticut; Including Employees of Bodine Corporation, Including Workers Whose Wages Were Paid by ATW Bodine, Bridgeport, Connecticut, Located in the Following Locations: Goshen, Kentucky; Allison Park, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1074 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on November 20, 2007, applicable to workers of Bodine Corporation, Bridgeport, Connecticut. The notice was published in the **Federal Register** on December 10, 2007 (72 FR 69710).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of automated assembly machines.

New information shows that ATW (Assembly Technology Worldwide) purchased certain assets of Bodine Corporation in November 2007. Some workers of the subject firm then became employees of ATW Bodine and their wages were reported under two separate unemployment insurance (UI) tax accounts for ATW Bodine and Bodine Corporation.

Information also shows that worker separations have occurred involving employees of the Bridgeport, Connecticut facility of the subject firm who are located in Goshen, Kentucky and Allison Park, Pennsylvania. Mr. John Artman and Mr. Kevin Moore provided sale function services for the Bridgeport, Connecticut location of the subject firm.

Accordingly, the Department is amending the certification to properly reflect these matters.

The intent of the Department's certification is to include all workers of Bodine Corporation who were adversely affected by increased customer imports.

The amended notice applicable to TA–W–62,223 is hereby issued as follows:

All workers of Bodine Corporation, including workers whose wages were paid by ATW Bodine, Bridgeport, Connecticut, including employees in support of Bodine Corporation, including workers whose wages were paid by ATW Bodine, Bridgeport, Connecticut located in Goshen, Kentucky (TA–W–62,223A) and Allison Park, Pennsylvania (TA–W–62,223B), who became totally or partially separated from employment on or after September 28, 2006, through November 20, 2009, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of January 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–840 Filed 1–17–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,449]

Delphi Corporation, Automotive Holding Group; Including On-Site Leased Workers of Securitas, Bartech, TAC Automotive, Interim, Breckenridge Enterprises/Dividend Staffing and Kelly Services, Wichita Falls, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 25, 2007, applicable to workers of Delphi Corporation, Automotive holding Group, including on-site leased workers of Securitas, Bartech, TAC Automotive, Interim, Dividend Staffing, and Kelly Services, Wichita Falls, Texas. The notice was published in the **Federal Register** on June 7, 2007 (72 FR 31615).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of exhaust oxygen sensors.

New information shows that the correct name of the on-site leasing firm Dividend Staffing should read Breckenridge Enterprises/Dividend Staffing. Some of the workers from Dividend Staffing separated from employment at the subject firm had their wages reported under the unemployment insurance (UI) tax account for Breckenridge Enterprises/Dividend Staffing. Accordingly, the Department is amending the certification to clarify this matter.

The intent of the Department's certification is to include all workers employed on-site at Delphi Corporation, Automotive Holding Group, Wichita Falls, Texas, who were adversely affected by increased imports. The amended notice applicable to TA–W–61,449 is hereby issued as follows:

All workers of Delphi Corporation, Automotive Holding Group, including on-site leased workers of Securitas, Bartech, TAC Automotive, Interim, Breckenridge Enterprises/Dividend Staffing, and Kelly Services, Wichita Falls, Texas, who became totally or partially separated from employment on or after April 30, 2006, through May 25, 2009, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of January 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–838 Filed 1–17–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,188]

Nortel Networks Corporation, Global Software Delivery Division, Site Readiness Group; Research Triangle Park, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application dated December 7, 2007, the petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on November 8, 2007 and published in the **Federal Register** on November 21, 2007 (72 FR 65607).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for workers of Nortel Networks Corporation, Global Software Delivery Division, Site Readiness Group, Research Triangle Park, North Carolina was based on the finding that the worker group does not produce an article within the meaning of section 222 of the Trade Act of 1974. The investigation revealed that workers of the subject firm monitored customer's hardware in preparation for software upgrades.

The petitioner contends that the Department erred in its interpretation of the facts and alleges that the company

official provided inaccurate information regarding the core responsibilities of the workers of the subject firm. The petitioner further states that workers of the subject firm ''prepare a customer's communications equipment to receive Nortel issued ''Critical'' patches/upgrades necessary for the equipment to operate within FCC regulated guidelines.'' The petitioner provided contact information for a different company official and requested further solicitation for all further information from this official.

On reconsideration, the Department contacted subject firm's company official as directed by the petitioner. This company official confirmed what was revealed in the initial investigation. The investigation revealed that workers of Nortel Networks Corporation, Global Software Delivery Division, Site Readiness Group, Research Triangle Park, North Carolina install software upgrades to customers' telecommunication equipment and that petitioner's description of the work performed at the subject firm is correct. Preparation of customer's communications equipment and other functions, as described above, are not considered production of an article within the meaning of section 222 of the Trade Act. No production took place at the subject facility and the workers did not support production of articles at any affiliated firm in the relevant time period.

The petitioner also alleges that jobs have been shifted from the subject firm to Mexico.

The allegation of a shift to another country might be relevant if it was determined that workers of the subject firm produced an article. However, the investigation determined that workers of Nortel Networks Corporation, Global Software Delivery Division, Site Readiness Group, Research Triangle Park, North Carolina do not produce an article within the meaning of section 222 of the Trade Act of 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 10th day of January, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–839 Filed 1–17–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,589]

Hubbard Supply Company; Leased On-Site Workers Employed at Atreum-Brighton, Brighton, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 19, 2007 in response to a worker petition filed by the State Workforce Office on behalf of workers of Hubbard Supply Company employed at Atreum-Brighton plant in Brighton, Michigan.

The petitioning group of workers is covered by an active certification, TA–W–62,396. That certification was part of an Amended Notice of Revised Determination issued on January 8, 2008, and expiring on November 14, 2009.

Signed at Washington, DC this 11th day of January 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–837 Filed 1–17–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0011]

Federal Advisory Council on Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Reopening of the record for submission of nominations for membership on the Federal Advisory Council on Occupational Safety and Health (FACOSH).

SUMMARY: On December 10, 2007, OSHA published a **Federal Register** notice inviting interested parties to submit nominations for membership on FACOSH. In that notice, OSHA set a submission deadline of January 9, 2008. OSHA is reopening the record to allow additional time for interested parties to submit nominations.

DATES: The revised deadline for submitting FACOSH nominations is February 19, 2008.

ADDRESSES: You may submit nominations for FACOSH, identified by Docket No. OSHA–2007–0011, by any of the following methods:

Electronically: Nominations, including attachments, may be submitted electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting nominations.

Facsimile: If your nomination, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, Express Delivery, Hand Delivery, Messenger or Courier Service: Submit three copies of your nomination to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (TTY number (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.—4:45 p.m., e.t.

Instructions: All nominations for FACOSH must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2007–0011). All submissions in response to this **Federal Register** notice, including personal information provided, will be posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birth dates. Because of security-related procedures, submitting nominations by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office, at the address above, for information about security procedures for submitting nominations by hand delivery, express delivery, and messenger or courier service.

For additional instructions and information on submitting nominations, see 72 FR 69713 (Dec. 10, 2007).

Docket: To read or download submissions, go to *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some documents (*e.g.*, copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted

material, are available for inspection and copying at the OSHA Docket Office at the address above.

Information on using the *http://www.regulations.gov* Web site to make submissions and to access the record and exhibits is available at the Website's User Tips Link. Contact the OSHA Docket Office for information about materials not available through *http://www.regulations.gov* and for assistance in using the Internet to locate submissions and other documents in the record.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Walker, Acting Director, OSHA, Office of Federal Agency Programs, Room N–3622, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2122; fax (202) 693–1685; e-mail *ofap@dol.gov.*

SUPPLEMENTARY INFORMATION: On December 10, 2007, OSHA published a **Federal Register** notice inviting interested parties to submit nominations for FACOSH membership, with a submission deadline of January 9, 2008 (72 FR 69713). OSHA is reopening the record to provide additional time for interested parties to submit nominations. For instructions and information about submitting nominations, see 72 FR 69713.

FACOSH is authorized to advise the Secretary of Labor on all matters relating to the occupational safety and health of Federal employees (Occupational Safety and Health Act of 1970 (29 U.S.C. 688), 5 U.S.C. 7902, Executive Order 13446). This includes providing advice on how to reduce and keep at a minimum the number of injuries and illnesses in the Federal workforce and how to encourage the establishment and maintenance of effective occupational safety and health programs in each Federal department and agency.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.*

Authority and Signature: Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, section 1(c) of Executive Order 13446, 29 CFR Part 1960 (Basic Program Elements for Federal Employee Occupational Safety and Health Programs), and Secretary of Labor's Order 5–2007 (72 FR 31160).

Signed at Washington, DC this 15th day of January, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–886 Filed 1–17–08; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings of the Board of Directors and Four of the Board's Committees

TIMES AND DATES: The Legal Services Corporation Board of Directors and four of the Board's Committees will meet on January 25–26, 2008 in the order set forth in the following schedule, with each meeting commencing shortly after adjournment of the immediately preceding meeting.

PUBLIC OBSERVATION BY TELEPHONE: Members of the public who wish to listen to the open portions of the meetings live may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. Comments from the public may from time to time be solicited by the presiding Chairman.

Call-In Directions for Open Sessions

Friday, January 25, 2008

- Call toll-free number 1–888–323–2711;
- When prompted, enter the following numeric pass code: 1619000;
- When connected to the call, please ''mute'' your telephone immediately.

Saturday, January 26, 2008

- Call toll-free number 1–800–593–0353;
- When prompted, enter the following numeric pass code: 4042977;
- When connected to the call, please ''mute'' your telephone immediately.

Meeting Schedule

Friday, January 25, 2008; Time,[1] 9 a.m.

1. Staff Presentations regarding Various LSC activities
2. Provision for the Delivery of Legal Services Committee (Provisions Committee)
3. Operations & Regulations Committee

Saturday, January 26, 2008; Time, 8:30 a.m.

4. Annual Performance Reviews Committee (Performance Reviews Committee)
5. Finance Committee
6. Board of Directors

LOCATION: The Legal Services Corporation, 3rd Floor Conference Center, 3333 K Street, NW., Washington, DC.

STATUS OF MEETINGS: Open, except as noted below.

- *January 25, 2008 Operations & Regulations Committee Meeting*—One item on the Committee's agenda—i.e., staff report on follow-up to GAO report on grants management—may be closed to the public pursuant to a vote of the Board of Directors authorizing the Committee to meet in executive session. The staff report/briefing is not subject to the Government in the Sunshine Act or the Legal Services Corporation regulations implementing the Sunshine Act.[2] Any Board discussions concerning the report rising to the level of deliberations would be subject to the Sunshine Act but are authorized by the relevant provisions of the Sunshine Act, 5 U.S.C. 552b(c)(2) and (9)(B), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(a) and (g). A *verbatim* written transcript of the session will be made and any portions that do not fall within the briefing or the aforementioned provisions of the Sunshine Act and LSC's implementing regulation will be available for public inspection. Any portion that is limited to a staff briefing or falls within the aforementioned provisions of the Sunshine Act and LSC regulation will not be available for public inspection. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.
- *January 26, 2008 Performance Reviews Committee Meeting*—Closed. This meeting may be closed to the public pursuant to a vote of the Board of Directors authorizing the Committee to meet in executive session to consider and act on the annual performance evaluation of the LSC President for calendar year 2007. The closing will be authorized by the relevant provision of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), and the corresponding provision of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(e). A *verbatim* written transcript of the session will be made. The transcript of any portions of the closed session falling within the

[1] Please note that all times in this notice are Eastern Standard Time.

[2] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

relevant provision(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), and the corresponding provision of LSC's implementing regulation, 45 CFR 1622.5(e), will not be available for public inspection. The transcript of any portions not falling within the cited provisions will be available for public inspection. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

• *January 26, 2008 Board of Directors Meeting*—Open, except that portions of the meetings of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to take up several agenda items in executive/closed sessions. Specifically, the Board will consider and may act on the report of the *Operations & Regulations Committee* on staff report on follow-up to GAO report on grants management, may consider and act on the report of the *Performance Reviews Committee* on evaluation of the LSC President for calendar year 2007, select an LSC Inspector General, and consider and may act on the General Counsel's report on potential and pending litigation involving LSC. A *verbatim* written transcript of the session will be made. The transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2), (6), (9)(b) and (10), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(a), (e), (g) and (h), will not be available for public inspection. The transcript of any portions not falling within the cited provisions will be available for public inspection. A copy of the General Counsel's Certifications that the closings are authorized by law will be available upon request.

Matters To Be Considered

Friday, January 25, 2008

Staff Presentations to Board

1. TIG Evaluation
2. Technology Strategic Plan
3. Native American Issues
4. Veterans

Provision for the Delivery of Legal Services Committee

Agenda

Open Session

1. Approval of agenda
2. Approval of the Committee's meeting minutes of July 27, 2007
3. Approval of the Committee's meeting minutes of October 26, 2007
4. Staff Update on activities implementing the *LSC Private Attorney Involvement Action Plan—Help Close the Justice Gap: Unleash the Power of Pro Bono*
   - Guy Lescault—Program Counsel, Office of Program Performance
5. Staff Update on Leadership Mentoring Pilot Program—Final Report
   - Monica Evans—Program Counsel, Office of Program Performance
6. Staff Update on Pilot Loan Repayment Assistance Program—First Year Evaluation
   - Bristow Hardin—Program Analyst, Office of Program Performance
7. Chairman's Update on Provisions Committee 2008 agenda
8. Public comment
9. Consider and act on other business
10. Consider and act on adjournment of meeting

Operations & Regulations Committee

Agenda

Open Session

1. Approval of agenda
2. Approval of the minutes of the Committee's October 27, 2007 meeting
3. Staff presentation on complaint investigation process
4. Follow up to GAO report on governance and accountability
   a. Consider and act on proposed LSC Code of Conduct
   b. Staff report on the Continuity of Operations Plan
   c. Staff report on risk management plan development

Closed Session

5. Staff report on follow-up to GAO report on grants management

Open Session

6. Discussion of the OIG Report on IPAs
7. Other public comment
8. Consider and act on other business
9. Consider and act on adjournment of meeting

Saturday, January 26, 2008

Performance Reviews Committee

Agenda

Closed Session

1. Approval of agenda
2. Approval of minutes of the *Committee's* Open Session of October 27, 2007
3. Consider and act on the Performance Evaluation of the President for calendar year 2007
4. Consider and act on other business
5. Consider and act on adjournment of meeting

Finance Committee

Agenda

Open Session

1. Approval of agenda
2. Approval of the minutes of the Committee's meeting of July 28, 2007
3. Approval of the minutes of the Committee's meeting of September 17, 2007
4. Approval of the minutes of the Committee's meeting of October 27, 2007
5. Presentation of the Fiscal Year 2007 Annual Financial Audit
   - Presentation by Dutch Merryman, Acting Inspector General
   - Comments by Nancy Davis, WithumSmith+Brown, P.C.
6. Staff report on FY 2008 Appropriations
   - Report by John Constance
7. Consider and act on locality pay
8. Consider and act on adoption of Consolidated Operating Budget for FY 2008
   - Presentation by David Richardson
   - Comments by Charles Jeffress
9. Presentation on LSC's Financial Reports for the first three months of FY 2008
   - Presentation by David Richardson
   - Comments by Charles Jeffress
10. Consider and act on recommendation to the Board to establish an audit committee or to assign audit committee functions to the Finance Committee
    - Presentation by Nancy Davis, WithumSmith+Brown, P.C.
    - Comments by Charles Jeffress, Victor Fortuno, and Dutch Merryman
11. Public comment
12. Consider and act on other business
13. Consider and act on adjournment of meeting

Board of Directors

Agenda

Open Session

1. Approval of agenda
2. Consider and act on whether to authorize an executive session of the *Board* to address items listed below under *Closed Session*

Closed Session

3. Approval of minutes of the *Board's* Executive Session of October 26, 2007
4. Approval of minutes of the *Board's* Executive Session of the *Board's* meeting of October 27, 2007
5. Approval of minutes of the *Board's* Executive Session *Telephonic* meeting of November 27, 2007

6. Consider and act on the report of the *Operations & Regulations Committee*
7. Consider and act on the report of the *Performance Reviews Committee*
8. Consider and act on selection of Inspector General
9. Consider and act on General Counsel's report on potential and pending litigation involving LSC
10. Consider and act on motion to return to *Open Session*

Open Session

11. Approval of minutes of the *Board's* Open Session of July 28, 2007
12. Approval of minutes of the *Board's* Open Session of October 26, 2007
13. Approval of minutes of the *Board's* Open Session of October 27, 2007
14. Approval of minutes of the *Board's* Open Session *Telephonic* meeting of November 27, 2007
15. Consider and act on nominations for the Chairman of the Board of Directors
16. Consider and act on nominations for the Vice Chairman of the Board of Directors
17. *Chairman's* Report
18. *Members'* Reports
19. *President's* Report
20. *Acting Inspector General's* Report
21. Consider and act on the report of the *Provision for the Delivery of Legal Services Committee*
22. Consider and act on the report of the *Finance Committee*
23. Consider and act on the report of the *Operations & Regulations Committee*
24. Consider and act on Board follow-up on recommendations to the Board contained in the report issued by the GAO on LSC governance
25. Consider and act on charters for Board committees
26. Consider and act on proposed Protocol for Board member access to Corporation records
27. Staff report on selected LSC Performance Measures
28. Public comment
29. Consider and act on other business
30. Consider and act on motion to adjourn meeting

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Manager of Board Operations, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia D. Batie, at (202) 295–1500.

Dated: January 16, 2008.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 08–215 Filed 1–16–08; 2:02 pm]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before February 19, 2008. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: requestschedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too

includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Risk Management Agency (N1–258–08–1, 1 item, 1 temporary item). Records pertaining to educational agreements of the Risk Management Education office. Included are application scores, funding and financial documents, and activity logs. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of the Army, Agency-wide (N1–AU–04–9, 2 items, 2 temporary items). Master file and outputs associated with an electronic information system used to track basic human resources data on personnel deployed to a theater of operations. Data includes personnel identifiers, assignment data, and contact information of next of kin.

3. Department of Defense, Defense Commissary Agency (N1–506–07–9, 10 items, 10 temporary items). Records in the Office of the General Counsel pertaining to legal matters. Included are correspondence, information releases, legal opinions, pecuniary charges and appeals, claims, and law enforcement reports. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of Homeland Security, Headquarters Offices (N1–563–07–13, 14 items, 1 temporary item). Write-in campaign correspondence. Proposed for permanent retention are recordkeeping copies of Congressional reports, briefing books, correspondence, plans, policy records, scheduling records, speeches and testimonies, subject files, telephone logs, and trip books. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of Justice, Criminal Division (N1–60–07–7, 4 items, 2 temporary items). Records of the Domestic Security Section, including duplicates of case files litigated by U.S. attorneys used for oversight purposes and general administrative files of the Section. Proposed for permanent retention are recordkeeping copies of records related to cases litigated by the Section and selected general files.

6. Department of Transportation, Federal Railroad Administration (N1–399–07–2, 1 item, 1 temporary item). Records consisting of responses to audits, evaluations, and routine investigations. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Transportation, Federal Railroad Administration (N1–399–07–12, 2 items, 2 temporary items). Records relating to grants and other program support agreements with Federal, state, local, and international government agencies, universities and institutions. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

8. Department of the Treasury, Internal Revenue Service (N1–58–08–1, 2 items, 2 temporary items). Correspondence with taxpayers and employers relating to the Withholding Compliance Program. This schedule revises the description and/or disposition for these records, which were previously approved for disposal.

9. Department of the Treasury, Internal Revenue Service (N1–58–08–2, 1 item, 1 temporary item). Records relating to Passive Foreign Investment Company for Tainted Removal Election (Form 8621–A) files. Included are review check sheets, activity logs, case history worksheets, document requests and other correspondence.

10. Department of the Treasury, Internal Revenue Service (N1–58–08–3, 5 items, 5 temporary items). Inputs, outputs, master files and documentation associated with an electronic information system used to record and manage all Systemic Advocacy project activities, task forces, reviews and advocacy portfolios.

11. Department of the Treasury, Internal Revenue Service (N1–58–08–4, 4 items, 4 temporary items). Inputs, outputs, electronic data, and system documentation associated with an electronic information system used to validate U.S. residency for applicants claiming benefits or exemptions relating to foreign income.

12. Department of the Treasury, Internal Revenue Service (N1–58–08–5, 1 item, 1 temporary item). Records relating to taxpayer delinquency, consisting of work requests received by secure e-mail and retained for inventory control and quality review purposes.

13. Commodity Futures Trading Commission, Office of the General Counsel (N1–180–08–1, 1 item, 1 temporary item). Attorney work papers used as background information for litigation cases, including drafts, correspondence, and interview notes. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

14. Office of Compliance, Agency-wide (N1–577–07–1, 24 items, 15 temporary items). Includes Administrative Dispute Resolution case files, forms, mediation surveys, general correspondence, and electronic case-tracking system; labor management relations case files, reviews, and forms; agency Web site; draft biennial and requestor-initiated inspections of Occupational Safety and Health Administration and Americans with Disabilities Act violations within the legislative branch; inspections of Federal Labor Relations Act violations within the legislative branch; litigation files; rulemaking files; and ethics inquiries. Proposed for permanent retention are recordkeeping copies of Executive Director's and Deputy Executive Directors' official files and standard operating procedures; educational materials; official photographs; historical documents (including annual reports); and Board of Directors' official files, final reports and decisions.

Dated: January 14, 2008.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E8–855 Filed 1–17–08; 8:45 am]

BILLING CODE 7515–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather C. Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the

National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* February 4, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Archaeology: Old World in Collaborative Research, submitted to the Division of Research Programs, at the November 1, 2007 deadline.

2. *Date:* February 5, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for American Studies in Collaborative Research, submitted to the Division of Research Programs, at the November 1, 2007 deadline.

3. *Date:* February 6, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Literature, the Arts, and Religion in Collaborative Research, submitted to the Division of Research Programs, at the November 1, 2007 deadline.

4. *Date:* February 7, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Philosophy and Science in Collaborative Research, submitted to the Division of Research Programs, at the November 1, 2007 deadline.

5. *Date:* February 7, 2008.
Time: 9 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for Public Programming Institutions, submitted to the Office of Challenge Grants, at the November 1, 2007 deadline.

6. *Date:* February 11, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Music, Literature, Philosophy, and Religion in Scholarly Editions, submitted to the Division of Research Programs, at the November 1, 2007 deadline.

7. *Date:* February 12, 2008.
Time: 9 a.m. to 5:30 p.m.
Room: 421.
Program: This meeting will review applications for Colleges, Universities, & Research Institutions, submitted to the Office of Challenge Grants, at the November 1, 2007 deadline.

8. *Date:* February 12, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for European Studies in Collaborative Research, submitted to the Division of Research Programs, at the November 1, 2007 deadline.

9. *Date:* February 13, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Africa and Asia in Collaborative Research, submitted to the Division of Research Programs, at the November 1, 2007 deadline.

10. *Date:* February 15, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for American History in Scholarly Editions, submitted to the Division of Research Programs, at the November 1, 2007 deadline.

11. *Date:* February 19, 2008.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for American and British Literature in Scholarly Editions, submitted to the Division of Research Programs, at the November 1, 2007 deadline.

12. *Date:* February 26, 2008.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Stabilization 1 in Preservation and Access Grants for Stabilizing Humanities Collections, submitted to the Division of Preservation and Access, at the October 10, 2007 deadline.

Heather C. Gottry,

Acting Advisory Committee, Management Officer.

[FR Doc. E8–834 Filed 1–17–08; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

Geologic Repository Operations Area Security and Material Control and Accounting Requirements; Meeting Cancellation

AGENCY: Nuclear Regulatory Commission.

ACTION: Cancellation of Public Meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing this notice to announce cancellation of the public meeting scheduled for January 23, 2008, in Las Vegas, Nevada, and announced in the **Federal Register** December 31, 2007 (72 FR 74352). The purpose of the meeting was to solicit public comments on a proposed rule on Geologic Repository Operations Area Security and Material Control and Accounting Requirements that was published for public comment (72 FR 72522; December 20, 2007). This meeting will not be rescheduled. NRC will still accept public comments on the proposed rule during the comment period; comments may be mailed to the NRC or submitted via fax or e-mail.

DATES: The meeting cancelled by this notice was scheduled for January 23, 2008 from 3 p.m. to 7 p.m.

ADDRESSES: The meeting was to have been held in the NRC Hearing Facility at the Pacific Enterprise Plaza, Building One, 3250 Pepper Lane, Las Vegas, NV 89120.

FOR FURTHER INFORMATION CONTACT: Merri Horn, telephone (301) 415–8126, e-mail, *mlh1@nrc.gov* of the Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: The public meeting scheduled for January 23, 2008, for the purpose of obtaining stakeholder comments on the Geologic Repository Operations Area Security and Material Control and Accounting Requirements Proposed Rule has been cancelled and will not be rescheduled. The NRC is cancelling this meeting as we are evaluating the implications of NRC's fiscal year 2008 appropriation from Congress for NRC's high-level radioactive waste program. The public may still submit comments on the proposed rule. The proposed rule is available via the Federal eRulemaking Portal *http://www.regulations.gov*.

Dated at Rockville, Maryland, this 11th day of January, 2008.

For the Nuclear Regulatory Commission.

Dennis K. Rathbun,

Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E8–873 Filed 1–17–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Mitsubishi Heavy Industries, LTD.; Notice of Receipt of Application for Design Certification of the US–APWR

Notice is hereby given that the Nuclear Regulatory Commission (NRC, the Commission) has received an application from Mitsubishi Heavy Industries (MHI), Ltd. Dated December 31, 2007, filed pursuant to section 103 of the Atomic Energy Act and Title 10 of the *Code of Federal Regulations* (10 CFR) part 52, for standard design certification of the US–APWR Standard Plant Design.

The US–APWR design is an approximately 1,700 megawatts electric, four-loop, advanced pressurized water reactor (APWR). MHI developed the US–APWR based on technologies for a 1,538 megawatts electric APWR planned for use in Japan. The US–APWR is based on the latest technologies to improve plant efficiency, reduce plant building volume, and provide a 24-month fuel cycle. The US–APWR application includes the entire power generation complex, except those elements and features considered site-specific. The acceptability of the tendered application for docketing and other matters relating to the requested rulemaking pursuant to 10 CFR 52.51 for design certification, including provisions for participation of the public and other parties, will be the subject of subsequent **Federal Register** notices.

A copy of the application will be available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. The accession number for the application is ML080020070. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 14th day of January 2008.

For the Nuclear Regulatory Commission.

Jeffrey A. Ciocco,

Sr. Project Manager, US–APWR Projects Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–872 Filed 1–17–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the Initiation of Child Labor Review in the Production of Certain GSP-Eligible Hand-Loomed or Hand-Hooked Carpets

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The 2004 Miscellaneous Trade and Technical Corrections Act (H.R. 1047) (the ''2004 Act''), as approved by Congress, authorized the President to designate seven tariff lines relating to carpets (5702.51.20 (now 5702.50.20), 5702.91.30, 5702.92.00 (now 5702.92.10), 5702.99.10 (now 5702.99.05), 5703.10.00 (now 5703.10.20), 5703.20.10, and 5703.30.00 (now 5703.30.20)) as eligible for duty-free treatment under the GSP program. These tariff lines cover certain hand-loomed or hand-hooked carpets and other textile floor coverings made of wool, cotton, fine animal hair, or man-made textile materials. Pursuant to the authorization in the 2004 Act, the President designated these seven tariff lines as eligible for duty-free treatment under the GSP program. The GSP Subcommittee of the Trade Policy Staff Committee (TPSC) is conducting a triennial review of whether each beneficiary country is taking steps to eliminate the worst forms of child labor, including the use of bonded child labor, in the production of such carpets imported under the U.S. GSP program. If sufficient steps are not underway, the TPSC will recommend to the President changes in GSP coverage that would eliminate from duty-free treatment under the GSP program those carpets found to be made with the worst forms of child labor.

FOR FURTHER INFORMATION CONTACT: The GSP Subcommittee of the TPSC, Office of the United States Trade Representative (USTR), 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: In connection with the President's designation of seven carpet tariff lines as GSP eligible articles, the GSP Subcommittee of the TPSC is reviewing whether each beneficiary country that supplies the identified hand-loomed or hand-hooked carpets under the GSP program is taking sufficient steps to eliminate the worst forms of child labor, including the use of bonded child labor, in the production of these items. The top suppliers of these carpet tariff lines under the GSP program to the United States in 2006 (the most recent year for which full-year data are available) were: India, Thailand, Philippines, Indonesia, Pakastan, Egypt, Turkey, South Africa, and Nepal.

Upon a finding during the review that a country is not taking steps to eliminate the worst forms of child labor, including the use of bonded child labor, in production of certain hand-loomed or hand-hooked carpets imported under the U.S. GSP Program, the TPSC will recommend changes in the GSP coverage that would eliminate those carpets from duty-free treatment under the GSP program. The review will be repeated at three-year intervals.

For purposes of this review, the term ''worst forms of child labor'' means (19 U.S.C. 2467(6)) (A) All forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage and serfdom, or forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

(B) The use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic purposes;

(C) The use, procuring, or offering of a child for illicit activities in particular for the production and trafficking of drugs; and

(D) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children.

The work referred to in subparagraph (D) shall be determined by the laws, regulations, or competent authority of the beneficiary developing country involved.

Opportunities for Public Comment and Inspection of Comments: The GSP Subcommittee of the TPSC invites comments for this review. Submissions should comply with 15 CFR Part 2007, except as modified below. All

submissions should identify the subject article(s) in terms of the country and the eight-digit Harmonized Tariff Schedule of the United States subheading number. The deadline for submission is February 15, 2008.

Requirements for Submissions: In order to facilitate prompt processing of submissions, USTR requires electronic e-mail submissions in response to this notice. Hand-delivered submissions will not be accepted. These submissions should be single-copy transmissions in English, and including attachments, with the total submission not to exceed 25 single-spaced standard letter-size pages in 12-point type and three megabytes as sent as a digital file attached to an e-mail transmission. E-mail submissions should use the following subject line: ''Child Labor Review in the Production of Certain GSP-Eligible Hand-loomed or Hand-hooked Carpet Lines'' followed by the country and the eight-digit HTSUS subheading number. Documents must be submitted in English in one of the following formats: WordPerfect (.WPD), Adobe (.PDF), MSWord (.DOC), or text (.TXT) files. Documents cannot be submitted as electronic image files or contain embedded images, *e.g.,* ''.JPG'', ''.TIF'', ''.BMP'', or ''.GIF''. Supporting documentation submitted as spreadsheets are acceptable as Excel files, formatted for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of each page of the document. The non-confidential version must also be clearly marked at the top and bottom of each page (either ''PUBLIC VERSION'' or ''NON-CONFIDENTIAL''). Documents that are submitted without any marking might not be accepted or will be considered public documents.

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the party (government, company, union, association, etc.) which is making the submission.

E-mail submissions should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself, including the sender's name, organization name, address, telephone number and e-mail address. The e-mail address for these submissions is *FR0081@USTR.EOP.GOV*. (**Note:** The letters ''FR'' in the e-mail address are followed by the number, zero, not a letter. Documents not submitted in accordance with these instructions might not be considered in this review. If unable to provide submissions by e-mail, please contact the GSP Subcommittee to arrange for an alternative method of transmission.)

Public versions of all documents relating to this review will be available for review approximately two weeks after the relevant due date by appointment in the USTR public reading room, 1724 F Street, NW., Washington, DC. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Marideth Sandler

Executive Director, Generalized System of Preferences, Office of the U.S. Trade Representative.

[FR Doc. E8–905 Filed 1–17–08; 8:45 am]

BILLING CODE 3190–W8–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57141; File No. SR–CBOE–2007–147]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Extension of the iShares Russell 2000 Index Fund (IWM) Option Pilot Program

January 14, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 11, 2007, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Exchange. On January 8, 2008, CBOE filed Amendment No. 1 to the proposed rule change. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend an existing pilot program that increases the position and exercise limits for options on the iShares Russell 2000 Index Fund (''IWM options'') traded on the Exchange (''IWM Option Pilot Program''). The text of the proposed rule change is available at *http://www.cboe.org/Legal,* the Exchange's principal office, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The IWM Option Pilot Program provides for increased position and exercise limits for IWM options traded on the Exchange.[6] Specifically, the IWM

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] CBOE gave the Commission written notice of its intent to file the proposed rule change on November 28, 2007.

[6] The proposal that established the IWM Option Pilot Program was effective and operative upon filing. *See* Securities Exchange Act Release No. 55176 (January 25, 2007), 72 FR 4741 (February 1, 2007) (SR–CBOE–2007–08). The IWM Option Pilot Program was extended, and is due to expire on January 18, 2008. *See* Securities Exchange Act Release No. 55926 (June 20, 2007), 72 FR 35275 (June 27, 2007) (SR–CBOE–2007–61).

Option Pilot Program increases the position and exercise limits for IWM option from 250,000 contracts to 500,000 contracts.[7]

The purpose of the instant proposed rule change is to extend the IWM Option Pilot Program through March 1, 2008. The Exchange is not proposing any other change to the IWM Option Pilot Program. The Exchange believes that extending the IWM Pilot Program is warranted due to the positive feedback received from market participants and for the reasons cited in the original proposed rule changes that proposed the adoption of the IWM Pilot Program. Also, the Exchange has not encountered any problems or difficulties relating to the IWM Option Pilot Program since its inception. For these reasons, the Exchange proposes to extend the IWM Option Pilot Program for the aforementioned additional period.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements provided under Section 6(b)(5) of the Act,[8] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (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, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

CBOE has requested the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission hereby grants CBOE's request[11] and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the IWM Option Pilot Program was previously extended. In addition, waiver of the 30-day operative period would allow the IWM Option Pilot Program to continue uninterrupted.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

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–CBOE–2007–147 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–CBOE–2007–147. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–147 and should be submitted on or before February 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–861 Filed 1–17–08; 8:45 am]

BILLING CODE 8011–01–P

[7] Exercise limits for IWM options are equivalent to the position limits prescribed for IWM options in Rule 4.11.07 and the increased exercise limits are only in effect during the IWM Option Pilot Period. *See* Rule 4.12.02.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on January 8, 2008, the date on which the Exchange filed Amendment No. 1.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57137; File No. SR–CHX–2007–24]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to the Handling of Clearly Erroneous Transactions

January 14, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 4, 2007, the Chicago Stock Exchange, Inc. (''CHX'' 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. On January 7, 2008, the CHX submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules regarding the handling of ''clearly erroneous'' and other transactions. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.chx.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange states that its rules currently allow the Exchange to cancel a trade, or modify the terms of a trade, when the terms of the trade are determined to be ''clearly erroneous'' or when other circumstances (including a CHX systems problem) require that that action be taken for the maintenance of a fair and orderly market or the protection of investors and the public interest.[3] The Exchange notes that other exchanges have similar rules.[4]

The Exchange states that as it has gained experience in the operation of these rules, it has identified, and is now proposing, several changes to the rules' provisions.

First, the Exchange seeks to extend, from 15 to 30 minutes, the time for filing an initial written request for review of a potentially ''clearly erroneous'' trade. As part of this change, the Exchange would also eliminate the arguably duplicative requirement that a participant also notify the Exchange by telephone of its intent to seek review. Together, the Exchange believes that these changes would streamline the process for filing a review request under these rules.[5]

Additionally, the Exchange would establish specific thresholds for determining whether or not the terms of a transaction are eligible for review under the clearly erroneous rules. Under these thresholds, a trade would be found to be eligible for review if: (a) For a trade where the price per share is less than $1.00, the execution price is 20% or more away from the midpoint of the national best bid and offer (''NBBO''); or (b) for a trade where the price per share is equal to or greater than $1.00, the execution price is 10% or more away from the midpoint of the NBBO. The Exchange believes that these easily applied standards set reasonable thresholds for determining whether or not a transaction should be eligible for review.[6]

Another proposed change to the CHX's rules would eliminate one of the two levels of appeal that can be taken from an initial Exchange determination that the terms of a trade should be modified or that the trade should be cancelled.[7] Under the existing rule, the Exchange's initial decision may be appealed to a subcommittee of the Committee on Exchange Procedure and the subcommittee's decision may be appealed, in turn, to the full Committee on Exchange Procedure.[8] Through this filing, the Exchange proposes to eliminate the appeal to the full Committee. The Exchange believes that its proposal brings the Exchange's procedures in line with those in other markets.[9]

The Exchange amended its original filing to, among other things, include changes to Article 2, Rule 5, to ensure that this rule language is consistent with the changes proposed in Article 20; describe the composition of a subcommittee of the Committee on Exchange Procedure; and make other more minor adjustments to the rule text. Additional descriptions were added to the narrative, as appropriate, to address changes that were made to the rule text.

Finally, the Exchange would be given the discretion, in situations where it is acting on its own initiative to respond to systems disruptions or extraordinary market conditions or other circumstances, to determine that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. This determination would provide certainty to participants whose transactions were affected by decisions in these unusual situations.[10]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest enhancing, in certain circumstances, a participant's opportunity to make an initial request for review of a transaction he believes to be ''clearly erroneous'' and allowing the Exchange to more efficiently respond to requests that are made.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* CHX Rules, Article 20, Rule 10 (''Handling Clearly Erroneous Transactions'' and Rule 11 (''Systems Disruptions and Malfunctions'').

[4] *See, e.g.*, Nasdaq Rule 11890 (''Clearly Erroneous Transactions''); NYSE Arca Equities Rule 7.10 (''Clearly Erroneous Transactions'').

[5] The Exchange notes that extending the time for filing a complaint to 30 minutes is consistent with the rules of at least one other exchange. *See* Nasdaq Rule 11890(a)(2)(A)(ii) (giving members 30 minutes to submit written complaints for transactions that are executed before 9:30 a.m. (Eastern Time) and at or after 10 a.m. (Eastern Time)).

[6] These eligibility requirements would only apply to trades for regular-way settlement during regular trading hours. *See* Proposed CHX Article 20, Rule 10(b). Among other things, the application of these standards would give participants certainty about whether or not a particular transaction would be eligible for review under the clearly erroneous rules and would allow the Exchange to focus its resources on addressing situations where more significant harm has potentially occurred.

[7] *See* Proposed Article 20, Rule 10(d). The Exchange also would make corresponding changes to Article 2, Rule 5, relating to appellate rights arising from subcommittee decisions, to confirm that the decision of the subcommittee is final and that the Exchange's initial decision is not stayed pending any appeal to the subcommittee.

[8] A subcommittee of the Committee on Exchange Procedure is composed of members of the full Committee on Exchange Procedure.

[9] *See* Nasdaq Rule 11890(c) (providing for an appeal to the Market Operations Review Committee); NYSE Arca Rule 7.10(c)(2) (providing for an appeal to the Clearly Erroneous Execution Panel).

[10] The Exchange notes that other markets have included a similar provision in their rules. *See* Nasdaq Rule 11890(c)(1); NYSE Arca Rule 7.10(c)(2).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

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 not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange 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 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–CHX–2007–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2007–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. 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–CHX–2007–24 and should be submitted on or before February 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–831 Filed 1–17–08; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57140; File No. SR–CHX–2007–23]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving a Proposed Rule Change To Allow the Exchange To Open at 8:30 a.m. (Chicago Time) Without Regard to the Opening on the Primary Market

January 14, 2008.

I. Introduction

On October 2, 2007, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow the Exchange to open at 8:30 a.m. (Chicago time) without regard to the opening on the primary market. To accommodate its implementation schedule for this proposal, the Exchange extended the time for Commission action to January 14, 2008. The **Federal Register** published the proposed rule change for comment on November 1, 2007.[3] The Commission received no comments on the proposal.

II. Description

Under existing rules, the Exchange generally opens for trading in a security once the primary market has done so.[4] If the primary market announces that it will not open, or if the primary market has delayed its opening for reasons other than a regulatory halt, the rules permit two senior CHX officials to open the market.[5] The Exchange has proposed to amend its rules to permit trading to begin at 8:30 a.m. (Chicago time), except for trading in specified exchange-traded funds, which would begin at 7:20 a.m. (Chicago time).[6]

In conjunction with this change to the opening time of the Exchange's market, the Exchange also proposes two other changes to its rules. First, the Exchange would eliminate the opening cross order type. According to the Exchange, these cross orders, which are designed to execute at the primary market opening price, likely could no longer be effectively executed on the Exchange, once the proposed change is made to the time of the Exchange's opening.[7] In addition, the Exchange would add a new rule that prevents immediate or cancel (''IOC'') market orders from being accepted until either (i) the primary market in a security has opened trading in that security or (ii) two senior officers of the Exchange have determined that it is appropriate for the Exchange to accept IOC market orders.[8] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 56698 (October 24, 2007), 72 FR 61919.

[4] *See* CHX Rules, Article 20, Rule 1(b).

[5] *See* CHX Rules, Article 20, Interpretation and Policy .01.

[6] *See* Proposed CHX Rules, Article 20, Rule 1(b). The Exchange represents that Exchange-traded funds that begin trading at 7:20 a.m. would be announced, from time to time, by the Exchange in a customer service notification or other type of update. The only exchange-traded fund currently trading at 7:20 a.m. is the streetTRACKS® Gold Trust. Telephone conversation between Ellen Neely, President and General Counsel, CHX, Richard Holley III, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, and Sonia Trocchio, Special Counsel, Division, Commission (October 18, 2007).

[7] If the Exchange's systems allow its participants to begin trading before the primary market opens trading in a particular security, an opening cross order (which must execute at the primary market opening price) might violate the protected quotations of other markets. To avoid this potential result, the Exchange believes that it is appropriate to eliminate this order type.

[8] *See* Proposed CHX Rules, Article 1, Rule 2(n) and Article 20, Rule 4(b)(13). For purposes of this rule, another exchange would be considered to have opened for trading in a security when the first trade

Continued

Exchange states that this change is designed to prevent market orders from being executed at prices that are far away from the primary market opening price, when that market ultimately opens.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that a national securities exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Previously, the Exchange opened for trading in a security once the primary market had opened in that security. The Exchange now proposes to permit trading to begin at 8:30 a.m. Chicago time (9:30 a.m. Eastern time), without regard to the whether the primary market opened in that security. The Commission believes that this proposed change is consistent with the Act and does not raise any new regulatory issues. Further, the proposal is consistent with the definition of ''regular trading hours'' under Rule 600(b)(64) of the Act.[11] In addition, the Exchange has proposed a related change to eliminate the opening cross order type, which executes at the primary market opening price. As the Exchange will no longer link its opening to the primary market, the Commission believes that eliminating the cross order type is consistent with the Act as it eliminates the potential for those order types to violate the protected quotations of other markets. Finally, the Exchange's proposal to prevent IOC market orders from being accepted until the primary market opens in that security or two senior officers of the Exchange otherwise determine that it is appropriate to accept such orders is likewise consistent with the Act and the protection of investors and the public interest and should allow IOC market orders entered on CHX to be executed at prices that are closely related to the primary market opening price.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CHX–2007–23) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–860 Filed 1–17–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57133; File No. SR–FINRA–2007–038]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay Implementation of Certain Rule Changes Approved in SR–NASD–2005–146

January 11, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 2007, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) 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 FINRA. FINRA filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to delay the final implementation date of the rule changes approved in SR–NASD–2005–146,[6] which is currently scheduled for January 14, 2008, until 60 days after Commission approval of SR–NASD–2007–041.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. *Purpose*

On February 26, 2007, the Commission approved SR–NASD–2005–146, which, among other things, amended IM–2110–2[7] to expand the scope to apply to OTC equity securities and modify the minimum price-improvement standards for securities trading in decimals. The amendments relating to OTC equity securities and the minimum price-improvement provisions are scheduled to become effective on January 14, 2008.[8]

On June 27, 2007, FINRA filed a proposed rule change (SR–NASD–2007–041) to amend the minimum price-improvement standards in IM–2110–2 that were approved as part of SR–

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in that security occurs in that market on or after 8:30 a.m. The Exchange has stated that two senior officers of the Exchange might decide that it is appropriate to allow IOC market orders to be accepted if, for example, the primary market has announced that it will open later than expected, but other markets are open to provide additional liquidity. Telephone conversation between Ellen Neely, President and General Counsel, CHX, Richard Holley III, Senior Special Counsel, Division, Commission, and Sonia Trocchio, Special Counsel, Division, Commission (October 18, 2007).

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 242.600(b)(64).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] FINRA has requested that the Commission waive the 5 day pre-filing notice and 30-day operative delay required by Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii). *See* discussion *infra* Section III.

[6] *See* Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (order approving SR–NASD–2005–146). *See also* NASD Notice to Members 07–19 (April 2007) (announcing the effective date of the rule changes in SR–NASD–2005–146).

[7] Currently, IM–2110–2 generally prohibits a member from trading for its own account in an exchange-listed security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better.

[8] *See* Securities Exchange Act Release No. 56822 (November 20, 2007), 72 FR 67326 (November 28, 2007) (notice of filing and immediate effectiveness of SR–FINRA–2007–023).

NASD–2005–146.[9] FINRA has proposed to implement the changes in SR–NASD–2007–041 on the final implementation date of SR–NASD–2005–146. SR–NASD–2007–041 remains pending at the Commission.

To provide additional time for the Commission to consider and act upon the proposed changes in SR–NASD–2007–041 and, if SR–NASD–2007–041 is approved, allow firms sufficient time to make the required technological changes to implement the proposed changes in SR–NASD–2007–041, FINRA is proposing that the final implementation date of SR–NASD–2005–146 currently scheduled for January 14, 2008 be delayed until 60 days after Commission approval of SR–NASD–2007–041.[10] In doing so, the proposed minimum price-improvement provisions in SR–NASD–2007–041, if approved, would become effective on the final implementation date of SR–NASD–2005–146. FINRA will announce the final implementation date of SR–NASD–2005–146 and the effective date of the changes in SR–NASD–2007–041 in a *Regulatory Notice*. FINRA has filed the proposed rule change for immediate effectiveness. FINRA proposes to implement the proposed rule change as described herein.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA 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. FINRA believes that the proposed rule change is consistent with the provisions of the Act noted above because extending the final implementation date of SR–NASD–2005–146 will ensure that the Commission has adequate time to act on the proposed changes in SR–NASD–2007–041 and, if SR–NASD–2007–041 is approved, ensure firms have sufficient time to make the necessary changes to comply with the new price-improvement standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)[13] thereunder.[14]

A proposed rule change filed under Commission Rule 19b–4(f)(6)[15] normally does not become operative prior to thirty days after the date of filing. FINRA requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow FINRA to delay the implementation date of SR–NASD–2005–146 currently scheduled for January 14, 2008 until 60 days after Commission approval of SR–NASD–2007–041. The Commission believes that waiving the 30-delay operative date is consistent with the protection of investors and the public interest because it would allow FINRA to delay immediately the implementation date of SR–NASD–2005–146, which is currently scheduled to become operative on January 14, 2008. For these reasons, the Commission designates the proposed rule change as operative upon filing.[16]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–FINRA–2007–038 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–FINRA–2007–038. 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 FINRA. 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–FINRA–2007–038 and

[9] *See* File No. SR–NASD–2007–041.

[10] Certain other rule changes that were approved as part of SR–NASD–2005–146 became effective on July 26, 2007 and are not effected by this proposed rule change. See FINRA Member Alert dated June 20, 2007.

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] FINRA has requested that the Commission waive the requirement that it provide the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which FINRA filed the proposed rule change pursuant to Rule 19b–4(f)(6)(iii). The Commission hereby grants this request. *See* 17 CFR 240.19b–4(f)(6)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

should be submitted on or before February 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–829 Filed 1–17–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57142; File No. SR–NFA–2007–07]

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Amendments to Compliance Rules 2–7 and 2–30 and the Interpretive Notices Entitled ''NFA Compliance Rule 2–4: Confidentiality Language in Release Agreements,'' ''Compliance Rule 2–9: Enhanced Supervisory Requirements,'' ''Compliance Rule 2–9: Special Supervisory Requirements for Members Registered as Broker-Dealers Under Section 15(b)(11) of the Securities Exchange Act of 1934,'' ''NFA Compliance Rule 2–37: Fair Commissions,'' ''NFA Compliance Rules 2–7 and 2–24 and Registration Rule 401: Proficiency Requirements for Security Futures Products,'' and ''NFA Compliance Rule 2–30(b): Risk Disclosure Statement for Security Futures Contracts''

January 14, 2008.

Pursuant to Section 19(b)(7) of the Securities Act of 1934 (''Act''),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on December 7, 2007, National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been substantially prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC'').

NFA, on December 5, 2007, requested that the CFTC make a determination that review of the proposed rule change of NFA is not necessary. By letter dated December 17, 2007, the CFTC notified NFA of its determination not to review the proposed rule change.[3]

I. Self-Regulatory Organization's Description of the Proposed Rule Change

In July 2007, the New York Stock Exchange merged its member regulation, enforcement, and arbitration functions into National Association of Securities Dealers, Inc. (''NASD''), which then became the Financial Industry Regulatory Authority, Inc. (''FINRA''). Since several of NFA's rules and interpretive notices reference NASD, the amendments replace those references with references to FINRA.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. NFA 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

Section 15A(k) of the Act[4] makes NFA a national securities association for the limited purpose of regulating the activities of NFA members (''Members'') who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Act.[5] The amendments replace the references to the NASD with references to FINRA in rules and interpretive notices that apply to Members that are registered as security futures brokers or dealers under Section 15(b)(11).

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.[6] The proposed changes are nothing more than technical amendments to replace references to NASD with references to FINRA.

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will 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 of Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA did not publish the rule change to the membership for comment. NFA did not receive comment letters concerning the rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CFTC notified NFA of its determination not to review the proposed rule change.[7] The proposed rule change has become effective on December 17, 2007.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[8]

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–NFA–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–NFA–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

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] *See* letter from Lawrence B. Patent, Deputy Director, CFTC, to Thomas W. Sexton, III, General Counsel, NFA (''Letter'').

[4] 15 U.S.C. 78*o*–3(k).

[5] 15 U.S.C. 78*o*(b)(11).

[6] 15 U.S.C. 78*o*–3(k).

[7] *See* Letter, *supra* note 3.

[8] 15 U.S.C. 78s(b)(1).

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 NFA. 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–NFA–2007–07 and should be submitted on or before February 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–833 Filed 1–17–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57139; File No. SR–NYSE–2008–01]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to NYSE Rule 129 To Reflect the Changes to the NYSE's Gross FOCUS (Financial and Operational Combined Uniform Single Report) Fee That Commenced on January 1, 2008

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2008, the New York Stock Exchange LLC (''NYSE'' 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to amend, retroactively effective to January 1, 2008, NYSE Rule 129 to reflect the changes to the NYSE's gross FOCUS (Financial and Operational Combined Uniform Single Report) fee that commenced on that date. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend, retroactively effective to January 1, 2008, NYSE Rule 129 to reflect the reduction in gross FOCUS fees that will be charged to member organizations after that date.

In connection with the transfer of certain NYSE Regulation, Inc. (''NYSE Regulation'') functions to the Financial Industry Regulatory Authority, Inc. (''FINRA''), the Exchange filed with the Commission to reduce its gross FOCUS fees by 75%, effective January 1, 2008.[3] That proposal was effective on filing with the Commission.

As noted in that filing, the Exchange currently charges its member organizations a fee of $0.42 per $1,000 of gross revenues as reported by each member organization in its FOCUS report,[4] subject to minimum annual fees of $180.00 for member organizations that do not conduct a public business, $1,000 for introducing firms, and $2,000 for carrying firms and specialists. The Exchange allocates the FOCUS fees to NYSE Regulation to fund its performance of its regulatory activities with respect to member organizations.

Because FINRA now performs a substantial portion of the regulatory activities for NYSE member organizations, for the period July 31, 2007 through the end of 2007, the Exchange agreed to pay FINRA 75% of the gross FOCUS fees paid to the Exchange. Beginning January 1, 2008, the Exchange reduced its FOCUS fees, including the minimum fees, by 75%.

NYSE Rule 129 sets forth the gross FOCUS fee schedule and minimum annual fees, as described above. Because those fees were reduced effective January 1, 2008, to reflect those changes, the Exchange proposes to amend the text of NYSE Rule 129 to set forth the revised fee schedule, retroactively effective to January 1, 2008.

2. Statutory Basis

The Exchange states that the basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[5] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[9] 17 CFR 200.30–3(a)(73).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56181 (August 1, 2007), 72 FR 44206 (August 7, 2007) (SR–NYSE–2007–70) (''Release No. 34–56181'').

[4] FOCUS (Securities Exchange Act Form X–17A–5) is an acronym for Financial and Operational Combined Uniform Single Report. The report is filed periodically with the Commission pursuant to Securities Exchange Act Rule 17a–5, 17 CFR 240.17a–5.

[5] 15 U.S.C. 78f(b)(5).

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–NYSE–2008–01 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–NYSE–2008–01. 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–2008–01 and should be submitted on or before February 8, 2008.

IV. Commission Findings

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[6] and, in particular, the requirements of section 6 of the Act.[7] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with section 6(b)(4) of the Act,[9] which requires the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities. The Commission believes that the proposed rule change to amend NYSE Rule 129 to incorporate the reduced gross FOCUS fees is appropriate and consistent with the Act.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the proposal was published for comment in the **Federal Register**. This approval allows the NYSE to immediately update its rule to accurately reflect the revised gross FOCUS fees. The proposal to reduce the gross FOCUS fees was already published for comment,[10] the Commission received no comments on the earlier proposal, and interested persons were provided the opportunity to submit comments on an essentially identical proposal. For these reasons, the Commission finds good cause, consistent with section 19(b)(2) of the Act, to grant accelerated approval to the proposal.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2008–01) is hereby approved on an accelerated basis.[11]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–832 Filed 1–17–08; 8:45 am]

BILLING CODE 8011–01–P

[6] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Release No. 34–56181, *supra* note 3.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of a temporary, emergency amendment to sentencing guidelines and commentary.

SUMMARY: Pursuant to section 5(c) of the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007, Public Law 110–179, the Commission hereby gives notice of a temporary, emergency amendment to the sentencing guidelines and commentary. This notice sets forth the temporary, emergency amendment and the reason for amendment.

DATES: The Commission has specified an effective date of February 6, 2008, for the emergency amendment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The Commission must promulgate a temporary, emergency amendment to implement the directive in section 5(c) of the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007, Public Law 110–179, by February 6, 2008. The statutory deadline for the promulgation of the temporary, emergency amendment, in conjunction with the Commission's public meeting schedule (the promulgation of such amendments must occur in a public meeting), made it impracticable to publish a proposed temporary, emergency amendment in the **Federal Register** in order to provide an opportunity for public comment, and to publish the promulgated amendment not less than 30 days before the effective date. The Commission therefore had good cause not to publish a proposed amendment before promulgation of the amendment and not to publish the promulgated amendment 30 days or more before the specified effective date of the amendment. *See* 5 U.S.C. 553(b), (d)(3).

The temporary, emergency amendment set forth in this notice also may be accessed through the Commission's Web site at *http://www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (o), (p), (x); section 5(c) of Pub. L. 110–179.

Ricardo H. Hinojosa,

Chair.

1. *Amendment:* Section 2B1.1(b) is amended by adding at the end the following:

''(16) If the offense involved fraud or theft involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a declaration of a major disaster or an emergency, increase by 2 levels.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 3 by inserting after the paragraph that begins ''(III) Offenses Under 18 U.S.C. 1030.—'' the following:

''(IV) *Disaster Fraud Cases.*—In a case in which subsection (b)(16) applies, reasonably foreseeable pecuniary harm includes the administrative costs to any federal, state, or local government entity or any commercial or not-for-profit entity of recovering the benefit from any recipient thereof who obtained the benefit through fraud or was otherwise ineligible for the benefit that were reasonably foreseeable.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended by redesignating Notes 15 through 19 as Notes 16 through 20, respectively; and by inserting after Note 14 the following:

''15. Application of Subsection (b)(16).—

(A) Definitions.—For purposes of this subsection:

'Emergency' has the meaning given that term in 42 U.S.C. 5122.''.

'Major disaster' has the meaning given that term in 42 U.S.C. 5122.

The Commentary to § 2B1.1 captioned ''Background'' is amended by adding at the end the following:

''Subsection (b)(16) implements the directive in section 5 of Public Law 110–179.''.

Appendix A (Statutory Index) is amended by inserting after the line reference to 18 U.S.C. 1039 the following:

''18 U.S.C. 1040 2B1.1''.

Reason for Amendment: This amendment implements the emergency directive in section 5 of the Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007, Public Law 110–179. The directive, which requires the Commission to promulgate an amendment under emergency amendment authority by February 6, 2008, directs that the Commission forthwith shall—promulgate sentencing guidelines or amend existing sentencing guidelines to provide for increased penalties for persons convicted of fraud or theft offenses in connection with a major disaster declaration under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or an emergency declaration under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191) * * *.

Section 5(b) of the Act further requires the Commission to—

(1) Ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in subsection (a) and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) Assure reasonable consistency with other relevant directives and with other guidelines;

(3) Account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) Make any necessary conforming changes to the sentencing guidelines; and

(5) Assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

The amendment addresses the directive by creating a two-level enhancement that applies if the offense involved fraud or theft in connection with a declaration of a major disaster or emergency, as those terms are defined in 42 U.S.C. § 5122. In addition, the amendment modifies Application Note 3 to provide that for purposes of determining loss under subsection (b)(1), reasonably foreseeable pecuniary harm includes certain administrative costs in such cases.

[FR Doc. E8–889 Filed 1–17–08; 8:45 am]

BILLING CODE 2211–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2006–0096]

Social Security Ruling (SSR) 94–4p; Rescission of SSR 94–4p, Policy Interpretation Ruling; Title II of Social Security Act and Title IV of the Federal Mine Safety and Health Act of 1977: Waiver of Recovery of Overpayments—Notice of Appeal and Waiver Rights—Right to a Pre-Recoupment Oral Hearing Before Waiver Can Be Denied

AGENCY: Social Security Administration.

ACTION: Notice; correction.

SUMMARY: This document contains a correction to the notice of rescission of SSR 94–4p that was published in the **Federal Register** on January 11, 2008 (73 FR 2074). The effective date shown in one place in that notice was incorrect.

FOR FURTHER INFORMATION CONTACT: Robin Strauss, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7944 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at http://www.socialsecurity.gov.

SUPPLEMENTARY INFORMATION: The notice of rescission of SSR 94–4p that was published on January 11, 2008 (73 FR 2074) shows January 11, 2008 as the effective date in one place and February 11, 2008 in another place. However, this rescission was intended to be coordinated with the effective date of final rules that were also published on January 11, 2008 (73 FR 1970). The effective date of the final rules is February 11, 2008. Therefore, the effective date of the notice of rescission of SSR 94–4p is also February 11, 2008, and SSR 94–4p is obsolete and rescinded as of February 11, 2008.

Dated: January 14, 2008.

Paul Kryglik,

Acting Social Security Regulations Officer.

[FR Doc. E8–880 Filed 1–17–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 6065]

60-Day Notice of Proposed Information Collection: Agency Form DS–4127, NEA/PI Online Performance Reporting System (PRS), OMB Control Number 1405–XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* NEA/PI Online Performance Reporting System (PRS).
- *OMB Control Number:* none.
- *Type of Request:* New collection.
- *Originating Office:* NEA/PI.
- *Form Number:* DS–4127.
- *Respondents:* Recipients of NEA/PI grants.
- *Estimated Number of Respondents:* 70 respondents annually.
- *Estimated Number of Responses:* 280 per year.

• *Average Hours Per Response:* 20.
• *Total Estimated Burden:* 5600 hours per year.
• *Frequency:* Quarterly.
• *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATE(S): The Department will accept comments from the public up to 60 days from January 18, 2008.

ADDRESSES: You may submit comments by any of the following methods:
• *E-mail: HibbenBA@state.gov.*
• *Mail (paper, disk, or CD–ROM submissions):* Barbara Hibben, Acting Deputy Director, U.S. Department of State, Office of the Middle East Partnership Initiative (NEA/PI), Bureau of Near Eastern Affairs, NEA Mail Room—Room 6258, 2201 C St., NW., Washington, DC 20520.
• *Fax:* 202–647–8445
• *Hand Delivery or Courier:* 2430 E St., NW. (23rd and D St., NW.), Navy Hill—SA–4—Central, Second Floor, Washington, DC 20037.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Please direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to George Wilson, U.S. Department of State, Office of the Middle East Partnership Initiative (NEA/PI), Bureau of Near Eastern Affairs, NEA Mail Room—Room 6258, 2201 C St., NW., Washington, DC 20520, who may be reached on 202–776–8641 or at *wilsongr@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:
Since 2002, MEPI has obligated more than $430 million to over 250 organizations, who carry out more than 370 projects in support of political, economic, education and women's rights reform in 20 countries of the Middle East and North Africa. As a normal course of business and in compliance with OMB Guidelines contained in Circular A–110, recipient organizations are required to provide, and the U.S. State Department required to collect, periodic program and financial performance reports. The responsibility of the State Department to track and monitor the programmatic and financial performance necessitates a database that can help facilitate this in a consistent and standardized manner. The MEPI Performance Reporting System (PRS) enables enhanced monitoring and evaluation of grants through standardized collection and storage of relevant award elements, such as quarterly progress reports, workplans, results monitoring plans, grant agreements, financial reports, and other business information related to MEPI implementers. The PRS streamlines communication with implementers and allows for rapid identification of information gaps for specific projects.

Methodology:
Information will be entered into PRS electronically by respondents. Non-respondents will submit their quarterly reports on paper.

Additional Information:

Dated: December 20, 2007.

Barbara Hibben,

Acting Deputy Director, Bureau of Near Eastern Affairs, NEA/PI, Department of State.

[FR Doc. E8–901 Filed 1–17–08; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public notice: 6064]

60-Day Notice of Proposed Information Collection: U.S. Department of State Driver License and Tax Exemption Card Application; OMB Collection Number 1405–0105; Forms DS–1972, DS–1972D & DS–1972T

ACTION: Notice of request for public comments.

SUMMARY: The Department of Sate is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* U.S. Department of State Driver License and Tax Exemption Card Application.
• *OMB Control Number:* 1405–0105.
• *Type of Request:* Extension of a currently approved collection.
• *Originating Office:* Diplomatic Security/Office of Foreign Missions (DS/OFM).
• *Form Numbers:* DS–1972, DS–1972D, DS–1972T.
• *Respondents:* Foreign government representatives assigned to the United States.
• *Estimated Number of Respondents:* 350 foreign missions.
• *Estimated Number of Responses:* 21,284 responses (DS–1972: 6,385), (DS–1972D: 4,470), (DS–1972T: 10,249).
• *Average Hours Per Response:* DS–1972 (30 minutes), DS–1972D (20 minutes), DS–1972T (15 minutes).
• *Total Estimated Burden:* 7,275 hours.
• *Frequency:* On occasion.
• *Obligation to Respond:* Required to obtain or retain benefits.

The Department will accept comments from the public up to 60 days from date of publication in the **Federal Register**. You may submit comments by either of the following methods:
• *E-mail: OFMInfo@state.gov.*
• *Mail:* U.S. Department of State, Diplomatic Security, Office of Foreign Missions, 2201 C Street, NW., Room 2238, Washington DC, 20520.

You must include the DS form number, information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Attn: Jacqueline Robinson, Diplomatic Security, Office of Foreign Missions, 2201 C Street, NW., Room 2238, Washington DC, 20520, who may be reached on (202) 647–3416 or *OFMInfo@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed collection of information is necessary for the proper performance of our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The forms associated with OMB Collection Number 1405–0105 are means by which foreign missions in the United States

request the issuance of a driver license and/or a sales tax exemption card for foreign mission personnel and their dependents. The exemption from sales taxes and the operation of a motor vehicle in the United States by foreign mission personnel are benefits under the Foreign Missions Act, 22 U.S.C. 4301 *et seq.*, which must be obtained by foreign missions through the U.S. Department of State, Office of Foreign Missions (DS/OFM). The DS–1972, DS–1972D, and DS–1972T applications provide OFM with the necessary information required to administer the two benefits effectively and efficiently. Sales tax exemption is enjoyed under the provisions of international law but is granted on the bases of reciprocity. The administration of driver licenses at the national level helps the Federal Government identify operators who repeatedly receive citations. This also helps the Federal Government determine the necessary course of action that may be required against an individual's driving privilege. Accordingly, the Federal Government is able to provide consistency of enforcement to the diplomatic community on a national level through a uniform program. The respondents are foreign government representatives assigned to the United States.

Methodology: These applications/information collections are submitted by all foreign missions to the Office of Foreign Missions via the following methods: mail, personal delivery, and/or electronically.

Dated: December 27, 2007.

Claude Nebel,

Deputy Assistant Secretary, Bureau of Diplomatic Security, Office of Foreign Missions, Department of State.

[FR Doc. E8–904 Filed 1–17–08; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 6063]

Bureau of Economic, Energy, and Business Affairs; List of November 8, 2007, of Participating Countries and Entities (Hereinafter Known as ''Participants'') Under the Clean Diamond Trade Act of 2003 (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: In accordance with sections 3 and 6 of the Clean Diamond Trade Act of 2003 (Public Law 108–19) and section 2 of Executive Order 13312 of July 29, 2003, the Department of State is identifying all the Participants eligible for trade in rough diamonds under the Act, and their respective Importing and Exporting Authorities, and revising the previously published list of August 31, 2007 (Volume 72, Number 169, page 50436–7) to include Republic of Congo.

FOR FURTHER INFORMATION CONTACT: Sue Saarnio, Special Advisor for Conflict Diamonds, Bureau of Economic and Business Affairs, Department of State (202) 647–1713.

SUPPLEMENTARY INFORMATION: Section 4 of the Clean Diamond Trade Act (the ''Act'') requires the President to prohibit the importation into, or the exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme (KPCS). Under section 3(2) of the Act, ''controlled through the Kimberley Process Certification Scheme'' means an importation from the territory of a Participant or exportation to the territory of a Participant of rough diamonds that is either (i) carried out in accordance with the KPCS, as set forth in regulations promulgated by the President, or (ii) controlled under a system determined by the President to meet substantially the standards, practices, and procedures of the KPCS. The referenced regulations are contained at 31 CFR Part 592 (''Rough Diamonds Control Regulations'') (69 FR 56936, September 23, 2004).

Section 6(b) of the Act requires the President to publish in the **Federal Register** a list of all Participants, and all Importing and Exporting Authorities of Participants, and to update the list as necessary. Section 2 of Executive Order 13312 of July 29, 2003 delegates this function to the Secretary of State. Section 3(7) of the Act defines ''Participant'' as a state, customs territory, or regional economic integration organization identified by the Secretary of State. Section 3(3) of the Act defines ''Exporting Authority'' as one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate a Kimberley Process Certificate. Section 3(4) of the Act defines ''Importing Authority'' as one or more entities designated by a Participant into whose territory a shipment of rough diamonds is imported as having the authority to enforce the laws and regulations of the Participant regarding imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

List of Participants

Pursuant to section 3 of the Clean Diamond Trade Act (the Act), section 2 of Executive Order 13312 of July 29, 2003, and Delegation of Authority No. 294 (July 6, 2006), I hereby identify the following entities as of November 8, 2007, as Participants under section 6(b) of the Act. Included in this List are the Importing and Exporting Authorities for Participants, as required by section 6(b) of the Act. This list revises the previously published list of August 31, 2007 (Volume 72, Number 169 50436–7).

Angola—Ministry of Geology and Mines.
Armenia—Ministry of Trade and Economic Development.
Australia—Exporting Authority—Department of Industry, Tourism and Resources; Importing Authority—Australian Customs Service.
Bangladesh—Ministry of Commerce.
Belarus—Department of Finance.
Botswana—Ministry of Minerals, Energy and Water Resources.
Brazil—Ministry of Mines and Energy.
Canada—Natural Resources Canada.
Central African Republic—Ministry of Energy and Mining.
China—General Administration of Quality Supervision, Inspection and Quarantine.
Democratic Republic of the Congo—Ministry of Mines.
Republic of Congo—Ministry of Mines.
Croatia—Ministry of Economy.
European Community—DG/External Relations/A.2.
Ghana—Precious Minerals and Marketing Company Ltd.
Guinea—Ministry of Mines and Geology.
Guyana—Geology and Mines Commission.
India—The Gem and Jewellery Export Promotion Council.
Indonesia—Directorate General of Foreign Trade of the Ministry of Trade.
Israel—The Diamond Controller.
Ivory Coast—Ministry of Mines and Energy.
Japan—Ministry of Economy, Trade and Industry.
Republic of Korea—Ministry of Commerce, Industry and Energy.
Laos—Ministry of Finance.
Lebanon—Ministry of Economy and Trade.
Lesotho—Commissioner of Mines and Geology.
Liberia—Ministry of Lands, Mines and Energy.
Malaysia—Ministry of International Trade and Industry.
Mauritius—Ministry of Commerce.

Namibia—Ministry of Mines and Energy.
New Zealand—Ministry of Foreign Affairs and Trade.
Norway—The Norwegian Goldsmiths' Association.
Russia—Gokhran, Ministry of Finance.
Sierra Leone—Government Gold and Diamond Office.
Singapore—Singapore Customs.
South Africa—South African Diamond Board.
Sri Lanka—National Gem and Jewellery Authority.
Switzerland—State Secretariat for Economic Affairs.
Taiwan—Bureau of Foreign Trade.
Tanzania—Commissioner for Minerals.
Thailand—Ministry of Commerce.
Togo—Ministry of Mines and Geology.
Turkey—Istanbul Gold Exchange.
Ukraine—State Gemological Centre of Ukraine.
United Arab Emirates—Dubai Metals and Commodities Center.
United States of America—Importing Authority—United States Bureau of Customs and Border Protection; Exporting Authority—Bureau of the Census.
Venezuela—Ministry of Energy and Mines.
Vietnam—Ministry of Trade.
Zimbabwe—Ministry of Mines and Mining Development.

This notice shall be published in the **Federal Register**.

John D. Negroponte,

Deputy Secretary of State, Department of State.

[FR Doc. E8–900 Filed 1–17–08; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Approval of Finding of No Significant Impact (FONSI) on a Short Form Environmental Assessment (EA); Abraham Lincoln Capital Airport; Springfield, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Approval of Documents.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of the approval of a Finding of No Significant Impact (FONSI) on an Environmental Assessment for proposed Federal actions at Abraham Lincoln Capital Airport, Springfield, Illinois. The FONSI specifies that the proposed federal actions and local development projects are consistent with existing environmental policies and objectives as set forth in the National Environmental Policy Act of 1969 and will not significantly affect the quality of the environment.

A description of the proposed Federal actions is: (a) To issue an environmental finding to allow approval of the Airport Layout Plan (ALP) for the development items listed below.

The items in the local airport development project are to: Acquire approximately 40 acres of residential land in fee simple title, including relocation assistance; demolish residential structures on acquired property; construct, light, and mark 1,000-foot northwesterly extension to Taxiway Bravo and connecting taxiway, including grading and drainage; clear and grub taxiway construction area; obtain borrow for Taxiway Bravo extension; implement declared distance concepts for Runway 13/31 to increase the usable length from 7,000 feet to a maximum usable length of 7,400 feet, including remarking; remove obstructions in Runway 13 approach; install/replace runway signage for Runway 13 Precision Approach Path Indicator (PAPI); relocate Runway 13 windcone; replace existing Medium Intensity Runway Lights (HIRLs) with High Intensity Runway Lights (HIRLs) on Runway 13/31; relocate Runway 31 windcone out of the Runway Safety Area; adjust vertically the Runway 31 Medium Intensity Approach Lighting System with Runway Alignment Indicator Lights (MALSR) threshold bar; install new Runway 13/31 homeruns; construct 200-foot by 200-foot blast pad to Runway 31; replace Runway 13/31 surface sensor system; upgrade airfield vault regulators; upgrade Airport Traffic Control Tower (ATCT) airfield lighting control system; and replace airport rotating beacon.

Copies of the environmental decision and the Short Form EA are available for public information review during regular business hours at the following locations:

1. Abraham Lincoln Capital Airport, 1200 Capital Airport Drive, Springfield, IL 62707.

2. Division of Aeronautics-Illinois Department of Transportation, One Langhorne Bond Drive, Capital Airport, Springfield, IL 62707.

3. Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Amy B. Hanson, Environmental Protection Specialist, Federal Aviation Administration, Chicago Airports District Office, Room 320, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Ms. Hanson can be contacted at (847) 294–7354 (voice), (847) 294–7046 (facsimile) or by E-Mail at *amy.hanson@faa.gov.*

Issued in Des Plaines, Illinois on December 21, 2007.

James G. Keefer,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 08–166 Filed 1–17–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Gillespie County Airport, Fredericksburg, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Gillespie County Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before February 19, 2008.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address:

Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Roger Hansen, Airport Manager, at the following address:

101 West Main St., Unit #9, Fredericksburg, Texas 78624.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cooks, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650, Telephone: (817) 222–5608, e-mail: *Steven.Cooks@faa.gov*, fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request

to release property at the Gillespie County Airport under the provisions of the AIR 21.

The following is a brief overview of the request:

The City of Fredericksburg owns 7.73 acre tract of land that adjoins airport property. The airport has 5.77 acre tract of land that adjoins a City partk. The County and the City propose to exchange these two tracts as being advantageous to both. The land was acquired by the County of Gillespie in 1946 using public funds derived through a bond issue voted in 1945. The property to be released will be traded to allow both entities future development. Any person may inspect the reqeust in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Gillespie County Airport, telephone number (830) 990–5764.

Issued in Fort Worth, Texas on January 9, 2008.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 08–168 Filed 1–17–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Pearland Regional Airport, Pearland, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Pearland Regional Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before February 19, 2008.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address:

Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Andy Rivera, Airport Director/Manager, at the following address:

17622 Airfield Lane, Pearland, Texas 77581.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cooks, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650, Telephone: (817) 222–5608, e-mail: *Steven.Cooks@faa.gov*, fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Pearland Regional Airport under the provisions of the AIR 21.

The following is a brief overview of the request:

Clover Acquisition Corporation, the owner of Pearland Regional Airport requests the release of two tracts of airport property. One tract of 0.472 acres of non-aeronautical airport property will be exchanged for 0.472 acres of adjacent private property that lies within the Runway Protection Zone of Runway 14–32. The second tract of 0.894 acres of non-aeronautical airport property will be sold. The land was acquired through a land acquisition grant from the Federal Aviation Administration Airport Improvement Program. Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Pearland Regional Airport, telephone number (281) 481–7751.

Issued in Fort Worth, Texas on January 7, 2008.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 08–167 Filed 1–17–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixteenth Meeting: RTCA Special Committee 207/Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 207 Meeting, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 207, Airport Security Access Control Systems.

DATES: This meeting will be held January 16, 2007 from 9:30 a.m.–4 p.m.

ADDRESSES: This meeting will be held at RTCA, Inc., Conference Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for a Special Committee 207 meeting. The agenda will include:

January 16

- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks).
- Review of Meeting Summary.
- Review of Workgroup Leaders Meetings.
- Workgroup Reports
  - Workgroup 2: Introduction.
  - Workgroup 3: Local Identity Management System.
  - Workgroup 4: Physical Access Control.
  - Workgroup 5: Intrusion Detection Systems.
  - Workgroup 6: Video Systems.
  - Workgroup 7: Security Operating Center.
  - Workgroup 8: Communications Infrastructure.
  - Workgroup 9: General Considerations.
  - Workgroup 10: Appendices.
- Closing Plenary Session (Other Business, Establish Agenda, Date and Place of Following Meetings.)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 27, 2007.

Franccisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 08–165 Filed 1–17–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership Availability in the National Parks Overflights Advisory Group Aviation Rulemaking Committee—Representatives of Environmental Concerns

ACTION: Notice.

SUMMARY: The National Park Service (NPS) and the Federal Aviation Administration (FAA), as required by the National Parks Air Tour Management Act of 2000, established the National Parks Overflights Advisory Group (NPOAG) in March 2001. The NPOAG was formed to provide continuing advice and counsel with respect to commercial air tour operations over and near national parks. This notice informs the public of two vacancies (due to completion of membership on May 30, 2008), on the NPOAG (now the NPOAG Aviation Rulemaking Committee (ARC)) for representatives of environmental concerns and invites interested persons to apply to fill the vacancies. A previous notice was published in the **Federal Register** on October 29, 2007, but only drew a limited response. This notice is being re-published to identify additional qualified candidates.

DATES: Persons interested in serving on the NPOAG ARC should contact Mr. Barry Brayer in writing and postmarked or e-mailed on or before February 15, 2008. If you had previously submitted a request to be considered for these two NPOAG ARC positions in response to the October 29, 2007 notice, you do not need to re-submit your request.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, AWP–1SP, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone: (310) 725–3800, e-mail: *Barry.Brayer@faa.gov* or Karen Trevino, National Park Service, Natural Sounds Program, 1201 Oakridge Dr., Suite 100, Fort Collins, CO, 80525, telephone (970) 225–3563, e-mail: *Karen_Trevino@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

The advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Members of the advisory group may be allowed certain travel expenses as authorized by section 5703 of Title 5, United States Code, for intermittent Government service.

By FAA Order No. 1110–138, signed by the FAA Administrator on October 10, 2003, the NPOAG became an Aviation Rulemaking Committee (ARC). FAA Order No. 1110–138, was amended and became effective as FAA Order No. 1110–138A, on January 20, 2006.

The current NPOAG ARC is made up of one member representing general aviation, three members representing the air tour industry, four members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG ARC are: Heidi Williams, Aircraft Owners and Pilots Association; Alan Stephen, fixed-winged air tour operator representative; Elling Halvorson, Papillon Airways, Inc.; Matthew Zuccaro, Helicopters Association International; Chip Dennerlein, Siskiyou Project; Greg Miller, American Hiking Society; Mark Peterson, National Audubon Society; Don Barger, National Parks Conservation Association; Rory Majenty, Hualapai Nation; and Richard Deertrack, Taos Pueblo.

Public Participation in the NPOAG ARC

In order to retain balance within the NPOAG ARC, the FAA and NPS invite persons interested in serving on the ARC to represent environmental concerns, to contact Mr. Barry Brayer (contact information is written above in **FOR FURTHER INFORMATION CONTACT**.) Requests to serve on the ARC must be made to Mr. Bryer in writing and postmarked or e-mailed on or before February 15, 2008. The request should indicate whether or not you are a member of an association or group related to environmental issues or concerns or have another affiliation with issues relating to aircraft flights over national parks. The request should also state what expertise you would bring to the NPOAG ARC as related to environmental concerns. The term of service for NPOAG ARC members is 3 years.

Issued in Hawthorne, CA on January 3, 2008.

William C. Withycombe,

Regional Administrator, Western-Pacific Region.

[FR Doc. 08–163 Filed 1–17–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket FAA–2007–29320]

Operating Limitations at John F. Kennedy International Airport; Order Limiting Scheduled Operations at John F. Kennedy International Airport

I. Introduction

This Order establishes a temporary limitation on the number of scheduled operations at John F. Kennedy International Airport (JFK). The Acting Administrator of the Federal Aviation Administration (FAA) is issuing this Order as a result of a persistent number of flights above capacity at JFK during the peak operating hours. We intend this Order to relieve the substantial inconvenience to the traveling public caused by excessive congestion-related flight delays at the airport, which magnify as they spread through the National Airspace System. Among other things, this Order will reduce the average length of delays and provide for a more efficient use of the nation's airspace. This Order takes effect at 6 a.m., Eastern Time, on March 30, 2008, and will expire at 11:59 p.m., Eastern Time, on October 24, 2009.

The FAA previously determined that a limit on scheduled operations is necessary to address the increased level of flights over the past two years and, in particular, flights added during the peak afternoon and evening hours. These additional flights resulted in

summer 2007 schedules well in excess of the airport's optimal capacity. The limits apply to all air carrier and foreign air carrier scheduled operations, excluding helicopters, from 6 a.m., Eastern Time, through 10:59 p.m., Eastern Time. The FAA will soon issue a proposal to establish limits on unscheduled flights at JFK during the same hours and a system to allocate the available reservations.

This Order follows the conclusion of a scheduling reduction meeting conducted by the FAA with air carriers and the Port Authority of New York and New Jersey (PANYNJ) under the FAA's authority in 49 U.S.C. 41722. he 15 air carriers that attended the meeting also met individually with the FAA to review their schedules. In addition to the meeting's collective and individual sessions, the FAA invited all interested individuals, organizations, and business entities to file their written views in the public docket associated with this proceeding. This Order is enforceable under the FAA's civil penalty authority.

II. Background

The U.S. Government has exclusive sovereignty over the airspace of the United States.[1] Under this broad authority, Congress has delegated to the Administrator extensive and plenary authority to ensure the safety of aircraft and the efficient use of the nation's navigable airspace. In this regard, the Administrator is required to assign the use of navigable airspace by regulation or order under such terms, conditions and limitations as he or she may deem necessary to ensure its efficient use.[2] The Administrator may modify or revoke an assignment when required in the public interest.[3] The FAA interprets its statutory directive to act in the public interest as implicitly applying to any decision by the FAA to assign the efficient use of the navigable airspace. Furthermore, in carrying out the Administrator's safety responsibilities under the statute, the Administrator must consider controlling the use of the navigable airspace and regulating civil operations in that airspace in the interest of the safety and efficiency of those operations.[4]

The FAA interprets its broad statutory authority to manage ''the efficient use of airspace'' to encompass its management of the nationwide system of air commerce and air traffic control. On a daily basis, that system regularly transports millions of passengers, thousands of tons of cargo, and millions of pieces of mail. The FAA believes that ensuring the efficient use of the airspace means that it must take all necessary steps to prevent extreme congestion at an airport from disrupting or adversely affecting the overall air traffic system for which the FAA is responsible. Inordinate delays at a single airport of the sort experienced at JFK can have a crippling effect on other parts of the system, causing untold losses in time and money for individuals and businesses, as well as the carriers at JFK and throughout the country.

The FAA's role in relieving congestion at JFK is not a recent phenomenon. In 1968, the FAA issued the High Density Rule (HDR), designating JFK a high density traffic airport and limiting the number of takeoffs and landings at the airport, effective April 27, 1969.[5] Under the HDR, the FAA required carriers to hold a reservation, which came to be known as a ''slot,'' for each takeoff or landing under instrument flight rules at the high density traffic airports.[6] The HDR remained in effect at JFK for nearly four decades, during which aircraft operations at JFK were limited for the five hours of peak demand—3 p.m. through 7:59 p.m., Eastern Time.

In April 2000, Congress began phasing out the HDR at certain airports, including JFK, which was no longer subject to the HDR after January 1, 2007.[7] The elimination of the HDR at JFK has allowed increased scheduling during the peak hours, continuing a trend of increased operations at JFK in recent years. However, capacity has not increased commensurate with the flight increases. In addition, JFK has evolved from an airport that historically served primarily international markets and the associated domestic feeder service into an airport that now also provides significantly more domestic service. There has more recently been an increasing emphasis on connecting traffic that is typical of hub airports, as well as an increased focus on origin and destination traffic.

As a result of these changes at JFK, carriers have significantly increased their scheduled operations throughout the day, and demand exceeds the airport's capacity during some periods. For example, from February 2007 through July 2007, JFK's average actual airport capacity was 81 operations per hour. The scheduled demand during the busiest hour, 4:00 p.m., was over 110 arrivals and departures during summer 2007. Adjacent hours had fewer scheduled flights, with total operations numbering from the mid-80s to mid-90s, but they were still above the average hourly runway capacity. As a result, aircraft were delayed until they could be accommodated safely within the available capacity.

In addition, the relatively pronounced arrival and departure banks that historically characterized JFK's afternoon and evening transatlantic operations are now supplanted by mixed arrivals and departures during peak hours. Although JFK has four runways, the airport is limited to, at most, a three-runway configuration due to the shared airspace in the New York area. JFK achieves maximum efficiency using either two arrival runways and one departure runway or two departure runways and one arrival runway. The recent mixing of arrivals and departures throughout the day, however, reduces the efficiency of predominantly arrival or departure runway configurations. Although air traffic control procedural and runway use plans adopted in early 2007 have increased JFK's aircraft throughput, especially for departures, they do not provide a capacity increase that will accommodate the current peak period demand.

The increase in scheduled operations at JFK has had a profound effect on the delays that travelers have experienced. During fiscal year 2007, the average daily operations at JFK increased 21% over fiscal year 2006. Corresponding to the increased operations, on-time performance and other delay metrics have declined year over year. The on-time arrival performance at JFK, which is defined as arrival at the gate within 15 minutes of the scheduled time, declined from 68.5% in fiscal year 2006 to 62.19% in fiscal year 2007. On-time arrivals during the peak travel months of June, July and August declined from 63.37% in 2006 to 58.53% in 2007 while on-time departures declined from 67.49% to 59.89%. For the entire fiscal year, the average daily arrival delays exceeding one hour increased by 87% over fiscal year 2006 levels. Taxi out delays, which measure the time that aircraft wait prior to departing the runway, increased by 15%. Taxi out delays in the evening departure periods frequently exceeded an hour in

[1] 49 U.S.C. 40103(a).

[2] 49 U.S.C. 40103(b)(1), as previously codified in 49 U.S.C. App. § 307(a). Title 49 was recodified by Pub. L. 103–222, 108 Stat. 745 (1994). The textual revisions were not intended to result in substantive changes to the law. The recodification stated that the words in § 307(a) ''under such terms, conditions, and limitations as he may deem'' were omitted as surplus. H. Rpt. 103–180 (103d Cong., 1st Sess. 1993) at 262.

[3] *Id.*

[4] 49 U.S.C. 40101(d)(4).

[5] 33 FR 17896 (1968). The FAA codified the rules for operating at high density traffic airports in 14 CFR part 93, subpart K.

[6] *See, e.g.*, 14 CFR 93.125 (2004).

[7] 49 U.S.C. 41715(a).

duration. At the same time, U.S. and foreign air carriers have continued to announce new flights for JFK throughout the day, including during the most oversubscribed hours.

The increased congestion and delays at JFK have had an adverse effect on other airports in the region and on the National Airspace System. For instance, Newark Liberty International Airport and LaGuardia Airport, which share airspace with JFK, have consistently been among the nation's most delay-prone airports. The recently approved airspace redesign plan for the New York/New Jersey/Philadelphia metropolitan area [8] documents the costs and far-reaching impacts of delays that originate from this area.

The FAA, working with the airport operator, carriers, and other customer representatives, has begun to implement a number of short-term initiatives to improve the efficiency of airport operations and the air traffic control system, especially during periods of adverse weather when the effects of overscheduling are more pronounced. The FAA's recently concluded New York Aviation Rulemaking Committee examined congestion issues in the New York area and considered a list of over 77 initiatives that could improve operations in the region, including some that could apply to JFK. Moreover, airspace redesign will open additional arrival and departure routes in the New York area to reduce delays and congestion. These measures alone, however, are not expected to provide sufficient near-term gains to accommodate the peak hour schedules at JFK's current or forecast levels of demand.

III. The Decision To Convene a Scheduling Reduction Meeting

When Congress began phasing out the HDR at JFK in 2000, it emphasized that it did not intend to limit the FAA's overall authority, including its authority over ''the movement of air traffic.'' [9] More recently, in December 2003, Congress specifically authorized the Secretary of Transportation to ask U.S. air carriers to meet with the FAA to discuss flight reductions at severely congested airports to reduce overscheduling and flight delays during peak operating hours.[10] Under this authority, the FAA's Acting Administrator found in September 2007 that such a meeting was necessary with respect to JFK to reduce overscheduling and flight delays during peak hours of operation. The Secretary of Transportation determined in October 2007 that a meeting was necessary to meet a serious transportation need or to achieve an important public benefit.

Through a notice issued October 16, 2007, and published in the **Federal Register**, the FAA invited all U.S. scheduled air carriers and the PANYNJ to attend the scheduling reduction meeting, commencing October 23. The FAA also invited all interested persons to submit information on the subject of overscheduling at JFK, including any data and their views, to a public docket for the FAA's consideration in issuing this Order.

IV. Determination of Operational Targets

The statute authorizing the Administrator to conduct a scheduling reduction meeting requires the FAA to establish operational targets for the efficient scheduling of the airport. In identifying this number, the FAA reviewed JFK's hourly operations over a two-year period, from July 2005 through July 2007. The FAA assigned to each hour the higher value of the actual aircraft throughput or the number of arrivals and departures that the air traffic control personnel identified as achievable in a given hour. As a result, the FAA accepted the higher number when the airport's performance exceeded expectations, as well as when the airport's potential capacity exceeded demand. Over the entire period that we reviewed, the higher of JFK's actual or air traffic control declared capacity averaged 77 hourly operations. We further noted, however, that the average steadily increased over the evaluated period. During the first year, from July 2005 through June 2006, the airport had an average adjusted capacity of 74 hourly operations. Over the final six months of the period—February 2007 through July 2007—the airport's average adjusted capacity increased to 81 hourly operations.

On October 19, 2007, the FAA announced its operational targets for the meeting. The announced total operational target was 80 operations per hour, except from 3 p.m. through 7:59 p.m., when the target was identified as 81 hourly operations. In an effort to smooth the operations within each hour, the targeted 30-minute maximum was 44 operations and the 15-minute maximum was 24 operations. In addition, because the best runway configurations at JFK offer either two arrival runways and one departure runway or two departure runways and one arrival runway, we identified that the mix of arrival and departure demand is important to achieve maximum aircraft throughput. Therefore, additional limits on arrivals and departures were targeted to balance the demand, with the number of arrivals or departures not to exceed 53 in any 60-minute period, 29 in any 30-minute period, or 16 in any 15-minute period.

The proposed targets for the scheduling discussions would apply to operations from 6 a.m. through 9:59 p.m., Eastern Time, daily. The targets included all scheduled operations and up to four unscheduled operations per hour. In applying the targets, the FAA decided that regularly conducted air carrier flights, such as cargo and charter flights, would be considered scheduled operations even if they do not appear in the Official Airline Guide.

V. Meetings With the U.S. Air Carriers

The FAA convened the scheduling reduction meeting with the U.S. air carrier participants and representatives of the airport operator on October 23, and the meeting continued on October 24. In total, the FAA had separate meeting sessions over the two days with 15 air carriers and with the PANYNJ. Additional in-person and telephonic meeting sessions took place on November 16 and December 11. Representatives of the Department of Justice's Antitrust Division monitored the joint and individual meeting sessions of the scheduling reduction meeting. In addition, the in-person and telephonic sessions were transcribed.[11] At these meetings, the FAA requested the carriers provide whatever information and opinion they deemed relevant to the FAA's ultimate decision; additionally, the FAA made clear its intention to take prompt action immediately following the sessions' conclusion to establish flight limits that would apply to all carriers and incorporate any positive schedule reductions or adjustments by U.S. carriers into a binding and final agency order.

During the individual air carrier sessions, American Airlines, Delta Air Lines, and JetBlue Airways, which together now account for approximately 75% of the total operations at JFK, withdrew the schedule increases that they proposed for summer 2008 during the airport's peak hours of 3 p.m. through 7:59 p.m. They also retimed operations from those hours, in some

[8] The Record of Decision implementing the New York/New Jersey/Philadelphia Metropolitan Area Airspace Redesign was issued September 5, 2007 and may be found at *http://www.faa.gov*.

[9] 49 U.S.C. 41715(b).

[10] 49 U.S.C. 41722(a).

[11] The FAA has not yet formally adjourned the meeting. In the event that further meeting sessions are required, it is anticipated that this may occur closer to the March 30, 2008, effective date of this order.

cases below the levels that they operated during summer 2006. Other participants were agreeable to retiming some scheduled operations to reduce scheduling peaks and to produce a more efficient overall schedule. Because the summer 2007 schedules already exceed the announced targets during some hours, proposed new operations could not be accommodated at those times. The FAA offered alternative hours when the airport had capacity, however, to the air carriers seeking to retime previously conducted operations or to add new flights to their summer 2008 schedules.

U.S. and foreign air carriers, the PANYNJ, and other interested parties were also invited by **Federal Register** notice to provide whatever information and opinion they deemed relevant to the FAA's ultimate decision. The **Federal Register** notice made clear the FAA's intention to take prompt action immediately following the sessions' conclusion to establish flight limits that would apply to all carriers and incorporate any positive schedule reductions or adjustments by U.S. air carriers into a binding and final agency order. Having considered the results of these sessions and the extensive information received during them and through the public docket, the Acting Administrator has determined that it is in the public interest to take immediate action to implement the various scheduling reductions and adjustments offered to the FAA.

VI. Summary of the Information Received

A. Revised Hourly Schedule Limitations

As discussed earlier in this Order, the FAA proposed 15-, 30-, and 60-minute scheduling targets for JFK that would have provided for considerable delay reduction over the summer 2007 levels. The FAA based these targets primarily on recent airport runway throughput and our delay reduction goals. Several air carriers and the PANYNJ stated during the scheduling reduction meeting that the targets were too low, would be overly restrictive, and would result in underutilization of the airport's capacity and infrastructure. A number of interested parties filed similar views in the public docket.

The FAA ultimately has agreed to accept schedules that include fewer reductions during some peak hours from the historic summer 2007 operations and exceed the 15-, 30-, and 60-minute targets in some periods. For the purpose of the initial summer 2008 allocation, we have accepted some scheduled operations above our proposed limits in recognition of the voluntary nature of the scheduling reduction meeting and in expectation of future schedule adjustments. In particular, we recognize that carriers have been increasing the point-to-point or block time of peak hour flights to account for delays experienced on a regular basis. With improved operational performance, carriers will likely seek to reduce block time, which could affect the currently allocated times. The FAA expects that, over time, some periods with Operating Authorizations currently above our proposed limits will be adjusted to other times.

The modeled delays for the currently proposed schedules will be a significant improvement over the proposed summer 2008 schedules that the carriers filed with the FAA in October 2007, under which delays could have increased by up to 150 percent over the summer 2007 levels. The accepted levels include an average of 82 to 83 operations by U.S. and foreign air carriers in certain hours. At the same time, about 100 new operations will be accommodated throughout the day. With these new flights and slightly higher scheduling targets, the modeled levels of delay are higher than those modeled for the proposed targets against the summer 2007 baseline schedules. Even so, the duration of the delays will not be as severe as those experienced in summer 2007 due to more evenly distributed demand in summer 2008.

While additional delay reduction benefits were possible using 15 minute targets, the FAA has decided to accept the proposed schedules and allocate Operating Authorizations in 30 minute increments. The FAA will continue to work with carriers to smooth their schedules and to adjust the timing of arriving and departing flights within the allocated times. It is possible this smoothing process could be hindered by a carrier assessing a relative ''value'' to a specific 15 minute time periods rather than seeking to improve the airports operations. The FAA believes allocating the authorizations in 30 minute increments will assist in smoothing actual operations. The FAA record of Operating Authorizations reflecting carrier schedules for summer 2008 are reflected in the appendix to this Order.

We will also closely monitor the efficiency gains and the reduction in delay from the implementation of airspace redesign and other air traffic control or airport operational changes in order to ensure that our scheduling limits reflect fully the available capacity.

B. Operational Flexibility and Future Airport Growth

Based on the FAA's experience with capacity-constrained airports, we anticipate that U.S. and foreign air carriers may occasionally need to modify their schedule times for operational or other reasons while this Order is in effect. Accordingly, we acknowledge that this Order should provide a mechanism through which such carriers can modify their schedules.

Given the near-saturation of the airport's peak operational hours, however, it is also essential that any schedule adjustment preserves the stabilizing effect of the operational limits in this Order. Therefore, this Order establishes three means through which U.S. and foreign air carriers can change an initial allocation of an Operating Authorization within the periods from 6 a.m. through 10:59 p.m.

First, because it is necessary to evaluate the effect of any proposed schedule change, a U.S. or foreign air carrier must obtain the Administrator's written approval before making a schedule change that would be outside the 30-minute window of the allocated Operating Authorization.

If we determine that the schedule change will not adversely affect congestion at JFK, the FAA will approve it. The FAA does not expect to approve schedule changes that would add flights above the accepted level of 81 operations in a given hour. Because the FAA wished to maximize the reduction in delays while accommodating carriers' need for flexibility, the FAA anticipates that it would approve schedule changes that bring the overall number of flights in any given hour down to or below 81.

Second, if the FAA is unable to approve a proposed schedule change, a U.S. or foreign air carrier may still achieve the scheduling change by trading Operating Authorizations with another carrier. Before any such trade becomes final, the carriers must obtain the Administrator's written approval. Once again, if the Administrator or his delegate determines that the trade will not increase congestion at JFK, the FAA will approve it.

Third, in addition to the permitted trades of Operating Authorizations among U.S. or foreign air carriers, the FAA will permit the leasing of the Operating Authorizations assigned under this Order, provided that any lease does not survive this Order's expiration. The carriers may offer or accept any form of consideration in a lease transaction negotiated under this Order. However, this Order is not

intended to create a long-term solution to congestion at JFK. Because the Operating Authorizations established under this Order do not create long-term rights at JFK, the FAA will not allow lease transactions that assume that the carrier leasing an Operating Authorization will acquire any right to continue operating flights after this Order expires. Because of the short-term nature of the Order, permanent sales, purchases, or transfers of Operating Authorizations will not be permitted. In addition, in order to lease an Operating Authorization, a carrier must have actually used the authorization to conduct flights into and out of JFK. Otherwise a carrier could simply choose to never operate a flight that it had represented to the FAA in the scheduling reduction meetings it intends to conduct.

In the event that any new capacity is realized at JFK during the duration of this Order, several oral requests and three written submissions proposed that the FAA should offer the new capacity first to any air carrier that reduced its schedule at JFK through the scheduling reduction meeting process. In responding to these requests, it should be noted that no air carrier reduced its overall number of operations at JFK during the constrained hours of 6 a.m. through 10:59 p.m. Instead, to the extent that air carriers retreated from their summer 2007 schedules during some hours to the more manageable levels that the FAA identified, the air carriers universally shifted operations to other hours. Moreover, in many instances, air carriers added still more scheduled operations. As a result, the schedule that this Order establishes adds more than 100 daily scheduled operations to the number previously offered at JFK through the unconstrained summer 2007 carrier schedules.

Under the scheduling reduction process, no carrier reduced operations at JFK from its summer 2007 levels, and total operations at the airport will actually increase during summer 2008. In addition, the FAA will intend to maximize passenger throughput during the most congested hours of the day by proposing to restrict unscheduled service, which effectively raises the cap for scheduled operations during those hours.

New capacity is defined as any capacity above and beyond 81, other than those Operating Authorizations above that level allocated under this Order. As new capacity becomes available, or as allocated Operating Authorizations are returned to the FAA, the FAA plans to lease that capacity. Capacity returned to the FAA as a function of this Order's use-or-lose provision or as a result of a carrier ceasing operations at JFK would also be leased by the FAA, but we would not withdraw existing capacity from any carrier for leasing purposes. We anticipate that each lease will be for a period of five years. Leases will be issued pursuant to an auction, with the highest responsive bidder being awarded the lease. Auction procedures will be consistent with our international obligations. Foreign air carriers will be eligible to bid on leases. We will provide additional information about leasing procedures and the relevant statutory authorities before conducting any auction.

C. Effect on Limited Incumbents and New Entrants

Three air carriers (Eos Airlines, Global Aero Logistics, and Virgin America) and two associations (the Air Carrier Association of America and the National Air Carrier Association) observed that a temporary cap on operations at JFK will tend to suppress the growth of new entrant and limited incumbent air carriers. Virgin America, in particular, proposed that the FAA should reserve 15 daily roundtrips (a total of 30 operations) for each air carrier during the restricted hours at JFK.

Throughout the scheduling reduction process, and during our review of all the schedule requests of U.S. and foreign air carriers, the FAA sought a solution that is fair to all the carriers, a subset of which is the carriers that provide a small number of daily operations at JFK. Ultimately, however, a successful conclusion required the FAA to reduce a summer 2007 spike in scheduled operations in the 8 a.m. hour and during the period from 3 p.m. through 7:59 p.m.[12] During the process, the FAA was sensitive to the proportionally greater importance a single operation can have to a carrier that operates fewer overall flights. As a result, in addition to granting all but the largest U.S. air carriers at JFK their historic schedules at every hour if they wished to continue them, the FAA offered the carriers with the smallest presence an opportunity to add operations during the hours that did not exceed the proposed hourly caps. The resulting schedule carefully balances the competing interests of all carriers at JFK and is the least intrusive on the carriers with the smallest JFK presence, who retain all of their historic and realistically timed new operations at the airport.

[12] *See* Docket FAA–2007–29320, Doc. 0009 at 4–5.

In addition, as noted in the previous subsection of this Order, all carriers will have an opportunity to acquire and to retime operations at JFK while this Order is in effect. Under this Order, all carriers have the opportunity to trade with others for Operating Authorizations at times that are more desirable to them. In addition, all U.S. and foreign air carriers have the opportunity to lease Operating Authorizations from other carriers for the duration of this Order. Furthermore, in the event that FAA or airport initiatives create new capacity at JFK while the Order is in effect, all air carriers—including those without a presence at JFK and those with few operations—would have the opportunity to bid on a leasehold interest in the new operations.

The FAA cannot accommodate Virgin America's suggestion that each air carrier receive 30 operations at JFK during the peak hours. Because Virgin America, like all other U.S. and foreign air carriers, had the opportunity to add operations at JFK during the hours when they could realistically conduct them, it appears that their request more specifically seeks 30 operations during their preferred hours. As one of three major New York-area airports and a key international gateway, however, JFK is not a typical facility. During the summer of 2007, JFK enjoyed service from no fewer than 83 different U.S. and foreign air carriers. Of these, only four offered more than 30 daily operations at JFK. As an airport that is so significantly oversubscribed, it is simply impossible to grant every air carrier 30 operations at the times that they would prefer.

D. Foreign Air Carriers

Foreign air carriers are included in the limits established by this Order and will be allocated Operating Authorizations based on historic summer 2007 operations or on amended requests for summer 2008 schedules that have been approved by FAA. The FAA declared JFK a Level 2 schedules facilitated airport under the International Air Transport Association (IATA) Worldwide Scheduling Guidelines and advised carriers to submit proposed summer 2008 schedules by October 11, 2007. Shortly after the submission deadline, the FAA determined to hold a scheduling reduction meeting for JFK and to declare the airport an IATA Level 3 coordinated airport. In November, the FAA met with many of the carriers at the IATA Schedules Conference to review the proposed summer 2008 schedules. Historic operations of foreign air carriers were granted if requested for summer

2008, as were some retimings. Similar to the position taken with domestic air carriers during the scheduling reduction meetings, the FAA indicated that requests for new operations during the oversubscribed hours could not be accommodated, because we expected U.S. air carriers to reduce operations during those hours below the summer 2007 level. Foreign air carriers were offered alternative timings when capacity was available, and like domestic carriers, they may trade or lease Operating Authorizations to change the timing of their operations or to obtain additional Operating Authorizations.

Because this Order extends to October 24, 2009, the FAA understands that there may be slight variations with winter timings or allocations that will need to be considered. The FAA will not exceed the limits adopted in this Order for the winter 2008 scheduling season, but we will work with carriers to address their historic scheduling needs.

E. Usage Requirement and Withdrawals

The FAA has considered whether, in order to encourage maximum utilization of JFK's limited capacity, this Order should include a usage requirement for the Operating Authorizations that it allocates. Such requirements are common at capacity constrained airports. A usage requirement previously applied to JFK and the other HDR airports; it continues to apply to Ronald Reagan Washington National Airport under the HDR; and such a requirement applies under the rules currently in effect at O'Hare International and LaGuardia Airports. In addition, the IATA Worldwide Scheduling Guidelines include a minimum usage requirement.

Based on discussions with carriers, it seems that most support adopting the Worldwide Scheduling Guidelines requirement for the usage of JFK's Operating Authorizations. The FAA therefore is requiring that the Operating Authorizations be used at least 80% of the time during the period for which they have been allocated. This standard is distinguished from the 80% usage requirement currently in effect at O'Hare and LaGuardia, because rather than calculating usage over an aggregate 2-month period, we will measure it by use on the allocated day and specific time. Including a usage requirement may also provide a greater opportunity for carriers to obtain Operating Authorizations in the secondary market, because carriers may seek to lease them rather than lose Operating Authorizations for underutilization. This could potentially benefit carriers seeking to enter the market or to increase their presence at JFK.

Recognizing that there may be unexpected times when a carrier's operations are greatly disrupted, the Administrator under this Order has the authority to waive the 80% usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which exists for a period of 5 consecutive days or more. Additionally, the FAA will treat as used any Operating Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

If the FAA determines that a reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery [13] to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. Once capacity returned to its previous levels, the withdrawn Operating Authorizations would be returned to the carriers from whom they were withdrawn. The FAA will provide at least 45 days advanced notice if possible.

F. Unscheduled Operations

Unscheduled operations, including general aviation, charter flights, and other ad hoc operations, have typically been a small percentage of the overall traffic at JFK. However, given the level of congestion experienced last summer, even the addition of a few operations during the oversubscribed hours can exacerbate delays. When the airport operations were limited by the HDR, a total of 8 reservations were set aside for unscheduled operations during the five slot controlled hours. From 5 p.m. until 6 p.m., no unscheduled reservations were available, permitting additional capacity for scheduled operations. As indicated earlier in this notice and in the FAA notice establishing the targets for the scheduling reduction meeting, the FAA is including regularly conducted carrier operations in the category of scheduled operations. Therefore, the carriers that have conducted such operations will be allocated Operating Authorizations for their summer 2008 operations.

The FAA soon intends to issue a separate notice of proposed rulemaking (NPRM) proposing to limit the number of unscheduled flights and to require a reservation to operate during controlled hours. During the busiest hours, the number of reservations set aside for unscheduled operations would be reduced to allow for additional scheduled traffic. In some of the scheduling reduction meeting discussions and in some of the views filed in this docket, some air carriers expressed support for additional operations for unscheduled flights, because such operations are an important component of their business. Atlas Air Worldwide Holdings, Global Aero Logistics, and the National Air Carrier Association advocated flexibility to accommodate charter, ferry, and other flights. The FAA expects that under certain operating conditions, additional reservations could be made available for unscheduled operations, provided that significant delay impacts are not expected. Additional information on unscheduled operations and the proposed reservation system will be included in the NPRM, and the FAA will consider any comments received prior to adopting a final rule.

G. Enforcement of This Order

The FAA may enforce this Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). A carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, is liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in this Order. A carrier that is a small business as defined in the Small Business Act is liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in this Order. The FAA also may file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any carrier from violating the terms of this Order.

H. Intermediate- and Long-Term Solutions

The views on schedule reduction that were expressed during the scheduling reduction meeting and filed in the public docket are uniform in their preference for increasing system capacity in the New York area. Among these thematically consistent views, some more specifically emphasized the importance of air traffic control modernization, others highlighted the importance of other technological improvements, and some emphasized the need to expedite airspace

[13] In a weighted lottery, the risk of having an Operating Authorization withdrawn is proportional to the number of Operating Authorizations that a carrier holds. Thus, those carriers with the greatest number of authorizations are most likely to have an authorization withdrawn. Those with very few operations bear a very small, but still some, risk of having an authorization withdrawn.

improvements in the region. The FAA shares the views of those who expressed them in this proceeding.

While this Order imposes a limitation on the number of scheduled operations at JFK, it is not the FAA's preferred alternative to addressing capacity shortfalls. In the FAA's view, the intermediate- and long-term priority is to expand airport and airway system capacity and to increase the efficient use of existing resources. This is by far the most effective way to serve the traveling public and to promote a strong airport and airway system. Although there is no single action that will solve the problem of congestion in and around New York, the recently concluded New York Aviation Rulemaking Committee, among its many other products, published a list of 77 airport and airspace initiatives that could help to relieve congestion in the New York area. The list is available as appendix C to the committee's report, which is currently available as a link off the FAA's Web site, *http://www.faa.gov.* It includes procedural, technological, and capital improvements that relate to all the major New York area airports, the efficient operation of which are largely interdependent.

While events or technology may overtake the completion of all the 77 listed initiatives, each has the potential to add incrementally to the existing capacity. Most immediately, we anticipate the completion or near completion of 18 of them by summer 2008. In addition, as the views expressed in the docket indicate, the full implementation of New York/New Jersey/Philadelphia airspace redesign and the progressive achievement of the Next Generation Air Traffic System's component technologies will also contribute to reducing delay. As a result, to permit time for system improvements to come on line, we are establishing an expiration date for this Order of October 24, 2009.

Accordingly, with respect to scheduled flight operations at JFK, it is ordered that:

1. This Order assigns operating authority to conduct an arrival or a departure at JFK during the affected hours to the U.S. air carrier or foreign air carrier identified in the appendix to this Order. The FAA will not assign operating authority under this Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority and FAA operating authority under 14 CFR part 121, 129, or 135. This Order applies to the following:

a. All U.S. air carriers and foreign air carriers conducting scheduled operations at JFK as of the date of this Order, any U.S. air carrier or foreign air carrier that operates under the same designator code as such carrier, and any air carrier or foreign-flag carrier that has or enters into a codeshare agreement with such carrier.

b. All U.S. air carriers or foreign air carriers initiating scheduled or regularly conducted commercial service to JFK while this Order is in effect.

c. The FAA Vice President, System Operations Services, is the final decision-maker for determinations under this paragraph.

2. This Order governs scheduled arrivals and departures at JFK from 6 a.m. through 10:59 p.m., Eastern Time, Sunday through Saturday.

3. This Order takes effect on March 30, 2008, and expires at 11:59 p.m., Eastern Time, on October 24, 2009.

4. Under the authority provided to the Secretary of Transportation and the FAA Administrator by 49 U.S.C. 40101, 40103 and 40113, we hereby order that:

a. No U.S. air carriers or foreign air carriers initiating or conducting scheduled or regularly conducted commercial service to JFK may conduct such operations without an Operating Authorization assigned by the FAA.

b. Except as provided in the appendix to this Order, scheduled U.S. air carrier and foreign air carrier arrivals and departures will not exceed 81 per hour from 6 a.m. through 10:59 p.m., Eastern Time.

c. The Administrator may change the limits if he determines that capacity exists to accommodate additional operations without a significant increase in delays.

5. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

6. A carrier holding an Operating Authorization may request the Administrator's approval to move any arrival or departure scheduled from 6 a.m. through 10:59 p.m. to another half hour within that period. Except as provided in paragraph seven, the carrier must receive the written approval of the Administrator, or his delegate, prior to conducting any scheduled arrival or departure that is not listed in the appendix to this Order. All requests to move an allocated Operating Authorization must be submitted to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7–AWA–Slotadmin@faa.gov*, and must come from a designated representative of the carrier. If the FAA cannot approve a carrier's request to move a scheduled arrival or departure, the carrier may then apply for a trade in accordance with paragraph seven.

7. A carrier may lease or trade an Operating Authorization to another carrier for any consideration, not to exceed the duration of this Order. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7–AWA–Slotadmin@faa.gov*, and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. The FAA will approve transfers between carriers under the same marketing control up to 72-hours after the actual operation, but only to accommodate operational disruptions that occur on the same day of the scheduled operation.

8. A carrier may not buy, sell, trade, or transfer an operating authorization, except as described in paragraph seven.

9. Each carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations actually operated for each day of the two-month reporting period within 14 days after the last day of the two-month reporting period beginning January 1 and every two months thereafter. Any Operating Authorization not used at least 80% of the time for each day over a two-month period will be withdrawn by the FAA for that day except:

a. The FAA will treat as used any Operating Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

b. The Administrator of the FAA may waive the 80% usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which affects carrier operations for a period of five consecutive days or more.

10. In the event that a carrier surrenders to the FAA any Operating Authorization assigned to it under this Order or if there are unallocated Operating Authorizations, the FAA will determine whether the unallocated operating authorizations should be reallocated.

11. If the FAA determines that a reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless

otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the carrier from which it was taken, provided that the carrier continues to operate scheduled service at JFK.

12. The FAA will enforce this Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). A carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, will be liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in this Order. A carrier that is a small business as defined in the Small Business Act will be liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in this Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of this Order.

13. The FAA may modify or withdraw any provision in this Order on its own or on application by any carrier for good cause shown.

Issued in Washington, DC, on January 15, 2008.

Robert A. Sturgell,

Acting Administrator, Federal Aviation Administration.

BILLING CODE 4910–13–P

JFK August 2008 as of 1/11/08

0600-2259 local hours only

	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Arrive	AAR : Asiana Airlines	21	00	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	6	00	2	2	2	2	2	2	2
Arrive	AAL : American Airlines	6	15	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	7	00	2	2	2	2	2	2	2
Arrive	AAL : American Airlines	7	15	2	2	2	2	2	2	2
Arrive	AAL : American Airlines	7	30	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	7	45	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	9	30	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	10	00	2	2	2	2	2	2	2
Arrive	AAL : American Airlines	10	45	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	11	00	2	2	2	2	2	2	2
Arrive	AAL : American Airlines	11	30	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	11	45	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	12	00	2	2	2	2	2	2	2
Arrive	AAL : American Airlines	12	15	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	13	00	2	2	2	2	2	2	2
Arrive	AAL : American Airlines	13	15	2	2	2	2	2	2	2
Arrive	AAL : American Airlines	13	30	3	3	3	3	3	3	3
Arrive	AAL : American Airlines	13	45	2	2	2	2	2	2	2
Arrive	AAL : American Airlines	14	00	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	14	30	4	4	4	4	4	4	4
Arrive	AAL : American Airlines	14	45	6	6	6	6	6	6	6
Arrive	AAL : American Airlines	15	15	2	2	2	2	2	2	2
Arrive	AAL : American Airlines	15	30	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	15	45	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	16	00	2	2	2	2	2	2	2
Arrive	AAL : American Airlines	16	15	6	6	6	6	6	6	6
Arrive	AAL : American Airlines	16	30	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	16	45	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	17	00	2	2	2	2	2	2	2
Arrive	AAL : American Airlines	17	45	2	2	2	2	2	2	2
Arrive	AAL : American Airlines	18	00	3	3	3	3	3	3	3
Arrive	AAL : American Airlines	18	45	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	19	00	3	3	3	3	3	3	3
Arrive	AAL : American Airlines	19	15	2	2	2	2	2	2	2

JFK August 2008 as of 1/11/08

0600-2259 local hours only

	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Arrive	AAL : American Airlines	19	30	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	19	45	2	2	2	2	2	2	2
Arrive	AAL : American Airlines	20	00	2	2	2	2	2	2	3
Arrive	AAL : American Airlines	20	15	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	20	30	3	3	3	3	3	3	3
Arrive	AAL : American Airlines	20	45	5	5	5	5	5	5	5
Arrive	AAL : American Airlines	21	00	1	1	1	2	1	1	1
Arrive	AAL : American Airlines	21	15	4	4	4	3	4	4	4
Arrive	AAL : American Airlines	21	45	3	3	3	3	3	3	3
Arrive	AAL : American Airlines	22	00	2	2	2	2	2	2	3
Arrive	AAL : American Airlines	22	30	1	1	1	1	1	1	1
Arrive	AAL : American Airlines	22	45	1	1	1	1	1	1	0
Depart	AAL : American Airlines	6	00	2	2	2	2	2	2	2
Depart	AAL : American Airlines	6	30	1	1	1	1	1	1	1
Depart	AAL : American Airlines	6	45	1	1	1	1	1	1	1
Depart	AAL : American Airlines	7	00	2	2	2	2	2	2	2
Depart	AAL : American Airlines	7	15	1	1	1	1	1	1	1
Depart	AAL : American Airlines	7	30	1	1	1	1	1	1	1
Depart	AAL : American Airlines	7	45	3	3	3	3	3	3	3
Depart	AAL : American Airlines	8	00	4	4	4	4	4	4	4
Depart	AAL : American Airlines	8	15	2	2	2	2	2	2	2
Depart	AAL : American Airlines	8	30	1	1	1	1	1	1	1
Depart	AAL : American Airlines	8	45	1	1	1	1	1	1	1
Depart	AAL : American Airlines	9	00	3	3	3	3	3	3	3
Depart	AAL : American Airlines	9	15	1	1	1	1	1	1	1
Depart	AAL : American Airlines	9	30	1	1	1	1	1	1	1
Depart	AAL : American Airlines	9	45	2	2	2	2	2	2	2
Depart	AAL : American Airlines	10	15	1	1	1	1	1	1	1
Depart	AAL : American Airlines	10	30	2	2	1	1	1	1	2
Depart	AAL : American Airlines	10	45	2	1	2	2	2	2	1
Depart	AAL : American Airlines	11	00	3	3	3	3	3	3	3
Depart	AAL : American Airlines	11	15	1	1	1	1	1	1	1
Depart	AAL : American Airlines	11	45	3	3	3	3	3	3	3
Depart	AAL : American Airlines	12	00	2	2	2	2	2	2	2
Depart	AAL : American Airlines	12	15	1	1	1	1	1	1	1
Depart	AAL : American Airlines	12	30	3	3	3	3	3	3	3

JFK August 2008 as of 1/11/08

0600-2259 local hours only

	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Depart	AAL : American Airlines	13	15	1	1	1	1	1	1	1
Depart	AAL : American Airlines	13	45	2	2	2	2	2	2	2
Depart	AAL : American Airlines	14	30	2	2	2	2	2	2	2
Depart	AAL : American Airlines	14	45	2	2	2	2	2	2	2
Depart	AAL : American Airlines	15	15	1	1	1	1	1	1	1
Depart	AAL : American Airlines	15	30	2	2	2	2	2	2	2
Depart	AAL : American Airlines	15	45	6	6	6	6	6	6	6
Depart	AAL : American Airlines	16	00	1	1	1	1	1	1	1
Depart	AAL : American Airlines	16	15	1	1	1	1	1	1	1
Depart	AAL : American Airlines	16	30	1	1	1	1	1	1	1
Depart	AAL : American Airlines	16	45	1	1	1	1	1	1	1
Depart	AAL : American Airlines	17	00	7	7	7	7	7	7	7
Depart	AAL : American Airlines	17	15	3	3	3	3	3	3	3
Depart	AAL : American Airlines	17	30	1	1	1	1	1	1	1
Depart	AAL : American Airlines	17	45	2	2	2	2	2	2	2
Depart	AAL : American Airlines	18	00	2	2	2	2	2	2	2
Depart	AAL : American Airlines	18	30	2	2	2	2	2	2	2
Depart	AAL : American Airlines	18	45	1	1	1	1	1	1	1
Depart	AAL : American Airlines	19	00	3	3	3	3	3	3	3
Depart	AAL : American Airlines	19	15	1	1	1	1	1	1	1
Depart	AAL : American Airlines	19	45	1	1	1	1	1	1	1
Depart	AAL : American Airlines	20	00	1	1	1	1	1	1	1
Depart	AAL : American Airlines	20	30	1	1	1	1	1	1	1
Depart	AAL : American Airlines	21	15	1	1	1	1	1	1	1
Depart	AAL : American Airlines	21	30	3	3	3	3	3	3	3
Depart	AAL : American Airlines	21	45	1	1	1	1	1	1	1
Depart	AAL : American Airlines	22	00	1	1	1	1	1	1	1
Depart	AAL : American Airlines	22	30	2	2	2	2	2	2	2
Arrive	ABX : ABX AIR, INC.	6	30	0	0	1	1	1	1	0
Arrive	ABX : ABX AIR, INC.	6	45	0	1	1	1	1	1	0
Depart	ABX : ABX AIR, INC.	7	00	0	0	1	1	1	1	0
Depart	ABX : ABX AIR, INC.	11	30	0	0	1	1	1	1	1
Depart	ABX : ABX AIR, INC.	14	15	0	0	0	0	0	0	1
Arrive	ACA : Air Canada	18	45	1	1	1	1	1	1	1

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Arrive	ACA : Air Canada	22	00	1	1	1	1	1	1	1
Depart	ACA : Air Canada	7	00	1	1	1	1	1	1	1
Depart	ACA : Air Canada	7	30	1	1	1	1	1	1	1
Arrive	AEW : Aerosvit Airlines	16	15	1	0	1	0	1	1	1
Depart	AEW : Aerosvit Airlines	18	15	1	0	1	0	1	1	1
Arrive	AFL : Aeroflot Russian Airlines	18	30	1	1	1	1	1	1	1
Depart	AFL : Aeroflot Russian Airlines	20	30	1	1	1	1	1	1	1
Arrive	AFR : Air France	10	15	1	1	1	1	1	1	1
Arrive	AFR : Air France	12	00	1	1	1	1	1	1	1
Arrive	AFR : Air France	15	15	1	1	1	1	1	1	1
Arrive	AFR : Air France	19	00	1	1	1	1	1	1	1
Arrive	AFR : Air France	20	45	1	1	1	1	1	1	1
Arrive	AFR : Air France	21	30	0	0	1	0	0	0	1
Arrive	AFR : Air France	22	45	1	1	1	1	2	1	1
Depart	AFR : Air France	6	30	1	0	0	0	0	0	1
Depart	AFR : Air France	7	45	1	1	1	1	1	1	1
Depart	AFR : Air France	16	30	1	1	1	1	1	1	1
Depart	AFR : Air France	18	00	1	1	1	1	1	1	1
Depart	AFR : Air France	19	00	1	1	1	1	1	1	1
Depart	AFR : Air France	21	15	1	1	1	1	1	1	1
Depart	AFR : Air France	22	45	1	1	1	1	1	1	1
Arrive	AIC : Air India	6	30	1	1	1	1	1	1	1
Arrive	AIC : Air India	7	00	1	1	1	1	1	1	1
Arrive	AIC : Air India	11	30	1	1	1	1	1	1	1
Arrive	AIC : Air India	16	00	1	1	1	1	1	1	1
Depart	AIC : Air India	17	00	1	1	1	1	1	1	1
Depart	AIC : Air India	19	45	1	1	1	1	1	1	1
Depart	AIC : Air India	21	30	1	1	1	1	1	1	1
Depart	AIC : Air India	22	00	1	1	1	1	1	1	1
Arrive	AJM : Air Jamaica	13	00	1	1	1	1	1	1	1
Arrive	AJM : Air Jamaica	21	45	1	1	1	1	1	1	1

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Arrive	AJM : Air Jamaica	22	00	1	1	1	1	1	1	1
Depart	AJM : Air Jamaica	7	45	1	1	1	1	1	1	1
Depart	AJM : Air Jamaica	10	00	1	1	1	1	1	1	1
Depart	AJM : Air Jamaica	14	45	1	1	1	1	1	1	1
Arrive	AMX : Aeromexico	7	00	0	0	1	0	0	0	1
Arrive	AMX : Aeromexico	13	00	1	1	1	1	1	1	0
Arrive	AMX : Aeromexico	15	30	1	1	1	1	1	1	1
Arrive	AMX : Aeromexico	22	45	1	1	1	1	1	1	1
Depart	AMX : Aeromexico	9	00	1	1	1	1	1	1	1
Depart	AMX : Aeromexico	9	30	0	0	0	0	0	0	1
Depart	AMX : Aeromexico	14	00	1	1	1	1	1	1	0
Depart	AMX : Aeromexico	17	00	1	1	1	1	1	1	1
Depart	AMX : Aeromexico	21	30	0	0	0	0	0	0	1
Arrive	ANA : All Nippon Airways	10	45	1	1	1	1	1	1	1
Depart	ANA : All Nippon Airways	12	30	1	1	1	1	1	1	1
Arrive	ARG : Aerolineas Argentinas	8	15	1	0	1	0	0	1	0
Depart	ARG : Aerolineas Argentinas	18	45	1	0	1	0	0	1	0
Arrive	AUA : Austrian	14	45	1	1	1	1	1	1	1
Depart	AUA : Austrian	17	30	1	1	1	1	1	1	1
Arrive	AVA : Avianca	22	00	1	1	1	1	1	1	1
Depart	AVA : Avianca	7	00	1	1	1	1	1	1	1
Depart	AVA : Avianca	8	00	1	1	1	1	1	1	1
Arrive	AZA : Alitalia	13	00	1	1	1	1	1	1	1
Arrive	AZA : Alitalia	14	00	1	1	1	1	1	1	1
Arrive	AZA : Alitalia	15	15	1	0	0	0	0	0	0
Arrive	AZA : Alitalia	18	00	1	1	1	1	1	1	1
Arrive	AZA : Alitalia	19	30	0	0	0	1	0	0	0
Arrive	AZA : Alitalia	20	45	1	0	0	0	0	0	0
Arrive	AZA : Alitalia	21	15	0	0	0	0	0	0	1
Arrive	AZA : Alitalia	23	45	0	0	1	0	0	0	0

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Depart	AZA : Alitalia	8	00	0	0	0	0	0	1	0
Depart	AZA : Alitalia	8	15	0	0	0	0	1	0	0
Depart	AZA : Alitalia	16	00	1	1	1	1	1	1	1
Depart	AZA : Alitalia	18	15	1	0	0	0	0	0	0
Depart	AZA : Alitalia	19	15	1	1	1	1	1	1	1
Depart	AZA : Alitalia	21	30	1	1	1	1	1	1	1
Depart	AZA : Alitalia	22	00	0	0	0	1	0	0	0
Arrive	BAW : British Airways	11	15	1	1	1	1	1	1	1
Arrive	BAW : British Airways	12	45	2	2	2	2	2	2	2
Arrive	BAW : British Airways	16	00	1	1	1	1	1	1	1
Arrive	BAW : British Airways	18	15	1	1	1	1	1	1	1
Arrive	BAW : British Airways	20	30	1	1	1	1	1	1	1
Arrive	BAW : British Airways	22	15	1	1	1	1	1	1	1
Arrive	BAW : British Airways	22	30	1	1	1	1	1	1	1
Depart	BAW : British Airways	7	45	0	1	1	1	1	1	1
Depart	BAW : British Airways	8	45	1	1	1	1	1	1	1
Depart	BAW : British Airways	18	00	1	1	1	1	1	1	1
Depart	BAW : British Airways	18	15	1	1	1	1	1	1	1
Depart	BAW : British Airways	18	45	0	0	0	0	1	0	0
Depart	BAW : British Airways	19	00	1	1	1	1	0	1	1
Depart	BAW : British Airways	19	30	1	1	1	1	1	1	1
Depart	BAW : British Airways	19	30	1	1	1	1	1	1	1
Depart	BAW : British Airways	21	00	1	1	1	1	1	1	1
Depart	BAW : British Airways	21	15	1	1	1	1	1	1	1
Depart	BAW : British Airways	22	30	1	1	1	1	1	1	1
Arrive	BWA : Caribbean Airlines	17	00	1	1	1	1	1	1	1
Depart	BWA : Caribbean Airlines	7	00	1	1	1	1	1	1	1
Arrive	CAL : China Airlines	22	15	1	0	1	0	1	1	0
Arrive	CAL : China Airlines	6	15	1	1	1	0	1	0	1
Arrive	CAL : China Airlines	6	30	0	0	0	1	0	0	0
Depart	CAL : China Airlines	8	15	0	0	0	0	0	1	0
Depart	CAL : China Airlines	9	00	0	0	0	1	0	0	0
Depart	CAL : China Airlines	9	15	1	1	1	0	1	0	1

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT	
Depart	CAL : China Airlines	23	45	1	0	1	0	1	1	0	
Arrive	CAY : Cayman Airways	21	30	1	1	1	1	1	1	1	
Depart	CAY : Cayman Airways	9	00	1	1	1	1	1	1	1	
Arrive	CCA : Air China Intl	6	30	1	0	0	1	1	1	0	
Arrive	CCA : Air China Intl	7	00	0	1	0	0	0	0	0	
Arrive	CCA : Air China Intl	14	30	1	1	1	1	1	1	1	
Depart	CCA : Air China Intl	9	30	1	0	0	1	1	1	0	
Depart	CCA : Air China Intl	10	00	0	1	0	0	0	0	0	
Depart	CCA : Air China Intl	16	30	1	1	1	1	1	1	1	
Arrive	CES : China Eastern	20	45	1	1	0	1	0	1	0	
Arrive	CGA : Cargoltalia	10	0	1	0	0	0	0	0	0	Preliminary
Arrive	CGA : Cargoltalia	13	45	0	0	0	1	0	0	0	Preliminary
Depart	CGA : Cargoltalia	12	30	1	0	0	0	0	0	0	Preliminary
Depart	CGA : Cargoltalia	16	15	0	0	0	1	0	0	0	Preliminary
Arrive	CKS : Kalitta Air	13	45	0	1	0	0	1	0	1	
Arrive	CKS : Kalitta Air	18	30	1	0	0	0	0	0	0	
Arrive	CKS : Kalitta Air	19	45	1	0	0	1	0	0	0	
Depart	CKS : Kalitta Air	16	00	0	1	0	0	1	0	1	
Arrive	CLX : Cargolux Airlines International	19	15	0	0	0	1	0	0	0	
Arrive	CLX : Cargolux Airlines International	21	30	0	0	0	1	0	0	1	
Arrive	CLX : Cargolux Airlines International	22	30	1	0	0	0	0	0	0	
Arrive	CLX : Cargolux Airlines International	22	45	0	0	0	0	1	0	0	
Depart	CLX : Cargolux Airlines International	21	15	0	0	0	1	0	0	0	
Depart	CMP : COPA Airlines	6	30	1	1	1	1	1	1	1	
Arrive	COA : Continental Airlines	20	30	1	1	1	1	1	1	1	
Depart	COA : Continental Airlines	7	30	0	1	1	1	1	1	0	
Depart	COA : Continental Airlines	13	15	1	1	1	1	1	1	0	
Depart	COA : Continental Airlines	14	45	0	0	0	0	0	0	1	

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Depart	COA : Continental Airlines	16	15	1	1	1	1	1	1	0
Depart	COA : Continental Airlines	17	45	1	1	1	1	1	1	0
Arrive	CPA : Cathay Pacific Airways	13	00	1	1	1	1	1	1	1
Arrive	CPA : Cathay Pacific Airways	18	00	0	0	0	1	0	1	0
Arrive	CPA : Cathay Pacific Airways	18	15	0	1	0	0	0	0	0
Arrive	CPA : Cathay Pacific Airways	21	15	1	1	1	1	1	1	1
Arrive	CPA : Cathay Pacific Airways	22	00	1	1	1	1	1	1	1
Arrive	CPA : Cathay Pacific Airways	22	15	1	0	0	0	0	0	0
Arrive	CPA : Cathay Pacific Airways	22	45	0	0	1	0	0	0	0
Depart	CPA : Cathay Pacific Airways	10	00	1	1	1	1	1	1	1
Depart	CPA : Cathay Pacific Airways	14	45	1	1	1	1	1	1	1
Depart	CPA : Cathay Pacific Airways	20	15	0	0	0	1	0	1	0
Depart	CPA : Cathay Pacific Airways	20	30	0	1	0	0	0	0	0
Depart	CPA : Cathay Pacific Airways	23	00	1	1	1	1	1	1	1
Arrive	CSA : Czech Airlines	14	15	1	1	1	1	1	1	1
Depart	CSA : Czech Airlines	16	00	1	1	1	1	1	1	1
Arrive	DAL : Delta Air Lines	6	00	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	6	15	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	6	30	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	7	00	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	7	15	5	5	5	5	5	5	5
Arrive	DAL : Delta Air Lines	7	30	7	7	7	7	7	7	7
Arrive	DAL : Delta Air Lines	7	45	5	5	5	5	5	5	5
Arrive	DAL : Delta Air Lines	8	15	5	5	5	5	5	5	5
Arrive	DAL : Delta Air Lines	8	30	1	1	1	1	1	1	1
Arrive	DAL : Delta Air Lines	8	45	1	1	1	1	1	1	1
Arrive	DAL : Delta Air Lines	9	15	1	1	1	1	1	1	1
Arrive	DAL : Delta Air Lines	9	30	1	1	1	1	1	1	1
Arrive	DAL : Delta Air Lines	10	00	1	1	1	1	1	1	1
Arrive	DAL : Delta Air Lines	10	15	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	10	30	3	3	3	3	3	3	3
Arrive	DAL : Delta Air Lines	11	00	1	1	1	1	1	1	1
Arrive	DAL : Delta Air Lines	11	15	3	3	3	3	3	3	3

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Arrive	DAL : Delta Air Lines	11	30	3	3	3	3	3	3	3
Arrive	DAL : Delta Air Lines	11	45	5	5	5	5	5	5	5
Arrive	DAL : Delta Air Lines	12	00	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	12	15	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	12	30	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	12	45	11	11	11	11	11	11	11
Arrive	DAL : Delta Air Lines	13	00	1	1	1	1	1	1	1
Arrive	DAL : Delta Air Lines	13	15	1	1	1	1	1	1	1
Arrive	DAL : Delta Air Lines	13	30	4	4	4	4	4	4	4
Arrive	DAL : Delta Air Lines	13	45	10	10	10	10	10	10	10
Arrive	DAL : Delta Air Lines	14	00	1	1	1	1	1	1	1
Arrive	DAL : Delta Air Lines	14	15	4	4	4	4	4	4	4
Arrive	DAL : Delta Air Lines	14	30	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	14	45	10	10	10	10	10	10	10
Arrive	DAL : Delta Air Lines	15	00	3	3	3	3	3	3	3
Arrive	DAL : Delta Air Lines	15	15	7	7	7	7	7	7	7
Arrive	DAL : Delta Air Lines	15	30	6	6	6	6	6	6	6
Arrive	DAL : Delta Air Lines	15	45	4	4	4	4	4	4	4
Arrive	DAL : Delta Air Lines	16	15	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	16	30	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	16	45	7	7	7	7	7	7	7
Arrive	DAL : Delta Air Lines	17	00	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	17	15	3	3	3	3	3	3	3
Arrive	DAL : Delta Air Lines	17	30	3	3	3	3	3	3	3
Arrive	DAL : Delta Air Lines	17	45	4	4	4	4	4	4	4
Arrive	DAL : Delta Air Lines	18	00	4	4	4	4	4	4	4
Arrive	DAL : Delta Air Lines	18	15	6	6	6	6	6	6	6
Arrive	DAL : Delta Air Lines	18	30	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	18	45	6	6	6	6	6	6	6
Arrive	DAL : Delta Air Lines	19	00	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	19	30	3	3	3	3	3	3	3
Arrive	DAL : Delta Air Lines	19	45	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	20	00	6	6	6	6	6	6	6
Arrive	DAL : Delta Air Lines	20	15	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	20	30	3	3	3	3	3	3	3
Arrive	DAL : Delta Air Lines	20	45	1	1	1	1	1	1	1

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Arrive	DAL : Delta Air Lines	21	00	1	1	1	1	1	1	1
Arrive	DAL : Delta Air Lines	22	00	9	9	9	9	9	9	9
Arrive	DAL : Delta Air Lines	22	15	2	2	2	2	2	2	2
Arrive	DAL : Delta Air Lines	22	30	1	1	1	1	1	1	1
Arrive	DAL : Delta Air Lines	23	15	1	1	1	1	1	1	1
Arrive	DAL : Delta Air Lines	23	45	1	1	1	1	1	1	1
Depart	DAL : Delta Air Lines	6	00	2	2	2	2	2	2	2
Depart	DAL : Delta Air Lines	6	45	1	1	1	1	1	1	1
Depart	DAL : Delta Air Lines	7	00	3	3	3	3	3	3	3
Depart	DAL : Delta Air Lines	7	45	2	2	2	2	2	2	2
Depart	DAL : Delta Air Lines	8	00	4	4	4	4	4	4	4
Depart	DAL : Delta Air Lines	8	15	7	7	7	7	7	7	7
Depart	DAL : Delta Air Lines	8	30	8	8	8	8	8	8	8
Depart	DAL : Delta Air Lines	8	45	5	5	5	5	5	5	5
Depart	DAL : Delta Air Lines	9	00	8	8	8	8	8	8	8
Depart	DAL : Delta Air Lines	9	15	3	3	3	3	3	3	3
Depart	DAL : Delta Air Lines	9	30	3	3	3	3	3	3	3
Depart	DAL : Delta Air Lines	9	45	5	5	5	5	5	5	5
Depart	DAL : Delta Air Lines	10	15	1	1	1	1	1	1	1
Depart	DAL : Delta Air Lines	10	45	3	3	3	3	3	3	3
Depart	DAL : Delta Air Lines	11	00	3	3	3	3	3	3	3
Depart	DAL : Delta Air Lines	11	15	2	2	2	2	2	2	2
Depart	DAL : Delta Air Lines	11	45	2	2	2	2	2	2	2
Depart	DAL : Delta Air Lines	12	00	1	1	1	1	1	1	1
Depart	DAL : Delta Air Lines	12	15	2	2	2	2	2	2	2
Depart	DAL : Delta Air Lines	12	30	3	3	3	3	3	3	3
Depart	DAL : Delta Air Lines	12	45	4	4	4	4	4	4	4
Depart	DAL : Delta Air Lines	13	00	1	1	1	1	1	1	1
Depart	DAL : Delta Air Lines	13	15	3	3	3	3	3	3	3
Depart	DAL : Delta Air Lines	13	30	4	4	4	4	4	4	4
Depart	DAL : Delta Air Lines	13	45	7	7	7	7	7	7	7
Depart	DAL : Delta Air Lines	14	15	1	1	1	1	1	1	1
Depart	DAL : Delta Air Lines	14	30	1	1	1	1	1	1	1
Depart	DAL : Delta Air Lines	14	45	8	8	8	8	8	8	8
Depart	DAL : Delta Air Lines	15	45	6	6	6	6	6	6	6
Depart	DAL : Delta Air Lines	16	00	5	5	5	5	5	5	5

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Depart	DAL : Delta Air Lines	16	15	7	7	7	7	7	7	7
Depart	DAL : Delta Air Lines	16	30	6	6	6	6	6	6	6
Depart	DAL : Delta Air Lines	16	45	2	2	2	2	2	2	2
Depart	DAL : Delta Air Lines	17	00	4	4	4	4	4	4	4
Depart	DAL : Delta Air Lines	17	15	1	1	1	1	1	1	1
Depart	DAL : Delta Air Lines	17	30	4	4	4	4	4	4	4
Depart	DAL : Delta Air Lines	17	45	5	5	5	5	5	5	5
Depart	DAL : Delta Air Lines	18	00	1	1	1	1	1	1	1
Depart	DAL : Delta Air Lines	18	30	4	4	4	4	4	4	4
Depart	DAL : Delta Air Lines	18	45	5	5	5	5	5	5	5
Depart	DAL : Delta Air Lines	19	00	7	7	7	7	7	7	7
Depart	DAL : Delta Air Lines	19	15	6	6	6	6	6	6	6
Depart	DAL : Delta Air Lines	19	30	5	5	5	5	5	5	5
Depart	DAL : Delta Air Lines	19	45	5	5	5	5	5	5	5
Depart	DAL : Delta Air Lines	20	00	4	4	4	4	4	4	4
Depart	DAL : Delta Air Lines	20	30	2	2	2	2	2	2	2
Depart	DAL : Delta Air Lines	20	45	5	5	5	5	5	5	5
Depart	DAL : Delta Air Lines	21	00	9	9	9	9	9	9	9
Depart	DAL : Delta Air Lines	21	15	4	4	4	4	4	4	4
Depart	DAL : Delta Air Lines	22	00	5	5	5	5	5	5	5
Depart	DAL : Delta Air Lines	22	15	2	2	2	2	2	2	2
Depart	DAL : Delta Air Lines	23	30	1	1	1	1	1	1	1
Depart	DAL : Delta Air Lines	23	45	1	1	1	1	1	1	1
Arrive	DHL: Astar	6	00	0	0	1	1	1	1	1
Arrive	DHL: Astar	7	30	0	0	1	1	1	1	1
Arrive	DHL: Astar	7	45	0	0	0	0	0	0	1
Depart	DHL: Astar	21	00	0	1	1	1	1	1	0
Depart	DHL: Astar	22	15	0	1	1	1	1	1	0
Depart	DHL: Astar	23	15	0	1	1	1	1	1	0
Arrive	DLH : Deutsche Lufthansa	6	00	0	0	0	0	0	0	1
Arrive	DLH : Deutsche Lufthansa	6	30	0	0	0	0	0	0	1
Arrive	DLH : Deutsche Lufthansa	12	45	1	1	1	1	1	1	1
Arrive	DLH : Deutsche Lufthansa	13	45	1	0	0	0	0	0	0
Arrive	DLH : Deutsche Lufthansa	14	45	1	1	1	1	1	1	1

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Arrive	DLH : Deutsche Lufthansa	16	00	1	1	1	1	1	1	1
Arrive	DLH : Deutsche Lufthansa	19	30	1	1	1	1	1	1	1
Depart	DLH : Deutsche Lufthansa	9	00	0	0	1	1	1	1	0
Depart	DLH : Deutsche Lufthansa	9	15	0	0	1	1	1	1	0
Depart	DLH : Deutsche Lufthansa	10	30	0	0	0	0	0	0	1
Depart	DLH : Deutsche Lufthansa	13	00	0	0	0	0	0	0	1
Depart	DLH : Deutsche Lufthansa	15	45	1	1	1	1	1	1	1
Depart	DLH : Deutsche Lufthansa	16	15	1	0	0	0	0	0	0
Depart	DLH : Deutsche Lufthansa	17	30	1	1	1	1	1	1	1
Depart	DLH : Deutsche Lufthansa	17	45	1	1	1	1	1	1	1
Depart	DLH : Deutsche Lufthansa	21	30	1	1	1	1	1	1	1
Arrive	EC: OpenSkies	13	15	1	1	1	1	1	1	1
Depart	EC: OpenSkies	17	30	1	1	1	1	1	1	1
Arrive	EEZ : Eurofly	18	00	1	1	1	0	1	1	1
Arrive	EEZ : Eurofly	18	45	0	0	1	1	1	0	0
Arrive	EEZ : Eurofly	19	30	1	0	0	1	0	0	0
Arrive	EEZ : Eurofly	19	45	0	0	0	0	0	1	0
Arrive	EEZ : Eurofly	20	15	1	0	0	0	0	0	0
Depart	EEZ : Eurofly	20	00	0	0	1	0	1	0	1
Depart	EEZ : Eurofly	20	15	1	0	0	0	0	0	0
Depart	EEZ : Eurofly	21	30	0	1	0	0	0	0	0
Depart	EEZ : Eurofly	21	45	1	0	0	1	1	1	1
Depart	EEZ : Eurofly	22	30	1	1	1	1	0	1	0
Arrive	EIA : Evergreen International Airlines	17	45	1	0	0	1	1	0	0
Arrive	EIA : Evergreen International Airlines	19	15	1	0	0	0	0	0	0
Arrive	EIN : Aer Lingus	13	00	1	1	1	1	1	1	1
Arrive	EIN : Aer Lingus	15	45	1	1	1	1	1	1	1
Arrive	EIN : Aer Lingus	19	00	1	1	1	1	1	1	1
Depart	EIN : Aer Lingus	17	30	1	1	1	1	1	1	1
Depart	EIN : Aer Lingus	18	30	1	1	1	1	1	1	1
Depart	EIN : Aer Lingus	21	15	1	1	1	1	1	1	1

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Arrive	ELY : El Al Israel Airlines	6	00	0	0	0	0	1	0	0
Arrive	ELY : El Al Israel Airlines	15	15	1	1	1	1	1	0	0
Arrive	ELY : El Al Israel Airlines	16	00	0	0	0	0	0	1	0
Arrive	ELY : El Al Israel Airlines	20	30	0	1	1	1	1	0	0
Arrive	ELY : El Al Israel Airlines	22	00	0	0	0	1	0	0	0
Depart	ELY : El Al Israel Airlines	11	45	0	1	1	1	1	0	0
Depart	ELY : El Al Israel Airlines	14	30	1	0	0	0	0	0	0
Depart	ELY : El Al Israel Airlines	19	45	1	1	1	1	1	0	0
Depart	ELY : El Al Israel Airlines	20	00	1	0	0	0	0	0	0
Arrive	ESS : Eos	11	30	0	0	0	0	0	0	1
Arrive	ESS : Eos	13	15	2	2	2	2	2	2	2
Arrive	ESS : Eos	15	45	1	1	1	1	1	1	1
Arrive	ESS : Eos	18	45	1	1	1	1	1	1	1
Arrive	ESS : Eos	21	15	1	1	1	1	1	1	1
Arrive	ESS : Eos	22	45	0	1	0	0	0	0	0
Depart	ESS : Eos	9	00	0	1	0	0	0	0	0
Depart	ESS : Eos	18	45	1	1	1	1	1	1	1
Depart	ESS : Eos	19	45	0	0	0	1	0	0	0
Depart	ESS : Eos	20	30	1	1	1	1	1	1	1
Depart	ESS : Eos	22	00	1	1	1	1	1	1	1
Arrive	ETD : Etihad Airways	8	30	1	1	1	1	1	1	1
Depart	ETD : Etihad Airways	11	15	1	1	1	1	1	1	1
Arrive	FDX: FedEx	6	30	0	0	1	1	1	1	0
Arrive	FDX: FedEx	6	45	0	0	0	0	0	0	1
Arrive	FDX: FedEx	14	30	1	0	0	0	0	0	1
Arrive	FDX: FedEx	15	00	0	0	1	1	1	1	0
Arrive	FDX: FedEx	19	15	1	0	1	1	1	1	1
Depart	FDX: FedEx	7	00	0	0	0	0	0	1	0
Depart	FDX: FedEx	7	45	1	0	1	1	1	1	0
Depart	FDX: FedEx	7	45	1	0	0	0	0	0	0
Depart	FDX: FedEx	8	00	0	0	0	0	0	0	1
Depart	FDX: FedEx	8	15	0	0	0	0	0	0	1
Depart	FDX: FedEx	8	45	0	0	1	1	1	1	0

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT	
Depart	FDX: FedEx	21	30	0	0	0	0	0	0	1	
Depart	FDX: FedEx	22	15	0	2	2	2	2	1	0	
Arrive	FIN : Finnair	15	45	1	1	1	1	1	1	1	
Depart	FIN : Finnair	17	45	1	1	1	1	1	1	1	
Arrive	IBE : Iberia	15	45	1	1	1	1	1	1	1	
Arrive	IBE : Iberia	19	00	1	1	1	1	1	1	1	
Depart	IBE : Iberia	18	00	1	1	1	1	1	1	1	
Depart	IBE : Iberia	21	00	1	1	1	1	1	1	1	
Arrive	ICE : Icelandair	7	15	0	0	1	1	1	1	0	
Arrive	ICE : Icelandair	10	00	0	0	0	0	0	0	1	
Arrive	ICE : Icelandair	12	30	0	0	0	0	1	1	0	
Arrive	ICE : Icelandair	19	00	1	1	1	1	1	1	1	
Depart	ICE : Icelandair	9	00	0	0	1	1	1	0	0	
Depart	ICE : Icelandair	14	00	0	0	0	0	1	1	0	
Depart	ICE : Icelandair	19	00	0	0	0	0	0	0	1	
Depart	ICE : Icelandair	20	30	1	1	1	1	1	1	1	
Arrive	ICL: Cargo Air Lines, Inc.	10	15	0	1	0	0	0	0	0	Preliminary
Arrive	ICL: Cargo Air Lines, Inc.	16	15	0	0	0	0	1	0	0	Preliminary
Arrive	ICL: Cargo Air Lines, Inc.	22	45	0	0	0	0	0	0	1	Preliminary
Depart	ICL: Cargo Air Lines, Inc.	10	00	0	0	0	0	0	0	1	Preliminary
Depart	ICL: Cargo Air Lines, Inc.	12	45	0	1	0	0	0	0	0	Preliminary
Depart	ICL: Cargo Air Lines, Inc.	19	00	0	0	0	0	1	0	0	Preliminary
Arrive	ISR: Israir	13	45	0	1	0	0	0	0	0	
Arrive	ISR: Israir	22	00	0	0	1	0	0	0	0	
Depart	ISR: Israir	11	30	0	0	0	0	1	0	0	
Depart	ISR: Israir	12	00	1	0	0	0	0	0	0	
Depart	ISR: Israir	20	00	0	1	0	0	0	0	0	
Arrive	JAI: Jet Airways	12	00	1	1	1	1	1	1	1	
Depart	JAI: Jet Airways	18	45	1	1	1	1	1	1	1	

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Arrive	JAL : Japan Airlines	7	15	0	0	1	0	0	1	1
Arrive	JAL : Japan Airlines	11	30	1	1	1	1	1	1	1
Arrive	JAL : Japan Airlines	15	30	1	0	0	0	0	0	0
Arrive	JAL : Japan Airlines	19	00	1	1	1	1	1	1	1
Depart	JAL : Japan Airlines	10	00	1	1	1	1	0	1	1
Depart	JAL : Japan Airlines	11	00	0	0	1	0	0	0	1
Depart	JAL : Japan Airlines	13	30	1	1	1	1	1	1	1
Depart	JAL : Japan Airlines	21	15	1	0	0	1	1	0	0
Arrive	JBU : Jet Blue Airlines	6	00	1	1	1	1	1	1	1
Arrive	JBU : Jet Blue Airlines	6	30	1	1	1	1	1	1	1
Arrive	JBU : Jet Blue Airlines	6	45	1	1	1	1	1	1	1
Arrive	JBU : Jet Blue Airlines	7	00	2	2	2	2	2	2	2
Arrive	JBU : Jet Blue Airlines	7	15	7	7	7	7	7	7	7
Arrive	JBU : Jet Blue Airlines	7	30	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	7	45	2	2	2	2	2	2	2
Arrive	JBU : Jet Blue Airlines	8	00	1	1	1	1	1	1	1
Arrive	JBU : Jet Blue Airlines	8	15	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	8	30	7	7	7	7	7	7	7
Arrive	JBU : Jet Blue Airlines	8	45	2	2	2	2	2	2	2
Arrive	JBU : Jet Blue Airlines	9	00	5	5	5	5	5	5	5
Arrive	JBU : Jet Blue Airlines	9	15	1	1	1	1	1	1	1
Arrive	JBU : Jet Blue Airlines	9	30	5	5	5	5	5	5	5
Arrive	JBU : Jet Blue Airlines	9	45	5	5	5	5	5	5	5
Arrive	JBU : Jet Blue Airlines	10	00	2	2	2	2	2	2	2
Arrive	JBU : Jet Blue Airlines	10	45	1	1	1	1	1	1	1
Arrive	JBU : Jet Blue Airlines	11	00	1	1	1	1	1	1	1
Arrive	JBU : Jet Blue Airlines	11	15	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	11	30	2	2	2	2	2	2	2
Arrive	JBU : Jet Blue Airlines	11	45	1	1	1	1	1	1	1
Arrive	JBU : Jet Blue Airlines	12	00	2	2	2	2	2	2	2
Arrive	JBU : Jet Blue Airlines	12	15	2	2	2	2	2	2	2
Arrive	JBU : Jet Blue Airlines	12	30	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	12	45	7	7	7	7	7	7	7
Arrive	JBU : Jet Blue Airlines	13	00	2	2	2	2	2	2	2
Arrive	JBU : Jet Blue Airlines	13	30	2	2	2	2	2	2	2

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Arrive	JBU : Jet Blue Airlines	13	45	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	14	00	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	14	15	4	4	4	4	4	4	4
Arrive	JBU : Jet Blue Airlines	14	30	1	1	1	1	1	1	1
Arrive	JBU : Jet Blue Airlines	14	45	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	15	15	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	15	45	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	16	15	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	16	30	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	16	45	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	17	00	1	1	1	1	1	1	1
Arrive	JBU : Jet Blue Airlines	17	15	4	4	4	4	4	4	4
Arrive	JBU : Jet Blue Airlines	17	45	2	2	2	2	2	2	2
Arrive	JBU : Jet Blue Airlines	18	00	1	1	1	1	1	1	1
Arrive	JBU : Jet Blue Airlines	18	15	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	18	30	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	18	45	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	19	00	6	6	6	6	6	6	6
Arrive	JBU : Jet Blue Airlines	19	15	1	1	1	1	1	1	1
Arrive	JBU : Jet Blue Airlines	19	30	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	20	00	5	5	5	5	5	5	5
Arrive	JBU : Jet Blue Airlines	20	30	3	3	3	3	3	3	3
Arrive	JBU : Jet Blue Airlines	20	45	1	1	1	1	1	1	1
Arrive	JBU : Jet Blue Airlines	21	00	8	8	8	8	8	8	8
Arrive	JBU : Jet Blue Airlines	21	15	4	4	4	4	4	4	4
Arrive	JBU : Jet Blue Airlines	21	30	5	5	5	5	5	5	5
Arrive	JBU : Jet Blue Airlines	21	45	4	4	4	4	4	4	4
Arrive	JBU : Jet Blue Airlines	22	00	4	4	4	4	4	4	4
Arrive	JBU : Jet Blue Airlines	22	15	4	4	4	4	4	4	4
Arrive	JBU : Jet Blue Airlines	22	30	4	4	4	4	4	4	4
Arrive	JBU : Jet Blue Airlines	22	45	3	3	3	3	3	3	3
Depart	JBU : Jet Blue Airlines	6	00	5	5	5	5	5	5	5
Depart	JBU : Jet Blue Airlines	6	30	5	5	5	5	5	5	5
Depart	JBU : Jet Blue Airlines	6	45	10	10	10	10	10	10	10
Depart	JBU : Jet Blue Airlines	7	00	3	3	3	3	3	3	3
Depart	JBU : Jet Blue Airlines	7	15	1	1	1	1	1	1	1

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Depart	JBU : Jet Blue Airlines	7	30	1	1	1	1	1	1	1
Depart	JBU : Jet Blue Airlines	7	45	5	5	5	5	5	5	5
Depart	JBU : Jet Blue Airlines	8	00	7	7	7	7	7	7	7
Depart	JBU : Jet Blue Airlines	8	15	4	4	4	4	4	4	4
Depart	JBU : Jet Blue Airlines	8	30	2	2	2	2	2	2	2
Depart	JBU : Jet Blue Airlines	8	45	2	2	2	2	2	2	2
Depart	JBU : Jet Blue Airlines	9	00	6	6	6	6	6	6	6
Depart	JBU : Jet Blue Airlines	9	15	3	3	3	3	3	3	3
Depart	JBU : Jet Blue Airlines	9	30	6	6	6	6	6	6	6
Depart	JBU : Jet Blue Airlines	9	45	3	3	3	3	3	3	3
Depart	JBU : Jet Blue Airlines	10	00	1	1	1	1	1	1	1
Depart	JBU : Jet Blue Airlines	10	15	3	3	3	3	3	3	3
Depart	JBU : Jet Blue Airlines	10	30	3	3	3	3	3	3	3
Depart	JBU : Jet Blue Airlines	10	45	2	2	2	2	2	2	2
Depart	JBU : Jet Blue Airlines	11	00	3	3	3	3	3	3	3
Depart	JBU : Jet Blue Airlines	11	15	3	3	3	3	3	3	3
Depart	JBU : Jet Blue Airlines	11	30	2	2	2	2	2	2	2
Depart	JBU : Jet Blue Airlines	11	45	1	1	1	1	1	1	1
Depart	JBU : Jet Blue Airlines	12	00	4	4	4	4	4	4	4
Depart	JBU : Jet Blue Airlines	12	15	1	1	1	1	1	1	1
Depart	JBU : Jet Blue Airlines	12	30	1	1	1	1	1	1	1
Depart	JBU : Jet Blue Airlines	12	45	1	1	1	1	1	1	1
Depart	JBU : Jet Blue Airlines	13	00	2	2	2	2	2	2	2
Depart	JBU : Jet Blue Airlines	13	15	4	4	4	4	4	4	4
Depart	JBU : Jet Blue Airlines	13	30	3	3	3	3	3	3	3
Depart	JBU : Jet Blue Airlines	13	45	3	3	3	3	3	3	3
Depart	JBU : Jet Blue Airlines	14	00	2	2	2	2	2	2	2
Depart	JBU : Jet Blue Airlines	14	15	2	2	2	2	2	2	2
Depart	JBU : Jet Blue Airlines	14	45	6	6	6	6	6	6	6
Depart	JBU : Jet Blue Airlines	15	00	2	2	2	2	2	2	2
Depart	JBU : Jet Blue Airlines	15	15	1	1	1	1	1	1	1
Depart	JBU : Jet Blue Airlines	15	30	2	2	2	2	2	2	2
Depart	JBU : Jet Blue Airlines	15	45	4	4	4	4	4	4	4
Depart	JBU : Jet Blue Airlines	16	30	1	1	1	1	1	1	1
Depart	JBU : Jet Blue Airlines	16	45	4	4	4	4	4	4	4
Depart	JBU : Jet Blue Airlines	17	00	1	1	1	1	1	1	1

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Depart	JBU : Jet Blue Airlines	17	15	3	3	3	3	3	3	3
Depart	JBU : Jet Blue Airlines	17	30	5	5	5	5	5	5	5
Depart	JBU : Jet Blue Airlines	18	15	1	1	1	1	1	1	1
Depart	JBU : Jet Blue Airlines	18	30	5	5	5	5	5	5	5
Depart	JBU : Jet Blue Airlines	18	45	2	2	2	2	2	2	2
Depart	JBU : Jet Blue Airlines	19	00	2	2	2	2	2	2	2
Depart	JBU : Jet Blue Airlines	19	30	4	4	4	4	4	4	4
Depart	JBU : Jet Blue Airlines	19	45	1	1	1	1	1	1	1
Depart	JBU : Jet Blue Airlines	20	00	6	6	6	6	6	6	6
Depart	JBU : Jet Blue Airlines	20	15	2	2	2	2	2	2	2
Depart	JBU : Jet Blue Airlines	20	30	4	4	4	4	4	4	4
Depart	JBU : Jet Blue Airlines	20	45	5	5	5	5	5	5	5
Depart	JBU : Jet Blue Airlines	21	00	3	3	3	3	3	3	3
Depart	JBU : Jet Blue Airlines	21	15	1	1	1	1	1	1	1
Depart	JBU : Jet Blue Airlines	21	30	5	5	5	5	5	5	5
Depart	JBU : Jet Blue Airlines	21	45	5	5	5	5	5	5	5
Depart	JBU : Jet Blue Airlines	22	00	2	2	2	2	2	2	2
Depart	JBU : Jet Blue Airlines	22	15	2	2	2	2	2	2	2
Depart	JBU : Jet Blue Airlines	22	30	3	3	3	3	3	3	3
Depart	JBU : Jet Blue Airlines	22	45	5	5	5	5	5	5	5
Arrive	KAC : Kuwait Airways	15	15	1	0	0	1	0	1	0
Arrive	KAC : Kuwait Airways	18	00	0	0	1	0	1	0	1
Depart	KAC : Kuwait Airways	21	00	1	0	0	1	0	1	0
Depart	KAC : Kuwait Airways	22	00	0	0	1	0	1	0	1
Arrive	KAL : Korean Air Lines	12	00	1	1	1	1	1	1	1
Arrive	KAL : Korean Air Lines	20	45	1	1	1	1	1	1	1
Depart	KAL : Korean Air Lines	14	00	1	1	1	1	1	1	1
Arrive	KFR: Kingfisher	7	00	1	1	1	1	1	1	1
Depart	KFR: Kingfisher	10	00	1	1	1	1	1	1	1
Arrive	KLM : Royal Dutch Airline	15	15	1	1	1	1	1	1	1
Arrive	KLM : Royal Dutch Airline	20	00	1	0	0	1	1	1	0
Arrive	KLM : Royal Dutch Airline	20	15	0	1	1	0	0	0	1

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Depart	KLM : Royal Dutch Airline	17	45	1	1	1	1	1	1	1
Depart	KLM : Royal Dutch Airline	21	30	1	0	0	1	1	1	0
Depart	KLM : Royal Dutch Airline	22	00	0	1	1	0	0	0	1
Arrive	LAN : LAN Airline	8	00	0	1	0	1	0	1	0
Arrive	LAN : LAN Airline	8	30	1	1	1	1	1	1	1
Depart	LAN : LAN Airline	21	00	0	1	0	1	0	0	0
Depart	LAN : LAN Airline	23	30	1	1	1	1	1	1	1
Arrive	LOT : LOT Polish Airlines	16	00	1	1	1	1	1	1	1
Arrive	LOT : LOT Polish Airlines	20	45	1	1	1	1	1	1	1
Depart	LOT : LOT Polish Airlines	18	00	1	1	1	1	1	1	1
Depart	LOT : LOT Polish Airlines	22	45	1	1	1	1	1	1	1
Arrive	LNE : LAN ECUADOR	20	45	1	1	1	1	1	1	1
Depart	LNE : LAN ECUADOR	10	30	1	1	1	1	1	1	1
Arrive	LTU : LTU International Airways	16	00	1	1	1	1	1	1	1
Depart	LTU : LTU International Airways	17	45	1	1	1	1	1	1	1
Arrive	MAH : Malev	15	30	1	1	1	1	1	1	1
Depart	MAH : Malev	17	45	1	1	1	1	1	1	1
Arrive	MSR : Egyptair	15	15	1	1	1	1	1	1	1
Depart	MSR : Egyptair	18	30	1	1	1	1	1	1	1
Arrive	MXA : Mexicana	15	45	1	1	1	1	1	1	1
Arrive	MXA : Mexicana	23	00	1	1	1	1	1	1	1
Depart	MXA : Mexicana	9	00	1	1	1	1	1	1	1
Depart	MXA : Mexicana	17	30	1	1	1	1	1	1	1
Arrive	NAO : North American Airlines	6	30	0	1	0	0	1	0	1
Arrive	NAO : North American Airlines	9	00	0	0	1	0	0	0	0
Arrive	NAO : North American Airlines	14	45	1	0	1	0	1	1	0
Arrive	NAO : North American Airlines	22	45	0	0	0	0	0	0	1
Depart	NAO : North American Airlines	9	00	0	0	0	0	0	0	1

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Depart	NAO : North American Airlines	15	45	1	0	1	0	1	0	1
Arrive	NWA : Northwest Airlines	10	45	1	1	1	1	1	1	1
Arrive	NWA : Northwest Airlines	11	45	1	1	1	1	1	1	1
Arrive	NWA : Northwest Airlines	15	00	1	1	1	1	1	1	1
Arrive	NWA : Northwest Airlines	17	15	1	1	1	1	1	1	1
Arrive	NWA : Northwest Airlines	22	30	1	1	1	1	1	1	0
Arrive	NWA : Northwest Airlines	22	45	1	1	1	1	1	1	1
Depart	NWA : Northwest Airlines	8	00	1	1	1	1	1	1	1
Depart	NWA : Northwest Airlines	9	00	1	1	1	1	1	1	1
Depart	NWA : Northwest Airlines	11	30	1	1	1	1	1	1	1
Depart	NWA : Northwest Airlines	12	15	1	1	1	1	1	1	1
Depart	NWA : Northwest Airlines	16	00	1	1	1	1	1	1	0
Depart	NWA : Northwest Airlines	18	00	1	1	1	1	1	1	1
Arrive	OAL : Olympic Airlines	12	15	0	0	0	0	0	1	1
Arrive	OAL : Olympic Airlines	14	45	1	1	1	1	1	1	1
Depart	OAL : Olympic Airlines	14	00	0	0	0	0	0	1	1
Depart	OAL : Olympic Airlines	16	30	1	1	1	1	1	1	1
Arrive	PIA : Pakistan International Airlines	14	30	1	0	0	1	1	1	1
Depart	PIA : Pakistan International Airlines	21	00	1	0	0	1	1	1	1
Arrive	QFA : Qantas Airways	10	30	0	0	0	0	0	1	0
Arrive	QFA : Qantas Airways	12	00	1	0	0	0	0	0	0
Arrive	QFA : Qantas Airways	17	00	1	1	1	1	1	1	1
Arrive	QFA : Qantas Airways	23	30	0	0	0	1	0	0	0
Depart	QFA : Qantas Airways	15	30	0	0	0	0	0	1	0
Depart	QFA : Qantas Airways	17	45	1	0	0	0	0	0	0
Depart	QFA : Qantas Airways	19	00	1	1	1	1	1	1	1
Arrive	RAM : Royal Air Maroc	14	45	1	1	1	1	1	1	1
Arrive	RAM : Royal Air Maroc	19	00	0	0	1	1	1	0	0
Depart	RAM : Royal Air Maroc	20	15	1	1	1	1	1	1	1
Depart	RAM : Royal Air Maroc	23	00	0	0	1	0	1	0	0

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Arrive	RJA : Royal Jordanian	16	00	1	0	1	1	0	1	1
Depart	RJA : Royal Jordanian	23	30	1	0	1	1	0	1	1
Arrive	SAA : South African Airways	7	00	1	1	1	1	1	1	1
Depart	SAA : South African Airways	17	15	1	1	1	1	1	1	1
Arrive	SCX : Sun Country Airlines	10	00	0	1	1	1	1	1	1
Arrive	SCX : Sun Country Airlines	19	30	1	0	0	0	0	0	0
Arrive	SCX : Sun Country Airlines	20	00	0	1	1	1	1	1	0
Depart	SCX : Sun Country Airlines	10	45	0	1	1	1	1	1	1
Depart	SCX : Sun Country Airlines	20	15	1	0	0	0	0	0	0
Depart	SCX : Sun Country Airlines	20	45	0	1	1	1	1	1	0
Arrive	SIA : Singapore Airlines	10	45	1	1	1	1	1	1	1
Arrive	SIA : Singapore Airlines	23	15	0	0	0	0	0	0	1
Depart	SIA : Singapore Airlines	6	30	0	0	0	0	0	1	0
Depart	SIA : Singapore Airlines	21	00	1	1	1	1	1	1	1
Arrive	SVA : Saudi Arabian Airlines	8	00	0	0	0	0	1	0	1
Arrive	SVA : Saudi Arabian Airlines	17	30	0	0	1	0	0	0	0
Arrive	SVA : Saudi Arabian Airlines	19	15	0	0	0	0	1	0	0
Arrive	SVA : Saudi Arabian Airlines	21	00	0	0	0	0	0	0	1
Arrive	SVA : Saudi Arabian Airlines	22	00	1	0	0	0	0	0	0
Depart	SVA : Saudi Arabian Airlines	14	00	0	0	0	0	1	0	1
Depart	SVA : Saudi Arabian Airlines	20	45	0	0	1	0	0	0	0
Depart	SVA : Saudi Arabian Airlines	21	45	0	0	0	0	1	0	0
Arrive	SWR : Swiss International Airlines	12	30	1	1	1	1	1	1	1
Arrive	SWR : Swiss International Airlines	14	30	1	1	1	1	1	1	1
Arrive	SWR : Swiss International Airlines	15	30	1	1	1	1	1	1	1
Depart	SWR : Swiss International Airlines	18	00	1	1	1	1	1	1	1
Depart	SWR : Swiss International Airlines	19	30	1	1	1	1	1	1	1
Depart	SWR : Swiss International Airlines	20	45	1	1	1	1	1	1	1
Arrive	TAI : Taca International Airlines	22	15	1	1	1	1	1	1	1
Depart	TAI : Taca International Airlines	9	00	1	1	1	1	1	1	1

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Arrive	TAM : TAM - Linhas Aerea	7	30	1	1	1	1	1	1	1
Arrive	TAM : TAM - Linhas Aerea	17	45	1	1	1	1	1	1	1
Depart	TAM : TAM - Linhas Aerea	9	15	1	1	1	1	1	1	1
Depart	TAM : TAM - Linhas Aerea	19	30	1	1	1	1	1	1	1
Arrive	THA : Thai Airways International	7	00	1	1	1	1	1	1	1
Depart	THA : Thai Airways International	11	30	1	1	1	1	1	1	1
Arrive	THT : Air Tahiti Nui	15	00	0	1	0	1	0	1	0
Depart	THT : Air Tahiti Nui	17	15	0	1	0	1	0	1	0
Arrive	THY : Turkish Airlines, Inc.	14	00	1	1	1	1	1	1	1
Arrive	THY : Turkish Airlines, Inc.	19	45	0	0	0	0	0	0	1
Depart	THY : Turkish Airlines, Inc.	16	00	1	1	1	1	1	1	1
Depart	THY : Turkish Airlines, Inc.	21	45	0	0	0	0	0	0	1
Arrive	UAE : Emirates	7	45	1	1	1	1	1	1	1
Arrive	UAE : Emirates	14	15	1	1	1	1	1	1	1
Arrive	UAE : Emirates	18	00	1	1	1	1	1	1	1
Depart	UAE : Emirates	10	15	0	0	0	0	0	1	0
Depart	UAE : Emirates	11	15	1	1	1	1	1	1	1
Depart	UAE : Emirates	23	00	1	1	1	1	1	1	1
Depart	UAE : Emirates	23	15	1	1	1	1	1	1	1
Arrive	UAL : United Airlines	6	00	1	1	1	1	1	1	1
Arrive	UAL : United Airlines	7	30	1	1	1	1	1	1	1
Arrive	UAL : United Airlines	9	30	1	1	1	1	1	1	1
Arrive	UAL : United Airlines	13	45	1	1	1	1	1	1	1
Arrive	UAL : United Airlines	14	15	1	1	1	1	1	1	1
Arrive	UAL : United Airlines	14	30	0	1	1	1	1	1	1
Arrive	UAL : United Airlines	16	15	1	1	1	1	1	1	1
Arrive	UAL : United Airlines	16	30	1	1	1	1	1	1	1
Arrive	UAL : United Airlines	18	00	1	1	1	1	1	1	1
Arrive	UAL : United Airlines	19	00	1	1	1	1	1	1	1
Arrive	UAL : United Airlines	19	15	1	1	1	1	1	1	1

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Arrive	UAL : United Airlines	20	00	1	1	1	1	1	1	1
Arrive	UAL : United Airlines	21	30	1	1	1	1	1	1	1
Arrive	UAL : United Airlines	21	45	1	1	1	1	1	1	1
Arrive	UAL : United Airlines	22	00	1	1	1	1	1	1	1
Arrive	UAL : United Airlines	22	30	1	1	1	1	1	1	1
Arrive	UAL : United Airlines	23	00	1	1	1	1	1	1	1
Depart	UAL : United Airlines	6	00	2	2	2	2	2	2	2
Depart	UAL : United Airlines	6	45	1	1	1	1	1	1	1
Depart	UAL : United Airlines	7	00	1	1	1	1	1	1	1
Depart	UAL : United Airlines	8	15	1	1	1	1	1	1	1
Depart	UAL : United Airlines	8	30	1	1	1	1	1	1	1
Depart	UAL : United Airlines	9	45	1	1	1	1	1	1	1
Depart	UAL : United Airlines	10	00	1	1	1	1	1	1	1
Depart	UAL : United Airlines	11	00	1	1	1	1	1	1	1
Depart	UAL : United Airlines	11	45	1	1	1	1	1	1	1
Depart	UAL : United Airlines	14	15	1	1	1	1	1	1	1
Depart	UAL : United Airlines	15	15	1	1	1	1	1	1	1
Depart	UAL : United Airlines	15	30	1	1	1	1	1	1	1
Depart	UAL : United Airlines	17	15	1	1	1	1	1	1	1
Depart	UAL : United Airlines	17	30	1	1	1	1	1	1	1
Depart	UAL : United Airlines	18	45	2	2	2	2	2	2	2
Depart	UAL : United Airlines	19	45	1	1	1	1	1	1	1
Depart	UAL : United Airlines	20	15	1	1	1	1	1	1	1
Depart	UAL : United Airlines	20	45	1	1	1	1	1	1	1
Arrive	USA : US Airways	7	45	1	1	1	1	1	1	0
Arrive	USA : US Airways	11	15	0	1	1	1	1	1	0
Arrive	USA : US Airways	15	15	1	1	1	1	1	1	0
Arrive	USA : US Airways	16	45	1	1	1	1	1	1	1
Arrive	USA : US Airways	19	15	1	1	1	1	1	1	1
Arrive	USA : US Airways	22	15	1	1	1	1	1	1	1
Arrive	USA : US Airways	23	00	1	1	1	1	1	1	1
Depart	USA : US Airways	6	15	1	1	1	1	1	1	1
Depart	USA : US Airways	6	30	1	1	1	1	1	1	1
Depart	USA : US Airways	7	45	1	1	1	1	1	1	1
Depart	USA : US Airways	9	15	1	1	1	1	1	1	1

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	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Depart	USA : US Airways	9	45	1	1	1	1	1	1	1
Depart	USA : US Airways	12	00	0	1	1	1	1	1	1
Depart	USA : US Airways	15	45	1	1	1	1	1	1	0
Depart	USA : US Airways	18	00	1	1	1	1	1	1	1
Depart	USA : US Airways	20	00	1	1	1	1	1	1	1
Arrive	UZB : Uzbekistan Airways	15	30	1	0	0	0	1	0	0
Depart	UZB : Uzbekistan Airways	18	00	1	0	0	0	1	0	0
Arrive	VIR : Virgin Atlantic Airways	12	00	1	1	1	1	1	1	1
Arrive	VIR : Virgin Atlantic Airways	16	30	1	1	1	1	1	1	1
Arrive	VIR : Virgin Atlantic Airways	18	45	1	1	1	1	1	1	1
Arrive	VIR : Virgin Atlantic Airways	21	00	1	1	1	1	1	1	1
Depart	VIR : Virgin Atlantic Airways	8	00	1	1	1	1	1	1	1
Depart	VIR : Virgin Atlantic Airways	18	30	1	1	1	1	1	1	1
Depart	VIR : Virgin Atlantic Airways	19	30	1	1	1	1	1	1	1
Depart	VIR : Virgin Atlantic Airways	21	30	1	1	1	1	1	1	1
Arrive	VRD: Virgin America	7	30	1	1	1	1	1	1	1
Arrive	VRD: Virgin America	11	00	1	1	1	1	1	1	1
Arrive	VRD: Virgin America	13	15	1	1	1	1	1	1	1
Arrive	VRD: Virgin America	15	30	1	1	1	1	1	1	1
Arrive	VRD: Virgin America	15	45	1	1	1	1	1	1	1
Arrive	VRD: Virgin America	17	15	1	1	1	1	1	1	1
Arrive	VRD: Virgin America	17	30	1	1	1	1	1	1	1
Arrive	VRD: Virgin America	22	00	1	1	1	1	1	1	1
Arrive	VRD: Virgin America	22	00	1	1	1	1	1	1	1
Arrive	VRD: Virgin America	22	00	1	1	1	1	1	1	1
Depart	VRD: Virgin America	7	00	1	1	1	1	1	1	1
Depart	VRD: Virgin America	7	30	1	1	1	1	1	1	1
Depart	VRD: Virgin America	9	15	1	1	1	1	1	1	1
Depart	VRD: Virgin America	9	30	1	1	1	1	1	1	1
Depart	VRD: Virgin America	10	30	1	1	1	1	1	1	1
Depart	VRD: Virgin America	12	00	1	1	1	1	1	1	1
Depart	VRD: Virgin America	16	30	1	1	1	1	1	1	1
Depart	VRD: Virgin America	16	45	1	1	1	1	1	1	1

JFK August 2008 as of 1/11/08

0600-2259 local hours only

	Seller Carrier	Hour (LT)	Quarter	SUN	MON	TUE	WED	THU	FRI	SAT
Depart	VRD: Virgin America	18	30	1	1	1	1	1	1	1
Depart	VRD: Virgin America	19	00	1	1	1	1	1	1	1
Arrive	VRG: Varig	8	00	1	1	1	1	1	1	1
Depart	VRG: Varig	22	00	1	1	1	1	1	1	1
Arrive	ZOM: Zoom Air UK	14	15	0	0	0	0	1	0	0
Arrive	ZOM: Zoom Air UK	15	45	1	1	1	1	0	1	1
Depart	ZOM: Zoom Air UK	16	00	0	0	0	0	1	0	0
Depart	ZOM: Zoom Air UK	17	30	1	1	1	1	0	1	1
Arrive	UPS: UPS	6	00	0	0	1	1	1	1	0
Arrive	UPS: UPS	6	15	0	0	0	0	0	0	1
Arrive	UPS: UPS	17	45	0	0	1	1	1	1	0
Depart	UPS: UPS	8	00	0	0	1	1	1	1	0
Depart	UPS: UPS	9	00	0	0	1	1	1	1	0
Depart	UPS: UPS	22	15	0	1	1	1	1	0	0
Depart	UPS: UPS	22	45	0	1	1	1	1	1	0

[FR Doc. 08–171 Filed 1–15–08; 1:41 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from BST Associates (WB616—1 1/7/2008) for access to certain data from the Board's 2005–2006 Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 245–0317.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–892 Filed 1–17–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will be held at the Hay-Adams Hotel, 16th Street and Pennsylvania Avenue, NW., Washington, DC, on January 29, 2008 at 10:30 a.m. of the following debt management advisory committee:

Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, section 10(d) and Public Law 103–202, § 202(c)(1)(B)(8) (31 U.S.C. section 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, section 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, section 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. section 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. section 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, section 3.

Although the Treasury's final announcement of financial plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. section 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions, financing estimates and technical charts. This briefing will give the press an opportunity to ask questions about financing projections and technical charts. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. section 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Karthik Ramanathan, Director, Office of Debt Management, at (202) 622–2042.

Dated: January 14, 2008.

Anthony W. Ryan,

Assistant Secretary, Financial Markets.

[FR Doc. 08–162 Filed 1–17–08: 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Minority Thrift Certification Form

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The OTS within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before March 18, 2008.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Nicola Kelly, (202) 906–7891, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the

approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Minority Thrift Certification Form.

OMB Number: 1550–0096.

Form Number: OTS Form 1661.

Description: OTS uses the results of the certification process to maintain an accurate listing of minority-owned thrifts. OTS provides training, technical assistance, and education programs to those thrifts throughout the year. In addition, OTS uses the list to provide information to potential investors who may be interested in supporting minority-owned thrifts. Finally, OTS reports annually to Congress on its efforts to support minority-owned thrifts, in accordance with Section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 22.

Estimated Frequency of Response: Annually.

Estimated Burden Hours per Response: 30 minutes.

Estimated Total Burden: 11 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: January 15, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–906 Filed 1–17–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Interagency Notice of Change in Control

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before February 19, 2008. A copy of this ICR, with applicable supporting documentation, can be obtained from *RegInfo.gov* at *http://www.reginfo.gov/public/do/PRAMain*.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725—17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov* (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Litigation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Interagency Notice of Change in Control.

OMB Number: 1550–0032.

Form Number: OTS Form 1622.

Description: The Regional Office must review the information contained in the Change of Control notices if the application is considered eligible for delegated action. If the application is considered non-delegated, OTS' Washington staff must also review the application. The OTS must review the information in these applications to determine that no person is acting directly or indirectly, or in concert with one or more other persons, to acquire control of an insured depository institution through the purchase, assignment, transfer, pledge, or other disposition of voting stock of the thrift institution, unless OTS has been afforded sixty days prior written notice to review the proposal and to object to the acquisition.

Type of Review: Extension without change of currently approved collection.

Affected Public: Business or other for profit; Federal Government.

Estimated Number of Respondents: 20.

Estimated Burden Hours per Response: 35 hours.

Estimated Frequency of Response: On occasion; as required per Transaction.

Estimated Total Burden: 698 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: January 15, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–907 Filed 1–17–08; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Friday,
January 18, 2008

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 441

Medicaid Program; Self-Directed Personal Assistance Services Program State Plan Option (Cash and Counseling); Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 441

[CMS–2229–P]

RIN 0938–AO52

Medicaid Program; Self-Directed Personal Assistance Services Program State Plan Option (Cash and Counseling)

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

ACTION: Proposed rule.

SUMMARY: This proposed rule provides guidance to States that want to administer self-directed personal assistance services through their State plans.

DATES: *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on February 19, 2008.

ADDRESSES: In commenting, please refer to file code CMS–2229–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

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

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

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–2229–P, P.O. Box 8016, Baltimore, MD 21244–8016.

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

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–2229–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410)–786–7195 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Marguerite Schervish, (410) 786–7200.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–2229–IFC and the specific ''issue identifier'' that precedes the section on which you choose to comment.

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

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

I. Background

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

A. Section 6087 of the Deficit Reduction Act of 2005

The Deficit Reduction Act (DRA) of 2005 was enacted into law on February 8, 2006 (Pub. L. 109–171). Section 6087 of the DRA provided for a new State Plan option that is built on the experiences and lessons learned from the disability rights movement and States that pioneered self-direction programs. Self-direction is an important component of independence as it promotes quality, access, and choice.

Specifically, section 6087 of the DRA amended section 1915 of the Social Security Act (the Act) to add new paragraph (j). Section 1915(j)(1) of the Act would allow a State the option to provide, as ''medical assistance,'' payment for part or all of the cost of self-directed personal assistance services (PAS) provided pursuant to a written plan of care to individuals for whom there has been a determination that, but for the provision of such services, the individuals would require and receive State Plan personal care services, or section 1915(c) home and community-based waiver services. Section 1915(j)(1) of the Act also expressly excludes Medicaid payment for room and board. Finally, section 1915(j)(1) of the Act requires that self-directed PAS may not be provided to individuals who reside in a home or property that is owned, operated, or controlled by a provider of services, not related by blood or marriage.

Section 1915(j)(2) of the Act sets forth five assurances that States must provide in order for the Secretary to approve self-directed PAS under this State Plan option. First, States must assure that necessary safeguards are in place to protect the health and welfare of individuals provided services under this State Plan option, and to assure the financial accountability for funds expended with respect to such services. Second, States must assure the provision of an evaluation of the need for State Plan personal care services, or

personal services under a section 1915(c) waiver. Third, States must assure that individuals who are likely to require State Plan personal care services, or section 1915(c) waiver services, are informed of the feasible alternatives to the self-directed PAS State Plan option (if available) such as personal care under the regular State plan option or personal assistance services under a section 1915(c) waiver program. Fourth, States must assure that they provide a support system that ensures that participants in the self-directed PAS program are appropriately assessed and counseled prior to enrollment and are able to manage their budgets.

Fifth, States must assure that they will provide to the Secretary an annual report on the number of individuals served under the State Plan option and the total expenditures on their behalf in the aggregate. States must also provide an evaluation of the overall impact of this new option on the health and welfare of participating individuals compared to non-participants every 3 years.

Section 1915(j)(3) of the Act indicates that States that offer self-directed PAS under this State Plan option are not subject to the statewideness and comparability requirements of the Act.

Section 1915(j)(4)(A) of the Act defines self-directed PAS to mean personal care and related services under the State Plan, or home and community-based waiver services under a section 1915(c) waiver, provided to a participant eligible under this self-directed PAS State Plan option. Furthermore, the statute states that within an approved self-directed services plan and budget, individuals can purchase personal assistance and related services and hire, fire, supervise, and manage the individuals providing such services.

Section 1915(j)(4)(B) of the Act gives States the option to permit participants to hire any individual capable of providing the assigned tasks, including legally liable relatives, as paid providers of the services. The statute also gives States the option to permit participants to purchase items that increase independence or substitute for human assistance to the extent that expenditures would otherwise be made for the human assistance.

Section 1915(j)(5) of the Act sets forth the requirements for an ''approved self-directed services plan and budget''. Section 1915(j)(5)(A) of the Act authorizes the individual or a defined representative to exercise choice and control over the budget, planning, and purchase of self-directed PAS, including the amount, duration, scope, provider, and location of service provision. Section 1915(j)(5)(B) of the Act requires an assessment of participants' needs, strengths, and preferences for PAS. Section 1915(j)(5)(C) of the Act requires States to develop a service plan based on the assessment of need using a person-centered planning process. Section 1915(j)(5)(D) of the Act requires States to develop and approve a budget for participants' services and supports based on the assessment of need and service plan and on a methodology that uses valid, reliable cost data, is open to public inspection, and includes a calculation of the expected cost of such services if those services were not self-directed. The budget may not restrict access to other medically necessary care and services furnished under the State Plan and approved by the State but not included in the budget.

Section 1915(j)(5)(E) of the Act requires that there are appropriate quality assurance and risk management techniques used in establishing and implementing the service plan and budget that recognize the roles and responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan and budget based upon the participant's resources and capabilities.

Section 1915(j)(6) of the Act indicates that States may employ a financial management entity to make payments to providers, track costs, and make reports. Payment for the activities of the financial management entity shall be at the administrative rate established in section 1903(a) of the Act.

B. History of Self-Direction

The Independent Living movement in the 1960s was premised on the concept that people with disabilities should have the same civil rights, options, and control over choices in their own lives as do people without disabilities, and that individuals with cognitive impairments should not be prohibited from exercising control over their lives. One mechanism that allows individuals to exercise more involvement, control, and choice over their lives is self-directed care. Self-directed care is a service delivery mechanism that empowers individuals with the opportunity to select, direct, and manage their needed services and supports identified in an individualized service plan and budget. Self-direction is not a service, but rather an alternative to the traditional service delivery model whereby a worker hired by the Medicaid recipient will furnish the Medicaid service to the Medicaid recipient and the Medicaid recipient retains the control and authority over who provides the services, how the services are provided, the hours they work, and their rate of pay.

Two national pilot projects demonstrated the success of self-directed care. During the mid-1990s, the Robert Wood Johnson Foundation awarded grants to develop self-determination in 19 States. These projects primarily evolved into Medicaid-funded programs under the section 1915(c) home and community-based services waiver authority. In the late 1990s, the Robert Wood Johnson Foundation again awarded grants to develop the ''Cash and Counseling'' national demonstration and evaluation project in three States. These projects evolved into demonstration programs under the section 1115 authority of the Act.

Evaluations were conducted in both of these national projects. Results in both projects were similar—persons directing their personal care experienced fewer unnecessary institutional placements, experienced higher levels of satisfaction, had fewer unmet needs, experienced higher continuity of care because of less worker turnover, and maximized the efficient use of community services and supports.

On February 1, 2001, the President announced the *New Freedom Initiative*, which included the following three elements: Promoting full access to community life through efforts to implement the Supreme Court's decision in *Olmstead* vs. *L.C.*, 527 U.S. 581 (1999) (''Olmstead''), integrating Americans with disabilities into the workforce with programs under the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA) (Pub. L. 106–170, enacted on December 19, 1999), and creating the National Commission on Mental Health. The President subsequently expanded this initiative through *Executive Order 13217* (June 18, 2001) by directing Federal agencies to work together to ''tear down the barriers'' to community living by developing a government-wide framework for providing elders and people with disabilities the supports necessary to learn and develop skills, engage in productive work, choose where to live, and fully participate in community life.

On May 9, 2002, as part of its response to the *New Freedom Initiative*, the Department of Health and Human Services unveiled the *Independence Plus* templates and the initiative to help States broaden their ability to offer individuals the opportunity to maximize choice and control over

services in their own homes and communities. The Department developed two templates that allowed States to choose different self-directed design features to satisfy their unique programs. The section 1115 demonstration template was developed for States that wanted to permit individuals to receive a prospective cash allowance equivalent to the amount of their Medicaid personal care benefit. Under the section 1115 authority, individuals could directly manage their cash allowance and direct the purchases of their personal care and related services and goods. For those States not wanting to offer the cash allowance, a section 1915(c) home and community-based services waiver template was developed. The section 1915(c) waiver template allowed Medicaid recipients to self-direct a wide array of services, so long as these services are required to keep a person from being institutionalized in a hospital, nursing facility or intermediate care facility for the mentally retarded (ICFMR).

However, a program was only given the *Independence Plus* designation when a State demonstrated a strong commitment to self-direction by developing a comprehensive program that offered a person-centered planning process, individualized budgeting, self-directed supports including financial management services, and a quality assurance and improvement plan. The intended purposes of the *Independence Plus* Initiative were to:

- Delay or avoid institutional or other high cost out-of-home placement by strengthening supports to individuals or families.
- Recognize the essential role of the individual or family in the planning and purchasing of health care supports and services by providing individual or family control over an agreed upon resource amount.
- Encourage cost effective decision-making in the purchase of supports and services.
- Increase individual or family satisfaction through the promotion of self-direction, control, and choice—a major theme expressed during the New Freedom Initiative-National Listening Session.
- Promote solutions to the problem of worker availability.
- Provide supports including financial management services to support and sustain individuals or families as they direct their own services.
- Assist States with meeting their legal obligations under the Americans with Disabilities Act (ADA) and the U.S. Supreme Court's *Olmstead* decision.
- Provide flexibility for States seeking to increase the opportunities afforded individuals and families in deciding how best to enlist or sustain home and community services.

A new section 1915(c) waiver application was also developed effective spring 2005 that incorporates our requirements for an *Independence Plus* program.

In 2003 we awarded 12 systems change grants to States for the development of *Independence Plus* programs. On October 7, 2004, the Robert Wood Johnson Foundation awarded a second round of ''Cash and Counseling'' grants to 11 States to develop *Independence Plus* programs using either the Section 1915(c) waiver or section 1115 demonstration application. As of March 20, 2006, 15 States had 17 approved *Independence Plus* programs. In addition, there were 2 other States that included self-direction options in their section 1115 demonstrations and a multitude of States that offered self-directed program options in their section 1915(c) home and community-based services waiver programs.

II. Provisions of the Proposed Rule

[If you choose to comment on issues in this section, please include the caption ''PROVISIONS OF THE PROPOSED RULE'' at the beginning of your comments.]

Section CFR 441.450 Basis, Scope and Definitions

This proposed rule would implement section 1915(j) of the Act, allowing States to provide a self-directed PAS through a State Plan option. We propose to implement this provision in 42 CFR part 441 subpart J. This part would set forth the requirements of the self-directed PAS delivery model administered through the Medicaid State plan and indicates how individuals may qualify to participate in a self-directed PAS State plan option. The overall purpose of section 1915(j) of the Act is to allow States the option to amend their State Plans to offer individuals the opportunity to self-direct their PAS. This self-directed PAS State plan option is a service delivery model and is premised in the experience and lessons learned from the self-direction and *Independence Plus* section 1115 demonstrations and section 1915(c) waiver programs. Based on the demonstrated success of self-directed services in these programs, we learned that individuals can successfully exercise decision-making authority over their PAS and supports identified in an individualized service plan and budget. Consequently, in 42 CFR 441.450(b), we propose that individuals be allowed to exercise decision-making authority in identifying, accessing, managing and purchasing their PAS. We propose a list of the minimum activities over which individuals may exercise authority, in order to implement the basic elements of self-direction, which convey control over both employer-related and budget-related activities. Individuals' decision-making authority includes, at a minimum, the purchase of PAS and supports for PAS, recruiting workers, hiring and discharging workers, specifying worker qualifications, determining worker duties, scheduling workers, supervising workers, evaluating worker performance, determining the amount paid for a service, support, or item, scheduling when services are provided, identifying service workers, and reviewing and approving invoices. This proposed list was determined through our review of States' experiences with existing self-directed programs and we believe it represents the minimum authority required by an individual to self-direct care. A State can include additional activities in its submitted State plan option request.

Since we view self-directed care as a method of service delivery rather than cash assistance, we do not view the following Medicaid provisions as a barrier to use of the self-directed PAS option:

- When States elect to offer a cash option to participants, funds made available to the individual solely for the purchase of medically necessary items and services (as outlined in the approved service plan) are not income or resources to the individual. Thus, they would not be counted for purposes of determining or redetermining eligibility (under 1902(a)(10)(A) or 1902(a)(10)(C) of the Act, or any demonstration project).
- Medicaid requirements for direct payment to providers found at section 1902(a)(32) of the Act and prepayment review found at section 1902(a)(37)(B) of the Act may be satisfied by specific responsibilities individuals undertake as part of self-direction, such as activities to effectively manage their funds, review all payment requests, and make payments to providers, either directly or through a financial management entity. These responsibilities are further described in § 441.470.
- In the service delivery model of self-direction, the mechanisms that an

individual undertakes to document delivery of services, such as having timesheets signed by the provider of services, should include the basic elements needed to satisfy the objective of the Medicaid requirements on provider agreements found at section 1902(a)(27) of the Act.

There are many terms specific to the self-directed PAS State plan option. Because of the need to be consistent with their usage within the context of section 1915(j), we are proposing to define the following terms for purposes of this section in § 441.450(c):

Assessment of Need

Section 1915(j)(5)(B) of the Act requires an assessment of a participant's needs, strengths, and preferences for PAS. Our proposed definition at § 441.450(c) reflects this statutory language. An assessment of an individual's needs, strengths and preferences is crucial because it forms the basis for the identification of the needed services and supports that will be authorized in the individual's service plan and the subsequent service budget. It is also important to identify an individual's strengths and preferences that will enable self-direction of PAS. Therefore, we also propose in § 441.450(c) that the assessment includes one or more processes to obtain information about an individual's health condition, personal goals and preferences for the provision of services, functional limitations, age, school, employment, household, and other factors that are relevant to the authorization and provision of services. We believe our proposed definition reflects the need for such an assessment to be a comprehensive assessment of all an individual's needs.

Individualized Backup Plan

We propose to add a definition for an individualized backup plan because we think it is an important beneficiary protection and a necessary communication device to convey important information should a situation occur that would pose a risk of harm to an individual that would necessitate a plan to ensure alternative arrangements for service delivery. Accordingly, in § 441.450(c), we would define an individualized backup plan to mean a written plan that addresses critical contingencies or incidents that would pose a risk of harm to the participant's health or welfare. We propose to require that the individualized backup plan be incorporated into the participant's service plan. For example, a typical critical contingency or incident could include the failure of a worker to appear when scheduled to provide necessary services and the individualized backup plan would include the steps necessary to continue to provide the necessary services in such a case. The individualized backup plan could include arranging for designated provider agencies to furnish staff support on an on-call basis, or use of other services and agencies in existence in the participant's community. We note each backup plan must necessarily be crafted to meet the unique needs and circumstances of each participant.

Legally Liable Relatives

Section 1915(j)(4)(B)(i) of the Act permits, at the State's option, participants in the self-directed PAS option to hire legally liable relatives as paid providers of services. In 42 CFR 441.450(c), we propose to define legally liable relatives to mean persons who have a duty under the provisions of State law to care for another person. Legally liable relatives may include: (1) The parent (biological or adoptive) of a minor child or the guardian of a minor child who must provide care to the child, (2) legally-assigned caretaker relatives, or (3) a spouse. It has been our experience that these are the most commonly used relationships in providing care, but we solicit comments on other possible relationships that could be used.

Self-Directed Personal Assistance Services

Section 1915(j)(4)(A) of the Act defines self-directed PAS to mean personal care and related services, or home and community-based services otherwise available under the State Plan or a 1915(c) waiver, that are provided to an individual determined to be eligible for the self-directed PAS program. We propose at § 441.450(c) to adopt the statutory language in our definition. We further note that we believe it is clear that ''personal care and related services'' refers to those services that an individual receives that are within the State's defined personal care State Plan optional service (for example, activities of daily living, instrumental activities of daily living, supervision, and cueing). Notwithstanding an individual's eligibility to participate in the self-directed PAS option because of their eligibility for and receipt of services under a State Plan personal care services option or a section 1915(c) waiver program, we also propose that self-directed PAS include, at the State's option, items that increase an individual's independence or substitute for human assistance, according to section 1915(j)(4)(B)(ii) of the Act. We believe it is clear that the State has the option to allow the individual to acquire these items, and that these items can be considered as self-directed PAS.

Self-Direction

Section 1915(j)(5)(A) of the Act defines self-direction to mean the opportunity for participants or their representatives to exercise choice and control over the budget, planning, and purchase of self-directed PAS, including the amount, duration, scope, provider, and location of service provision. We propose to reflect this statutory definition in the rule at § 441.450(c).

Service Budget

Section 1915(j)(5)(D) of the Act sets out the requirement for a service budget as part of an ''approved self-directed services plan and budget.'' We propose, at § 441.450(c), to define a service budget to mean an amount of funds that is under the control and direction of a participant when the State has selected the State Plan option for provision of self-directed PAS. We further propose that the budget be developed using a person-centered and directed process, and be individually tailored in accordance with the participant's needs and personal preferences as established in the service plan. We further note that the statutory requirements that the budget be based upon an assessment of need, approved by the State, developed using a valid methodology, is open to public inspection, and includes a calculation of the expected cost of the PAS if not self-directed are inherent in the process for approval of a self-directed PAS State plan option and we are not proposing these requirements as part of the proposed definition.

Service Plan

The statute at section 1915(j)(5)(C) of the Act references the requirement for a service plan to be developed and approved by the State based on an assessment of need through a person-centered process. At § 441.450(c), we propose to define a service plan to mean the written document that specifies the services and supports (regardless of funding source) that are to be furnished to meet the needs of a participant in the self-directed PAS option so the participant can successfully direct the PAS and live in the community. We believe that an assessment of an individual's needs, strengths and preferences is crucial because it forms the basis for the identification of the needed services and supports that will

be authorized in the individual's service plan and the subsequent service budget.

We also propose to reflect the statutory requirement that the service plan be based on the assessment of need using a person-centered and directed planning process. We also propose to incorporate the principles of a person-centered planning process since we believe that the service plan must build upon the participant's capacity to actively engage in and lead the development of the plan, including identifying persons who will be involved in the process. We anticipate that States will provide individuals with information, assistance and training, as needed or desired, in advance of and during the service planning process in order to help them develop their service plans, thereby ensuring that the plan reflects their needs, strengths and preferences. Specifically, we propose to require that the process build upon the participant's capacity to engage in activities that promote community life and that respects the participant's preferences, choices, and abilities. We also propose to allow families, friends and professionals, as desired or required by the participant, to be involved in the service-planning process.

Support System

Section 1915(j)(2)(D) of the Act requires that States provide a support system that ensures that participants are appropriately assessed and counseled prior to their decision to participate in the self-directed PAS State Plan option and are able to manage their budgets. The statute further requires that additional counseling and management support may be provided at the request of the individual. In § 441.450(c), we propose to define support system to mean information, counseling, training, and assistance that support the participant (or the participant's family or representative, as appropriate) in identifying, accessing, managing, and directing their PAS and supports and in purchasing their PAS identified in the service plan and budget.

The following proposed provisions of subpart J deal with General Administration.

Section 441.452 Self-Direction: General

We note that the statute is written such that States must have in place, before electing the self-directed PAS option, personal care services through their State plan, or home and community-based services in a section 1915(c) waiver program. In this way, States that choose to amend their State plans to add self-directed PAS, will have both the traditional delivery system (that is, non-self-directed) and the self-directed PAS service delivery option available in the event that individuals voluntary disenroll from or are involuntarily disenrolled from the self-directed PAS service delivery option. This also reflects the choice requirement for such individuals as set forth in section 1915(j)(2)(C) of the Act. In the traditional delivery system, the provider of the PAS is an entity such as a home health agency. The entity, and not the Medicaid recipient, exercises authority over who will furnish the PAS and retains the control and authority over how the services are provided, the worker's hours, and the worker's rate of pay.

We are also proposing to require that the State's assessment of an individual's needs should form the basis for the level of services for which the individual is eligible. This requirement will ensure that, regardless of service delivery system, individuals will receive the services identified in the assessment of need. The proposed regulation should not be construed as affecting an individual's Medicaid eligibility, including that of an individual whose Medicaid eligibility is attained through receipt of section 1915(c) waiver services. We are proposing in § 441.452 to reflect the general concepts of section 1915(j)(1) statutory requirements as noted above. We are available to all States to provide technical assistance in structuring this new self-directed PAS State Plan option.

Section 441.454 Use of Cash

In the section 1115 self-direction demonstration programs, participants could receive a prospective cash allowance equivalent to the amount of Medicaid expenditures for the services included in the demonstration and could, if they chose this option, directly manage their cash allowance. We learned that participants who chose to directly manage their cash allowance were able to do so successfully and that they became more prudent purchasers of their needed supports and services. Some individuals also chose to perform all the employer tax-related responsibilities that are associated with being an employer of record, while others desired to use a fiscal/employer agent or financial management entity to help them with some or all of these responsibilities.

We are aware that individuals who have been directly receiving and managing their cash allowance wish to continue to have this option. We are also aware that individuals in States where this option has not heretofore been available wish to be able to access this option. Accordingly, we are proposing in § 441.454, that States can elect to disburse cash prospectively to participants who are self-directing their PAS and must ensure compliance with the IRS requirements if they adopt this option. Further, if the cash option is made available by the State, we would require States to permit individuals who select the cash option the choice of whether to use a financial management entity. Individuals must be given flexibility to determine whether to use a financial management entity, and the functions, if any, to be performed on their behalf by the financial management entity. For example, some individuals may want the financial management entity to perform all employer-related tax functions, while they retain responsibility for paying their providers of PAS. Individuals choosing not to use a financial management entity must comply with all employer-related tax functions of the IRS requirements. However, we are also proposing that if States choose to allow the cash option, that they make available a financial management entity to participants who have demonstrated, after additional counseling, information, training, or assistance, that they cannot effectively manage the cash option.

Section 441.456 Voluntary Disenrollment

We understand that a self-directed service delivery model may not necessarily work for everyone. Individuals who initially elect to self-direct their PAS may subsequently decide to move to a traditional service delivery system. At § 441.456, we propose to specify that individuals may voluntarily disenroll from the self-directed PAS State plan option at any time and elect to receive their services through the traditional service delivery system. As required by statute, PAS will be offered to the individual so long as the individual still qualifies for State Plan personal care services or home and community based services provided through a 1915(c) waiver program.

If individuals decide to leave the self-directed care option, we want to be assured that individuals continue to receive the services for which they are eligible and that their health and welfare are maintained. Accordingly, we propose to require that States specify in the State plan the safeguards that will be in place to ensure continuity of services during the transition from self-directed services. In order to effectuate a prompt and efficient transition, we would expect that any revisions to the service plan be made promptly and that

participants are quickly linked with alternate service providers to prevent a break in the delivery of services.

Section 441.458 Involuntary Disenrollment

We understand there may be circumstances, where in the interest of the participant's health and welfare, the State may wish to involuntarily disenroll the participant from the self-directed PAS option. For example, involuntary disenrollment may be necessary when the individual does not carry out the necessary responsibilities, thereby jeopardizing their health and welfare, or in other circumstances where action must be taken to ensure an individual's health and welfare. Accordingly, in § 441.458, we propose to permit States to determine the conditions under which an individual may be involuntarily disenrolled from the self-directed PAS State plan option. We also note that we propose that we approve these conditions, and plan to do so as part of the review of the State plan amendment to provide self-directed PAS.

Again, we want to be assured that individuals continue to receive the services for which they are eligible and that their health and welfare are maintained. Accordingly, we would also propose to require that States specify in the State plan the safeguards that will be in place to ensure continuity of services during the transition from self-directed services. In order to effectuate a prompt and efficient transition, we would expect that any needed revisions to the service plan would be made promptly and that participants are quickly linked with alternate service providers for a seamless delivery of services.

Section 441.460 Participant Living Arrangements

Section 1915(j)(1) of the Act states that self-directed PAS cannot be made available to individuals who reside in a home or property that is owned, operated, or controlled by a provider of services, who is not related to the individual by blood or marriage. We are proposing to reflect the statutory requirement in § 441.460(a). We note programs that have successfully provided the self-directed care option have typically provided it to individuals who live in homes of their own or in the homes of their families. We believe successfully directing one's own care may become less feasible when individuals receive services and reside in large, provider-owned, operated or controlled residential living arrangements. For example, if the residential facility also provides and receives payment for the provision of personal care and related services, it may prohibit the self-directed service delivery option for fear of duplication of services. We are also proposing in § 441.460(b) to allow States to specify additional restrictions on participant living arrangements, if they have been approved by CMS. We further note that we believe this limitation should be applied to individuals residing in assisted living facilities, as we anticipate that the provider would both control the housing and be expected to provide the PAS. However, we do not believe this limitation would apply to situations in which the individual resides in the home of someone whom they wish to employ under the self-directed PAS option. We invite comment on our proposal as well as on other situations to which this limitation should apply.

Section 441.462 Statewideness, Comparability, and Limitations on Number Served

Section 1915(j)(3) of the Act permits a State to provide self-directed PAS without regard to the requirements for statewideness (section 1902(a)(1) of the Act), comparability of services or the number of individuals served (section 1902(a)(10)(B) of the Act). In § 441.462, we propose to reflect section 1915(j)(3) of the Act. However, we also wish to note below our understanding of the extent to which these provisions provide flexibilities in the State plan PAS option.

1. Geographic Limitations

Under this new State plan option, States are not bound by the ''statewideness'' requirement of section 1902(a)(1) of the Act. (The statewideness requirement of section 1902(a)(1) of the Act provides, in part, that the provisions of a State plan be in effect in all political subdivisions of the State.) Therefore, consistent with the statute, we propose in § 441.462 to permit States to limit the provision of self-directed PAS to any defined location of the State (that is, city, county, community, etc.).

We note that the exception to the statewideness requirement applies only to the provision of self-directed PAS under section 1915(j) of the Act. The statewideness requirement of section 1902(a)(1) of the Act continues to apply to all other Medicaid services for which an individual may be eligible, unless those services are subject to their own statewideness exception. In other words, the State cannot geographically limit other services. Receipt of State plan PAS does not in any way alter an individual's eligibility to receive any other service under the State plan.

2. Comparability

Under this State plan option, the statute permits a State to provide self-directed PAS to individuals without regard to the ''comparability'' provision in section 1902(a)(10)(B) of the Act. Thus, a State can limit the populations eligible to receive these services. (The ''comparability'' provision of section 1902(a)(10)(B) of the Act generally requires States to make Medicaid services available in the same amount, duration, and scope to one group of categorically needy individuals as it offers to another group of categorically needy individuals. The comparability provision also requires that the Medicaid services available to any individual in a categorically needy group are not less in amount, duration, and scope than those Medicaid services available to an individual in a medically needy group). Section 1915(j)(3) of the Act thus permits States to offer self-directed PAS to certain populations, such as those with developmental disabilities, physical disabilities or aged.

As with the statewideness exception, we note that the exception to the comparability requirement applies only to the provision of self-directed PAS under section 1915(j) of the Act. For all other Medicaid services for which an individual may be eligible, the comparability requirements of section 1902(a)(10)(B) of the Act continue to apply, unless those services are subject to their own comparability exception. In other words, receipt of self-directed PAS State plan does not in any way alter an individual's eligibility to receive any other service under the State plan.

3. Limitations on Number of People Served

The statute also permits a State to limit the number of persons served under this State plan option. This means that the State may limit the number of individuals receiving self-directed PAS. For example, States could offer self-directed PAS to only 150 individuals.

Section 441.464 State Assurances

Section 1915(j)(2) of the Act requires States that elect this option to assure the appropriate protection of Medicaid recipients. The statute does not permit us to approve a program that does not provide certain specified assurances. Specifically, section 1915(j)(2) of the Act requires States to assure the Secretary of the following:

1. Necessary Safeguards

States must assure that necessary safeguards have been taken to protect the health and welfare of individuals furnished services under this program and to assure the financial accountability for funds expended for self-directed services. In proposed § 441.464(a), we reflect this general requirement. More specifically, in proposed § 441.464(a)(1), we would require that safeguards must prevent the premature depletion of the participant directed budget as well as identify potential service delivery problems that might be associated with budget underutilization. We believe it is important that States have a system to oversee the expenditures being made by participants. Premature depletion of the funds in a budget could signal a health crisis which would require the State to immediately determine the health status of a participant and conduct a new assessment of the participant's needs. It could also signal misuse of the funds, for which the State would need to take corrective action. The corrective action could be the provision of additional counseling and training on how to manage the budget, or recoupment of the misspent funds. In contrast, under-utilization of the funds could signal a problem with the provision of services, or the lack of understanding of how the funds may be used to purchase PAS and supports.

We propose, in § 441.464(a)(2), a minimum list of safeguards that must be provided, but States would have the ability to implement additional safeguards to protect health and welfare and to prevent premature depletion of the participant-directed budget. Our experience with self-direction indicated that, at a minimum, a certain level of oversight by the State is necessary to help flag potential issues, particularly as to budget issues. The proposed list is based, in part, on this experience. We believe that the proposed list represents reasonable activities that a State should have in place so that any health or other problems associated with use of the budgeted funds will be brought to the attention of a case manager, support broker, financial management entity, or other person with oversight responsibilities. In proposed § 441.464(a)(3) we would require that safeguards must be designed so that budget problems are identified on a timely basis so that corrective action may be taken, if necessary, in order to protect health and welfare and ensure financial accountability.

2. Evaluation of Need

States must assure the performance of an evaluation of the need for personal care under the State plan or personal services under a section 1915(c) home and community-based services waiver program. In addition, section 1915(j)(2)(B) of the Act states that those subject to the evaluation of need are individuals who: (1) Are entitled to medical assistance for personal care services under the State plan, or receive home and community-based services under a section 1915(c) waiver; (2) may require self-directed PAS; and (3) may be eligible for self-directed PAS. We would reflect these statutory requirements in proposed § 441.464(b).

3. Notification of Feasible Alternatives

Individuals likely to require personal care under the State plan, or home and community-based services under a section 1915(c) waiver program, are informed of feasible alternatives, if available under the State's self-directed PAS State plan option, at the choice of such individuals, to the provision of personal care services under the State plan, or personal assistance services under a section 1915(c) home and community-based services waiver program.

With the implementation of this new State plan option, there could be multiple programs offering individuals opportunities to receive their services through different service delivery mechanisms. We believe it is important that individuals be made aware, before enrolling in a program, of feasible alternatives for which they may be eligible and the requirements of all self-directed and non-self-directed programs operating within a State. We have historically required that participation in a self-directed program be voluntary and informed in order to ensure that participants'' choice of the self-directed model of service delivery is meaningful. To reflect both the statutory requirement and our longstanding policy, we propose in § 441.464(c)(1), that individuals receive information about self-direction opportunities that is sufficient to inform decision-making about the election of self-direction and provided on a timely basis to individuals or their representatives. The information given to individuals must minimally include the elements of self-direction compared to non-self-directed PAS, self-direction responsibilities and potential liabilities, their choice to receive PAS under a section 1915(c) waiver program, if applicable, and the option, if available, to receive and manage the cash amount of their individual budget allocation. We also propose to require a State, at § 441.464(c)(2), to inform individuals about when and how the information is provided.

4. Support System

Section 1915(j)(2)(D) of the Act requires States to provide a support system to ensure that participants in the self-directed PAS State plan option are appropriately assessed and counseled before enrollment and are able to manage their budgets. Participants may also request additional counseling and management support during participation in the self-directed PAS option in an effort to address any difficulties they may experience.

Based on our experience with self-direction programs, we are aware that individuals of different ages and with different abilities and disabilities, will desire to self-direct their PAS. In consideration of the potential differences in abilities to self-direct services, we have long required that States offer participants a support system that includes information about self-direction, as well as any counseling, training and assistance that may be needed or desired to effectively manage their services and budgets. We propose to reflect both the statutory requirement and our long-standing policy at § 441.464(d). While we do not prescribe the way States are to design their support system in order to allow flexibility, based on our experience, we include in the proposed regulation a minimum list of activities for which individuals may need information, counseling, training and/or assistance, but States may offer supports for additional activities. Generally, the activities requiring support include participant rights information and how the self-directed model of service delivery operates. For example, the list includes providing important beneficiary rights and protections such as freedom of choice of providers, information about the grievance process and how participants would recognize and report critical incidents. In order to convey all the necessary information to individuals, we understand some States have developed a ''consumer training manual'' and/or an orientation and training program that includes necessary information about self-direction, person-centered planning, the services that may be self-directed, the roles and responsibilities of participants, providers, supports brokers/counselors and financial management service entities, as well as a host of other information about managing and directing the services and

supports identified in the service plan and budget. We encourage States to have such a manual or an orientation and training program in place because it will give clear guidance to the involved and interested parties in the self-directed PAS State plan option.

We also realize that as self-direction assumes a level of independence and the ability of individuals to make decisions and choices, the extent to which individuals use the information and assistance may vary with their abilities and preferences. Individuals may elect whether and to what extent they will avail themselves of the support system, although States must require individuals not participating in the cash option to utilize financial management services. However, we do recognize that situations could arise in which individuals experience episodic difficulty in effectively managing and directing their PAS services and budgets. It has been our experience with self-direction waiver and demonstration programs that States have chosen to increase the level of support an individual may temporarily need and to offer additional information, counseling, training or assistance that may be needed and desired by individuals to overcome the difficulty. States have found that by flexibly providing ongoing support, success in self-directing services can usually be attained.

Based on these States'' experiences, we would require at proposed § 441.464(d)(3), that States would have information, counseling, training or assistance available, including financial management services, on an ongoing basis to participants at their request or when the State has determined that the participant is not effectively managing the services identified in the service plan or budget. However, to ensure that participants continue to receive needed services, we are also proposing in § 441.464(d)(4), that if, after additional information, counseling, training or assistance is provided, the situation has not improved, States may mandate additional assistance or may initiate an involuntary disenrollment in accordance with § 441.458.

5. Annual Report and Evaluation of Impact

Section 1915(j)(2)(E) of the Act requires that the State provide to the Secretary an annual report reflecting the number of individuals served under the State plan option and total expenditures on their behalf. This section also requires that the State provide an evaluation of the overall impact of the self-directed PAS option on participants'' health and welfare, in comparison to that of non-participants, every 3 years.

We propose to include these requirements in the regulations at § 441.464(e) and (f). We plan to issue further guidance on the requirements and structure of the annual report, and we invite comments on other information that we should consider in the development of this guidance. We also plan to issue further guidance regarding expected requirements and implementation of the evaluation component. We also invite comment on the structure of this evaluation. For purposes of this evaluation requirement, the comparison group of ''non-participants'' should be individuals receiving PAS that are not self-directed.

Section 441.466 Assessment of Need

Section 1915(j)(5)(B) of the Act requires that States conduct an assessment of participants' needs, strengths, and preferences for self-directed PAS. We propose to implement this requirement at § 441.466. An assessment of an individual's needs, strengths and preferences is crucial because it forms the basis for the identification of the needed services and supports that will be authorized in the individual's subsequent service plan and budget. It is also important to identify an individual's strengths and preferences that will enable self-direction of PAS. The assessment should include a determination of whether there are any persons available to support the individual, including family members. These persons may be able to provide unpaid personal assistance, or fulfill more formal roles such as acting in the capacity of a paid provider of PAS or as an individual's representative. We do not prescribe the assessment tool to be used by States, but we expect that the assessment will be sufficiently comprehensive to support the determination that an individual would require personal care services under the State plan or personal assistance services under a section 1915(c) waiver program and the development of the individual's subsequent service plan and budget. Accordingly, we reflect this understanding that while the format of the assessment is within the State's discretion, we expect the assessment to be comprehensive and minimally meet the statutory requirement. We propose that it include information about an individual's health condition, personal goals and preferences for the provision of services, functional limitations, age, school, employment, household, and other factors that are relevant to the authorization and provision of services, and support the finding for need of PAS and development of the service plan and budget.

Section 441.468 Service Plan Elements

Section 1915(j)(5)(C) of the Act requires States to develop and approve a service plan for each participant that includes the services and supports for such services, based on the assessment of need through a person-centered process. Section 1915(j)(5)(C) of the Act also requires that the service-planning process build on the participant's capacity to engage in activities that promote community life and that respects the participant's preferences, choices, and abilities, and must involve families, friends, and professionals in the planning or delivery of services or supports as desired or required by the participant. We propose to reflect these requirements at § 441.468. Specifically, at proposed § 441.468(a), we list those service plan elements we have found to be minimally necessary in developing a service plan that adequately describes the services to be furnished. We also propose, as explained previously in our Definitions section, that we believe the service plan includes the individualized backup plan.

Furthermore, based on our experience with States' self-direction waivers and demonstrations, we are aware that States implement the person-centered planning process differently. Some States interpret the process to be simply focused on the participant's needs, and do not allow participants to also direct the process. Others allow the process to be person-directed as well as person-centered. We propose to require, at § 441.468(b), that the process must be both person-centered and directed because we believe that a person-centered and directed service planning process will ensure that the resultant service plan actively engages a participant, accurately reflects a participant's abilities, preferences, and choices, and better meets the underlying purpose of the self-directed PAS option. Therefore, we would propose at § 441.468(b)(1) that each participant's preferences, choices and abilities are identified and strategies to address those preferences, choices and abilities are included in the service plan. We would also propose at § 441.468(b)(2) that the participant is permitted to exercise choice and control over services and supports discussed in the plan. Finally, we would propose at § 441.468(b)(3) that risks that may pose harm to the participant are assessed and planned for. For example, we would expect that the assessment would identify potential risks to the

participant. The participant, or the participant's representative, if any, together with the persons designated by the State to develop the service plan, and others from whom the participant may seek guidance, would discuss a plan for how any potential risks may be mitigated or eliminated. The resultant plan is the individualized backup plan and would be included in the service plan.

We would also propose at § 441.468(c) that States have in place policies and procedures associated with service plan development. In § 441.468(c)(1) through (c)(7), we propose a minimum list of policies and procedures that we believe are necessary to ensure the proper administration and development of the service plan. These include that the participant has the opportunity to engage in and direct the process to the extent desired, the participant has the opportunity to involve family, friends, and professionals as desired or required, the planning process is timely, the participant's needs are assessed and services meet the needs, the responsibilities for service plan development are identified, the qualifications of the individuals who are responsible for service plan development are reflective of the nature of the program's target population(s) and that service plans be reviewed annually, or whenever necessary due to a change in the participant's needs or health status.

In this way, the service plan would continuously address all of the participant's assessed needs and goals, including health and safety factors, and would be updated to add or delete services or modify the amount and frequency of services.

We also propose to require, at § 441.468(d), that safeguards be established when an entity that provides other State Plan services is responsible for service plan development to ensure that the service provider's role in the planning process is fully disclosed to the participant and controls are in place to avoid any possible conflict of interest. Based on our review of the demonstrations and 1915(c) waiver programs, we are aware that States sometimes choose to delegate the service planning function to an entity that provides other State Plan services. In order to ensure free choice of providers, we propose to add this beneficiary protection to the regulation.

We also propose to require that approval of the service plan conveys authority to the participant to perform, at a minimum, the tasks listed in § 441.468(e), such as recruiting, hiring, firing, supervising and managing workers. It is the approval of the service plan by the State that authorizes the individual to undertake these activities as part of self-directed service delivery. The service plan must encompass both the general decision-making authority that a participant has and outline the individualized services and supports to address the participant's needs, abilities, preferences and choices.

Section 441.470 Service Budget Elements

Section 1915(j)(5)(D) of the Act requires the establishment of a budget for the provision of PAS and sets forth certain requirements for the service budget. Specifically, this includes that the budget is developed and approved by the State based on the assessment of need and service plan. We propose to reflect this requirement in § 441.470 and also propose to require that States inform participants of the specific dollar amount that may be used for their services and supports so they can properly develop a budget for how they will purchase their services and supports. Similarly, we propose to require that the specific dollar amount that may be used is indicated in the budget so there is no question about the amount available to the participant. We believe these requirements are necessary because it is important for participants to have sufficient and clear information to allow them to adequately plan for how they will use the funds to secure their needed services and supports.

Section 1915(j)(5)(D) of the Act also requires that the budget not restrict access to other medically necessary care and services furnished under the State plan and approved by the State but not included in the budget and sets forth the requirements for determining the budget. We address these statutory requirements at proposed § 441.472. Based on our experience with the self-direction waivers and demonstrations, we learned that participants benefited from the flexibility to be able to shift funds among authorized services within the total amount of the budget without prior review and approval. To require the State's review and approval of each budget modification would be administratively untenable and would run counter to the philosophy of self-direction. Therefore, we propose to require at § 441.470(c) that the State have procedures in place that govern how participants may flexibly adjust their budgets. The procedures must minimally include how the participant may freely make changes to the budget; the circumstances that may require prior approval before a budget adjustment is made, for example, purchases above a certain dollar amount; and the circumstances that may also require a modification to the participant's service plan.

Section 1915(j)(4)(B)(ii) of the Act allows States, at their option, to permit individuals to use their budget to acquire items that increase independence or substitute for human assistance, to the extent that expenditures would otherwise be made for the human assistance. Based on our experience, we learned that participants benefited from this option and were able to purchase items that allowed them greater independence, such as an accessibility ramp, or that substituted for human assistance, such as a microwave oven. The States that offered this option required that the items to be purchased related to a need identified in the service plan.

Some of these states also limited participants' purchases to a list of allowable items for which no prior approval was necessary. Still other States required prior approval for all items, while some others provided a list of allowable items and required prior approval for other items not on the list. In addition, each State developed procedures that governed how participants could save an amount of their monthly budget to purchase these items and how and at what intervals the State would recoup funds that were not spent according to the purchase plan.

Accordingly, if a State has elected this option, we propose to require at § 441.470(d), that the State have procedures that govern how a person may put aside or reserve funds to purchase items that increase independence or substitute for human assistance. These items could include additional supports, goods, equipment, or supplies, and the State should indicate if prior approval is required. As stated above, participants benefited from this option and the ability to reserve funds to purchase these items likewise proved beneficial to the participants. Accordingly, we believe it is worthwhile to continue this option under this State plan option.

We also recognize that some of the ''Cash and Counseling'' programs allowed participants to use a small amount of their budget to purchase items not otherwise delineated in the budget or earmarked for savings. For example, participants used this discretionary amount to purchase or supplement needed items or services not otherwise covered by Medicaid, such as non-Medicaid covered prescription drugs or transportation to a doctor's appointment. States typically set a dollar limit on the amount of the

discretionary funds and participants were required to account for the expenditures, but not necessarily retain receipts for the discretionary purchases. Based on the success of this practice, we propose, at § 441.470(e), to permit participants to use a small amount of their budget to purchase items not otherwise delineated in the budget or earmarked for savings. We anticipate that any budget methodology employed by the State and the participant would take this option into consideration.

Lastly, just as persons who receive traditional services have the ability to grieve a denial or reduction of benefits, we think it is important to ensure that participants in the self-directed PAS State plan option have an opportunity to request a fair hearing if their request for a budget adjustment is denied or the amount of the budget is reduced. Accordingly, we propose to add the opportunity for a fair hearing, as provided in § 441.300, in the regulation at § 441.470(f).

Section 441.472 Budget Methodology

Section 1915(j)(5)(D) of the Act also sets forth certain requirements concerning the budget methodology. Underlying the requirements are the concepts that the methodology used to develop the service budget must be reasonable and fairly applied to all participants. Specifically, the statute requires that the methodology use valid, reliable cost data, is open to public inspection, and includes a calculation of the expected cost of such services if those services were not self-directed.

We are not proposing to prescribe the methodology States should use to develop a service budget. We recognize that some States may wish to use a prospective method, a retrospective method, or a combination of methods. However, we propose to require in the regulation at § 441.472, that whatever methodology is used, it is objective and evidence-based, using valid, reliable cost data, that is, the method is based on an analysis of historical costs and utilization and other factors that are likely to affect costs. We would also propose to require that it is applied consistently to participants and that the methodology is open to public inspection. We also propose to require that the State's method includes a calculation of the expected cost of the self-directed PAS and supports, if these services and supports were not self-directed. This service budget amount is the cap on the amount of funds available to an individual with which to purchase self-directed PAS and supports.

We recognize in § 441.472(a)(5) that States may place monetary or budgetary limits on self-directed services and supports. Therefore, if a State does so, we would require that the State have a process in place that describes the limits and the basis for the limits, and any adjustments that will be allowed and the basis for the adjustments, such as participant health and welfare.

Additionally, we propose to require certain beneficiary safeguards in light of these possible limitations. First, we propose that States have procedures to safeguard participants when the budgeted service amount is insufficient to meet a participant's needs. Second, we propose that States have a method of notifying participants of the amount of any limit that applies to a participant's self-directed PAS and supports. Third, we propose that the budget not restrict access to other medically necessary care and services furnished under the plan and approved by the State but not included in the budget. We note this proposal not only reflects the statutory requirement at section 1915(j)(5)(D) of the Act, but makes clear that the only limitation would be for self-directed PAS.

Section 441.474 Quality Assurance and Improvement Plan

Section 1915(j)(5)(E) of the Act requires States to provide appropriate quality assurance techniques to establish and implement the PAS service plan and budget. Such techniques must recognize the roles and responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan and budget based upon the participant's resources and capabilities. For approximately 30 years, we have witnessed an increasing number of Medicaid recipients who want to move into or remain in the community in order to receive community-based care and services. Simultaneously, we have seen the growth in the number of individuals who want to self-direct their community-based care and services. States face the challenge of how to ensure each participant's health and welfare while also respecting individual autonomy and choice. We believe that this challenge can be met with an effective quality assurance and improvement plan that incorporates performance of discovery, remediation, and quality improvement activities and includes system performance measures, outcome measures, and satisfaction measures. We propose to reflect such measures and quality assurance and improvement plan components in the regulation at § 441.474(a) and (b) and expect the State to monitor and evaluate these measures.

We will be reviewing the State's description of the quality assurance and improvement plan when we review the State's request to use the self-directed PAS option. The State Medicaid agency must be involved in planning the quality assurance activities and measures, and the discovery, remediation, and improvement activities, but does not have to execute every activity. However, the State Medicaid Agency must retain the overall oversight and responsibility for the quality assurance plan.

Section 441.476 Risk Management

Section 1915(j)(5)(E) of the Act also requires States to provide appropriate risk management techniques to establish and implement the PAS service plans and budgets. As with quality assurance, these techniques must recognize the roles and responsibilities in obtaining services in a self-directed manner and assure the appropriateness of such plan and budget based upon the participant's resources and capabilities. We have learned that self-directed care has empowered individuals to assert their choices and to want to exercise more control over their care and services. As individuals experience greater choice and control, they may also desire to assume more of the responsibilities and risks associated with the provision of their PAS. How much risk an individual is willing and able to assume is a matter of discussion and negotiation among the persons designated by the State to develop the service plan, the participant, the participant's representative, if any, and others from whom the participant may seek guidance. In order to facilitate appropriate risk management, we propose to include certain requirements at § 441.476.

First, at § 441.476(a), we propose to require that the State specify the risk assessment methods it uses to identify potential risks to the participant. We do not prescribe an assessment method States must use but note that a proper assessment of the potential risks should include several perspectives, including any relevant clinical perspective, and involve those responsible for development of the service plan, the participant, the participant's representative, if any, and others from whom the participant may seek guidance.

Second, we also propose, at § 441.476(b), that the State specify any tools or instruments it uses to mitigate identified risks. Again, we do not propose to prescribe the tools or

instruments that States must use because States should have the flexibility necessary to use the instruments or tools they have found best meet the needs of the participants. Examples of risk management tools or instruments might include criminal and worker background checks; job descriptions that clearly set forth the roles and responsibilities of participants, workers, representatives, and all others involved with supporting the participant; and the use of individual risk agreements that permit the participant to acknowledge and accept the responsibility for addressing certain types of risks. Currently, States have the option, at their own expense, to provide criminal background checks for individuals who are self-directing their services. We invite comment on whether the provision of criminal background checks should be mandatory under this self-directed PAS State plan option.

Third, at § 441.476(c), we propose to require that the State ensure that each participant's service plan includes the risks that the participant is willing and able to assume, and the plan for how the identified risks will be mitigated. In this manner, the service plan adequately includes and documents how these identified risks are to be handled. Finally, at § 441.476(d), we would require that the State ensure that the risk management plan is the result of discussion and negotiation among the persons designated by the State to develop the service plan, the participant, the participant's representative, if any, and others from whom the participant may seek guidance. The input of all the parties interested in the participant's PAS service plan would thus be included and ensure that the service plan and budget reflect the participant's resources and capabilities.

Section 441.478 Qualifications of Providers of Personal Assistance

Section 1915(j)(4)(B) of the Act permits States to elect to allow participants to choose any individual capable of providing the assigned tasks, including legally liable relatives, as paid providers of services. We reflect these requirements in the proposed regulation at § 441.478(a). We are not proposing to set a minimum age requirement in the regulation and invite comment on whether an age requirement should be added, and if so, under what circumstances. At this point, we believe that an age requirement would not allow States the flexibility in setting their own standards should they choose this option. For example, hiring a 16-year-old to perform some homemaker tasks may be appropriate, whereas an adult may be better suited to provide more technically difficult or intimate personal care services. We expect the State to consider these issues prior to making a decision to elect this option.

However, we propose, at § 441.478(b), that participants retain the right to train their workers in the specific areas of personal assistance needed by the participant and to perform the needed assistance in a manner that comports with the participant's personal, cultural, and/or religious preferences. We have learned, through our experience with the self-direction waiver and demonstration programs, that the training for workers furnishing self-directed PAS must be tailored to each individual's preferences, as well as their needs. In this way, workers benefit from clear instructions about how to effectively and appropriately deliver the self-directed PAS, and any potential dissatisfaction with the way services are being delivered can be averted. We further propose, at § 441.478(c), that participants retain the right to establish additional staff qualifications based on their needs and preferences. Again, we believe that the participant is in the best position to set forth the particular staff qualifications needed to meet the particular preferences of the participant. For example, if the participant communicates best using American Sign Language (ASL), the participant may require the worker to be able to communicate using ASL.

Section 441.480 Use of a Representative

Section 1915(j)(5)(A) of the Act indicates the types of participant representatives in the self-directed PAS option. Specifically, the statute includes as representatives a parent or guardian if the participant is a minor child, or an individual recognized by State law to act on behalf of a participant who is an incapacitated adult. We propose to include these requirements at § 441.480(a)(1) and (a)(2).

In addition to the statutory listings, we believe that other representatives should be permitted by the State. The role of the representative is to assist individuals in making decisions with respect to the planning, development, management and direction of their service plans and budgets. We encourage States to recognize and permit other representative relationships, so that participants can exercise greater flexibility in their choice of who will assist them with their decisions.

Furthermore, based on the experience of States with self-direction programs, we believe it is appropriate for States to have the option to mandate the use of a representative if the participant has demonstrated, after additional counseling, information, training, or assistance, the inability to self-direct PAS. We specify this requirement in the proposed regulation at § 441.480(a)(5), and also propose to require that CMS approve in the State plan amendment a State's criteria for situations that would result in the State mandating the use of a representative. Examples of these criteria could include a participant not being able to carry out the responsibilities for self-direction after the provision of additional counseling, information, training, or assistance, or because an individual's health or welfare requires the assistance of a representative.

Finally, to protect against conflict of interest, we propose, at § 441.480(b), to prohibit a participant's representative from also serving as a paid provider of services to the participant. Based upon the experiences of the States participating in the original ''Cash and Counseling'' demonstration, we learned that it is important to include this limitation in the self-directed PAS option in order to avoid the situation of a representative overseeing or making decisions that directly impact them, for example, ''approving'' their own rate of pay, their own timesheets, and the like. Accordingly, in order to promote participant health and welfare and program integrity, and to ensure that participants actually receive their authorized PAS, we propose to include this necessary protection in the proposed regulation.

Section 441.482 Permissible Purchases

Section 1915(j)(4)(B)(ii) of the Act permits individuals, at the State's option, to use the funds allocated in their budgets to acquire items that increase their independence or substitute for human assistance, to the extent that expenditures would otherwise be made for that human assistance. We propose to implement this provision in the proposed regulation at § 441.482(a). The statute specifically gives the examples of a microwave oven and accessibility ramp because these two items could conceivably increase independence or substitute for human assistance.

Moreover, experience under the section 1115 and section 1915 (c) of the Act self-direction and *Independence Plus* programs indicated that when recipients are given the ability to purchase items that increased their

independence or substituted for human assistance, they do so prudently and effectively. However, we propose, at § 441.482(b), that these purchases must address an assessed participant need included in the service plan, in order to ensure that the item, and insofar as that expenditure would have otherwise been made using human assistance, is medically necessary and to promote program integrity. We also note that we have previously proposed in § 441.470(d) that the State set forth a procedure that governs how such items are to be included in the service budget.

Section 441.484 Financial Management Services

Under section 1915(j)(6) of the Act, States may employ a financial management entity to make payments to providers, track costs, and make reports under the self-directed PAS State plan option. The financial management provisions are noted in the proposed regulation at § 441.484. The statute lists very broad responsibilities for a financial management entity to perform. In the context of the self-directed PAS option, these broad statutory categories must be considered and linked to specific duties. For example, financial management services are used for two purposes: (a) To address Federal, State, and local employment tax, labor and workers'' compensation insurance rules, and other requirements that apply when the participant functions as the employer of workers, and (b) to make financial transactions on behalf of the participant, such as preparing paychecks for workers and paying invoices for goods and services identified in the participant's service plan. These responsibilities can be generally noted as making payments and tracking costs.

We first note there are different Internal Revenue Service (IRS) requirements that must be adhered to, depending on how financial management services are provided. For instance, financial management services provided directly by the State, or by a State's reporting or subagent through its fiscal intermediary, must follow section 3504 of the IRS Code and Revenue Procedure 80–4 and Notice 2003–70. Financial management services provided through vendor organizations must follow Section 3504 of the IRS Code and Revenue Procedure 70–6. When private entities furnish financial management services, the procurement method must meet requirements set forth in 45 CFR 74.40 through section 74.48. Accordingly, we propose, at § 441.484(a)(1) and (a)(2), the arrangement options available to States for offering financial management services, and specify proposed requirements that must be followed for each option (barring participants who perform these functions themselves).

Furthermore, to ensure appropriate safeguards and recipient protections, we propose to require States to provide oversight of financial management services. Without this oversight there is a risk of inadequate delivery of financial management such as system deficiencies, failure to pay workers timely, and errors in complying with IRS requirements. When utilized, the financial management service is critical to the success of the self-directed PAS State plan option. Specifically, at § 441.484(b), we are proposing that States must perform the following oversight activities, regardless of how financial management services are provided: Monitoring and assessing the performance of the financial management entity, including assuring the integrity of financial transactions they perform; designating a State entity or entities responsible for this monitoring; and determining how frequently financial management entity performance will be assessed. While we are not requiring specific oversight activities, examples of State performance monitoring and assessment may include conducting periodic audits of financial management entities, conducting participant satisfaction surveys or other methods or procedures.

Also, as a further beneficiary safeguard, we propose, at § 441.484(c), a list of the specific minimum functions that must be provided by financial management entities as noted under the broad statutory requirement (or by States directly, if no financial management entities are utilized).

This list includes, but is not limited to, collecting and processing timesheets of the participant's workers; processing payroll, withholding, filing and payment of applicable Federal, State and local employment-related taxes and insurance; maintaining a separate account for each participant's budget; tracking and reporting disbursements and balances of participant funds; processing and paying invoices for goods and services approved in the service plan; and providing to participants periodic reports of expenditures and the status of the approved service budget. We believe these proposed functions represent, at a minimum, the standard duties and responsibilities that a financial management entity (or a State) would need to assume in assisting a beneficiary in the self-directed State plan option.

Inherent in the statute is the ability of the State to retain the responsibility of providing financial management entity functions. We are aware that many States with self-direction programs do in fact retain this responsibility. We expect a State to perform the same functions as a financial management entity. We are proposing to explicitly require the State to do such in the absence of utilizing a financial management entity. The purpose of noting this expectation of the States is to clarify to a participant that these services are provided by the State. Accordingly, we propose at § 441.482(d) that States not employing a financial management entity must perform all functions that would have been provided by the financial management entity on behalf of all participants self-directing their PAS under this new State plan option, except for participants taking advantage of the cash option, as they directly perform those functions for themselves.

Based on our review of self-directed programs, we are aware that States may choose to allow participants to self-direct services under the ''agency with choice'' model, which utilizes a co-employment relationship between the participant and an agency. This agency could be a traditional service provider or a financial management entity, and acts as the employer of record of the PAS worker. If a State allows this option, the financial management services must be separately delineated from other services that the agency may provide in order that the financial management services (FMS) are claimed appropriately.

Section 1915(j)(6) of the Act further states activities of the financial management entity be matched by CMS at ''the administrative rate established in Section 1903(a)'' of the Act. We are interpreting this reference to apply specifically to section 1903(a)(7) of the Act, which provides for a Federal Medical Assistance Percentage (FMAP) rate of 50 percent for the ''amounts expended * * * found necessary by the Secretary for the proper and efficient administration of the State plan.'' We believe the DRA Conference Report language supports this reading as it notes that payment for the activities of the financial management entity will be reimbursed at the ''same rate as other Medicaid administrative activities generally * * * percent.'' H.R. Conf. Rep. No.362, (109th Cong. 301). We will also consider the State's financial management activities to be general administrative activities and likewise matched at 50 percent. Therefore, financial management services, whether

provided by a financial management entity, the State, or by another entity under ''agency with choice'' will be reimbursed under the 50 percent administrative rate under this new State plan option.

III. Response to Comments

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

IV. Collection of Information Requirements

[If you choose to comment on issues in this section, please include the caption ''COLLECTION OF INFORMATION REQUIREMENTS'' at the beginning of your comments.]

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

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

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

Section 441.454 Use of Cash

Section 441.454(d) requires States to make available a financial management entity to a participant who has demonstrated, after additional counseling, information, training, or assistance, that the participant cannot effectively manage the cash option described in paragraph (a) of this section.

The burden associated with this requirement is the time and effort put forth by the State to counsel and to provide information, training, and or assistance to participants. We believe that it would take a State 1 hour per participant to provide this guidance. The total annual burden of this requirement would vary according to the number of participants in each State who are self-directing their PAS under this State Plan option.

Section 441.456 Voluntary Disenrollment

Section 441.456(b) requires States to specify in the State plan the safeguards that are in place to ensure continuity of services during the transition from self-directed PAS.

The burden associated with this requirement is the time and effort put forth by the State to revise its State plan to include the safeguards. While the burden associated with this requirement is subject to the PRA, the burden associated with the State plan amendment is currently approved under OMB #0938–0933.

Section 441.458 Involuntary Disenrollment

Section 441.458(c) requires States to specify in the State plan the safeguards that are in place to ensure continuity of services during the transition from self-directed PAS.

The burden associated with this requirement is the time and effort put forth by the State to revise its State plan to include the safeguards. While the burden associated with this requirement is subject to the PRA, the burden associated with the State plan amendment is currently approved under OMB #0938–0933.

Section 441.464 State Assurances

Section 441.464(a) requires States to provide an assurance that necessary safeguards have been taken to protect the health and welfare of individuals furnished services under the program and to assure the financial accountability for funds expended for self-directed services.

The burden associated with this requirement is the time and effort it would take for each State to meet these conditions. To meet the requirements in § 441.464(a), we estimate it would take each State 80 hours to develop a system of safeguards that protects participants' health and welfare and ensures financial accountability for funds expended, and no further burden would be associated with this requirement. We estimate the total maximum one-time burden for this requirement to be 4,480 hours. (56 States × 80 hours = 4,480 hours)

Section 441.464(b) requires States to provide an assurance that they will perform an evaluation of the need for personal care under the State plan or personal services under a section 1915(c) home and community-based services waiver program. The burden associated with this requirement is the time and effort it would take for each State to meet this condition. To meet the requirement in § 441.464(b), we estimate it would take a State 2 hours per participant to perform this evaluation of need. The total annual burden of this requirement would vary according to the number of participants in each State who are (1) entitled to medical assistance for personal care services under the State plan, or receive home and community-based services under a section 1915(c) waiver program; (2) may require self-directed PAS; and (3) may be eligible for self-directed PAS.

Section 441.464(c) requires States to provide an assurance that individuals likely to require personal care under the State plan, or home and community-based services under a section 1915(c) waiver program, are informed of the feasible alternatives, if available, under the State's self-directed PAS State plan option, at the choice of these individuals, to the provision of personal care services under the State plan or PAS under a section 1915(c) home and community-based services waiver program. The burden associated with this requirement is the time and effort it would take for each State to meet this condition. To meet the requirement in § 441.464(c), we estimate it would take a State 15 minutes per participant to inform individuals of feasible alternatives. The total annual burden of this requirement would vary according to the number of participants in each State who are likely to require personal care under the State plan, or home and community-based services under a section 1915(c) waiver program.

Section 441.464(d) requires States to provide a support system that meets the following conditions:

(1) Appropriately assesses and counsels an individual before enrollment.

(2) Provides appropriate information, counseling, training, and assistance to ensure that a participant is able to manage the services and budgets. The support activities must include at least the following:

(i) Person-centered planning and how it is applied.

(ii) Information about the services available for self-direction.

(iii) Range and scope of individual choices and options.

(iv) Process for changing the service plan and service budget.

(v) Grievance process.

(vi) Risks and responsibilities of self-direction.

(vii) Freedom of choice of providers.

(viii) Individual rights.

(ix) Reassessment and review schedules.

(x) Defining goals, needs, and preferences.

(xi) Identifying and accessing services, supports, and resources.

(xii) Development of risk management agreements.

(xiii) Development of an individualized backup plan.

(xiv) Recognizing and reporting critical events.

(3) Offers additional information, counseling, training, or assistance, including financial management services under either of the following conditions:

(i) At the request of the participant for any reason.

(ii) When the State has determined the participant is not effectively managing the services identified in the service plan or budget.

The burden associated with this requirement is the time and effort it would take for each State to meet these conditions. To meet the requirements in § 441.464(d)(1), we estimate it would take each State 2 hours per participant. To meet the requirements in § 441.464(d)(2), we estimate it would take each State 1 hour per participant. To meet the requirements in § 441.464(d)(3), we estimate it would take each State 1 hour per participant. The total annual burden of these requirements would vary according to the number of participants in each State who are self-directing their PAS under this State Plan option.

Section 441.464(e) requires the State to provide to CMS an annual report on the number of individuals served and the total expenditures on their behalf in the aggregate.

The annual burden associated with this requirement is the time and effort it would take for each State to gather the necessary data and provide an annual report to CMS. We estimate that it would take one State no more than 25 hours to meet this requirement; therefore, the total maximum annual burden is 1,400 hours. (56 States × 25 hours = 1,400 hours)

Section 441.464(f) requires the State to provide to CMS an evaluation of the overall impact on the health and welfare of participating individuals compared to non-participants every 3 years, as determined by CMS.

The burden associated with this requirement is the time and effort it would take for each State to provide such an evaluation to CMS. We estimate that it would take one State 200 hours to prepare and submit the evaluation to CMS every 3rd year; therefore, the total maximum burden on that 3rd year would be 11,200 hours. (56 States × 200 hours = 11,200)

Section 441.468 Service Plan Elements

Section 441.468(b) requires a State to develop a service plan for each program participant using a person-centered and directed planning process to ensure the following:

(1) The identification of each program participant's preferences, choices, and abilities, and strategies to address those preferences, choices, and abilities.

(2) The option for the program participant to exercise choice and control over services and supports discussed in the plan.

(3) Assessment of, and planning for avoiding, risks that may pose harm to a participant.

The burden associated with this requirement is the time and effort it would take for each State to meet these conditions. We estimate it would take each State 3 hours per participant to meet this requirement. The total annual burden of this requirement would vary according to the number of participants in each State who are self-directing their PAS under this State Plan option.

Section 441.468(d) states that when an entity that is permitted to provide other State plan services is responsible for service plan development, the State must describe the safeguards that are in place to ensure that the service provider's role in the planning process is fully disclosed to the participant and controls are in place to avoid any possible conflict of interest.

The burden associated with this requirement is the time and effort it would take for the State to fully disclose the required information. We estimate that it would take one State 15 minutes per participant to meet this requirement. The total annual burden of this requirement would vary according to the number of participants in each State who are self-directing their PAS under this State Plan option.

Section 441.468(e) requires that an approved self-directed service plan conveys authority to the participant to perform, at a minimum, the following tasks: Recruit and hire workers to provide self-directed services, including specifying worker qualifications; fire workers; supervise workers in the provision of self-directed services; manage workers in the provision of self-directed services (determining worker duties, scheduling workers, training workers in assigned tasks, and evaluating workers' performance); determine the amount paid for a service, support, or item; and review and approve provider invoices.

While this information collection is subject to the PRA, we believe this requirement meets the requirements of 5 CFR 1320.3(b)(2), and as such, the burden associated with this requirement is exempt from the PRA.

Section 441.470 Service Budget Elements

Section 441.470 states that a service budget must be developed and approved by the State based on the assessment of need and service plan and must include the following:

(a) The specific dollar amount a participant may utilize for services and supports.

(b) How the participant is informed of the amount of the service budget before the service plan is finalized;

(c) The procedures for how the participant may adjust the budget, including the following:

(1) How the participant may freely make changes to the budget.

(2) The circumstances, if any, that may require prior approval before a budget adjustment is made.

(3) The circumstances, if any, that may require a change in the service plan.

(d) The procedure(s) that governs how a person, at the election of the State, may reserve funds to purchase items that increase independence or substitute for human assistance including additional goods, supports, services or supplies.

(e) The procedure(s) that governs how a person may use a discretionary amount, if applicable, to purchase items not otherwise delineated in the budget.

(f) How participants are afforded the opportunity to request a fair hearing under § 441.300 if a participant's request for a budget adjustment is denied or the amount of the budget is reduced.

The burden associated with this requirement is the time and effort put forth by the State to develop a service budget. We estimate it would take a State 3 hours per participant to meet this requirement. The total annual burden of this requirement would vary according to the number of participants in each State who are self-directing their PAS under this State Plan option.

Section 441.472 Budget Methodology

Section 441.472(b) requires a State to have procedures in place to safeguard participants when the budgeted service amount is insufficient to meet a participant's needs.

The burden associated with this requirement is the time and effort it

would take for a State to develop its procedures on how to handle this. We estimate that it would take one State 16 hours to develop these procedures and no further burden would be associated with this requirement. The one-time maximum burden associated with this requirement is 896 hours. (56 States × 16 hours = 896 hours)

Section 441.472(c) requires a State to have a method of notifying participants of the amount of any limit that applies to a participant's self-directed PAS and supports.

The burden associated with this requirement is the time and effort it would take for the State to provide this notification. We estimate it would take one State 15 minutes per participant to meet this requirement. The total annual burden of this requirement would vary according to the number of participants in each State who are self-directing their PAS under this State Plan option.

Section 441.474 Quality Assurance and Improvement Plan

Section 441.474(a) requires States to provide a quality assurance and improvement plan that describes the State's system of how it would conduct activities of discovery, remediation, and quality improvement in order to learn of critical incidents or events that affect participants, correct shortcomings, and pursue opportunities for improvement; and

(b) The quality assurance and improvement plan shall also describe the system performance measures, outcome measures, and satisfaction measures that the State would use to monitor and evaluate the self-directed State plan option.

The burden associated with this requirement is the time and effort it would take for the State to customize its quality assurance and improvement plan to the self-directed service delivery model. We estimate that it would take one State 100 hours to customize its quality assurance and improvement plan and no further burden would be associated with this requirement. The one-time maximum burden associated with this requirement is 5,600 hours. (56 States × 100 hours = 5,600 hours)

Section 441.484 Financial Management Services

Section 441.484(a) proposes that States may choose to provide financial management services to participants self-directing PAS, with the exception of those participants utilizing the cash option who directly perform those functions. Section 441.484(c) proposes to require that the financial management entity provide functions including, but not limited to, the following:

(1) Collect and process timesheets of the participant's workers.

(2) Process payroll, withholding, filing and payment of applicable Federal, State and local employment-related taxes and insurance.

(3) Maintain a separate account for each participant's budget.

(4) Track and report disbursements and balances of participant funds.

(5) Process and pay invoices for goods and services approved in the service plan.

(6) Provide to participants periodic reports of expenditures and the status of the approved service budget. Section 441.484(d) requires States not utilizing a financial management entity must perform the functions listed in paragraph (c) of this section on behalf of participants self-directing PAS, with the exception of those participants utilizing the cash option who directly perform those functions.

The burden associated with this requirement is the time and effort it would take for the financial management entity or State to develop and perform the listed functions. We estimate it would take a financial management entity or the State 320 hours to develop the financial management system. Once the system was in place, the annual burden associated with these functions would vary according to the number of participants in each State who are self-directing their PAS under this State Plan option. We estimate the maximum one-time burden on the States to develop the financial management system to be 17,920 hours during the first year. (56 States × 320 hours = 17,920)

Note: Annual burden in the following years will vary. We have no data on how many financial management entities would be affected by this requirement; therefore, we are unable to provide total annual burden associated with financial management entities.

The total aggregate burden for the requirements in this proposed rule that affect States annually is estimated to be 1,400 hours. The total aggregate burden associated with one-time requirements on States is estimated to be 28,896. The total aggregate burden associated with the burden placed on States every 3rd year is estimated to be 11,200 hours.

Note: We are unable to provide aggregate burden totals for those requirements affecting participants because burden will vary according to the number of participants in each State who are self-directing their PAS under this State Plan option. We are also unable to provide aggregate burden for financial management entities affected by § 441.484(a).

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

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attn.: Melissa Musotto, CMS–2229–P, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *Attn:* Katherine Astrich, CMS Desk Officer, CMS–2229–P, *katherine_astrich@omb.eop.gov.* Fax (202) 395–6974.

V. Regulatory Impact Statement

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

A. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies,

that this rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

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

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation would not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

B. Anticipated Effects

FFP will be available for self-directed PAS if the State elects to offer this opportunity through the approved State plan. Since self-direction is an alternative service delivery model, it is expected that the impact on Medicaid spending would not be very large. The use of self-directed PAS is estimated to cost a total of $225 million in FY 2008 to FY 2012, of which $127 million is Federal share.

In making this estimate, we considered that costs might increase due to new covered expenses (such as microwave ovens or accessibility ramps) as well as new applicants being attracted to the Medicaid program, because of the permissibility of payments to relatives. Costs could decrease because beneficiaries might require less help and less expensive help. We also noted that some States have already implemented self-directed programs under other Medicaid authorities and thus, in those States, there would be little cost effect to the statute or this new regulation. We first estimated that the projected impact of all our proposals would amount to an overall 0.5 percent increase in personal care service expenditures, if all States and Territories implemented this self-direction PAS State plan option. We then accounted for a partial starting year, a phase-in period and the fact that this is a State plan option. Our final estimate is as noted in the table below.

SECTION 1915(J) SELF-DIRECTED PERSONAL ASSISTANCE SERVICES PROGRAM (CASH & COUNSELING)

[Dollars in millions]

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Federal Cost	12	20	29	32	34
State Cost	9	15	22	24	26
Total*	22	35	51	56	61

* Amounts may not equal total due to rounding.

C. Alternatives Considered

In considering alternatives to the proposals presented in this proposed rule, we considered the current practices under section 1115 demonstrations and section 1915(c) waiver programs that implemented self-direction. In particular, we considered whether to allow States the flexibility to offer the option of disbursing cash prospectively to participants. We learned from the experience of the section 1115 demonstrations that participants were able to successfully manage the funds in their budget and maintain financial accountability, with some general guidance and oversight. In light of our desire to provide flexibility to the beneficiaries and to better reflect the intent of the PAS State plan option, we proposed this option.

We also considered the extent to which to include prescriptive support activities that States must include in their support system. We propose a minimum list of support activities to ensure that participants have the necessary tools to successfully manage their services and budgets. We were concerned that if States were not required to include such activities as part of the support system within the PAS State plan option, the likelihood of successfully self-directing PAS would diminish. As we learned from our experience with the section 1115 demonstrations and section 1915(c) waiver programs, support activities have a crucial role in leading to the success of any self-directed PAS program.

D. Accounting Statement and Table

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in the table below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. This table provides our best estimate of the increase in Medicaid payment as a result of the changes presented in this proposed rule.

TABLE—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM FY 2008 TO FY 2012

[In millions]

Category	Transfers	
Annualized Monetized Transfers	3% Units Discount Rate. $25.2	7% Units Discount Rate. $24.8.
From Whom To Whom?	Federal Government to Providers.	
Annualized Monetized Transfers	3% Units Discount Rate. $19.0	7% Units Discount Rate. $18.7.
From Whom To Whom?	State Governments to Providers.	

E. Conclusion

As indicated in the estimated expenditures table above, we project the Federal Medicaid program cost of this proposed rule to be $127 million over the period from FY 2008 to FY 2012.

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

List of Subjects in CFR Part 441

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

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

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

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

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

2. Amend part 441 by adding new subpart J, consisting of § 441.450 through § 441.486, to read as follows:

Subpart J—Optional Self-Directed Personal Assistance Services Program

Sec.

441.450 Basis, scope, and definitions.
441.452 Self-direction: General.
441.454 Use of cash.
441.456 Voluntary disenrollment.
441.458 Involuntary disenrollment.
441.460 Participant living arrangement.
441.462 Statewideness, comparability, and limitations on number served.
441.464 State assurances.
441.466 Assessment of need.
441.468 Service plan elements.
441.470 Service budget elements.
441.472 Budget methodology.
441.474 Quality assurance and improvement plan.
441.476 Risk management.
441.478 Qualifications of providers of personal assistance.
441.480 Use of a representative.
441.482 Permissible purchases.
441.484 Financial management services.

Subpart—J Optional Self-Directed Personal Assistance Services Program

§ 441.450 Basis, scope, and definitions.

(a) *Basis.* This subpart implements section 1915(j) of the Act concerning the self-directed personal assistance services (PAS) option through a State Plan.

(b) *Scope.* A self-directed PAS option is designed to allow individuals to exercise decision-making authority in identifying, accessing, managing and purchasing their PAS. This authority includes, at a minimum, all of the following:

(1) The purchase of PAS and supports for PAS.

(2) Recruiting workers.

(3) Hiring and discharging workers.

(4) Specifying worker qualifications.

(5) Determining worker duties.

(6) Scheduling workers.

(7) Supervising workers.

(8) Evaluating worker performance.

(9) Determining the amount paid for a service, support or item.

(10) Scheduling when services are provided.

(11) Identifying service workers.

(12) Reviewing and approving invoices.

(c) *Definitions.*

Assessment of need means an evaluation of the needs, strengths, and preferences of participants for services.

This includes one or more processes to obtain information about an individual, including health condition, personal goals and preferences, functional limitation, age, school, employment, household, and other factors that are relevant to the authorization and provision of services. Assessment information supports the development of the service plan and the subsequent service budget.

Individualized backup plan means a written plan that addresses critical contingencies or incidents that would pose a risk of harm to the participant's health or welfare and is incorporated into the participant's service plan.

Legally liable relatives means persons who have a duty under the provisions of State law to care for another person. Legally liable relatives may include any of the following:

(1) The parent (biological or adoptive) of a minor child or the guardian of a minor child who must provide care to the child.

(2) Legally-assigned caretaker relatives.

(3) A spouse.

Self-directed personal assistance services (PAS) means personal care and related services, or home and community-based services otherwise available under the State plan or a 1915(c) waiver program that are provided to an individual who has been determined eligible for the PAS option. Self-directed PAS also includes, at the State's option, items that increase the individual's independence or substitutes (such as a microwave oven or an accessibility ramp) for human assistance, to the extent the expenditures would otherwise be made for the human assistance.

Self-direction means the opportunity for participants or their representatives to exercise choice and control over the budget, planning, and purchase of self-directed PAS, including the amount, duration, scope, provider, and location of service provision.

Service budget means an amount of funds that is under the control and direction of a participant when the State has selected the State plan option for provision of self-directed PAS. It is developed using a person-centered and directed process and is individually tailored in accordance with the participant's needs and personal preferences as established in the service plan.

Service plan means the written document that specifies the services and supports (regardless of funding source) that are to be furnished to meet the needs of a participant in the self-

directed PAS option and to assist the participant to direct the PAS and to remain in the community. The service plan is developed based on the assessment of need using a person-centered and directed process. The service plan builds upon the participant's capacity to engage in activities that promote community life and respects the participant's preferences, choices, and abilities. Families, friends and professionals, as desired or required by the participant, will be involved in the service-planning process.

Support system means information, counseling, training, and assistance that support the participant (or the participant's family or representative, as appropriate) in identifying, accessing, managing, and directing their PAS and supports and in purchasing their PAS identified in the service plan and budget.

§ 441.452 Self-direction: General.

(a) States must have in place, before electing the self-directed PAS option, personal care services through the State plan, or home and community-based services under a section 1915(c) waiver.

(b) The State must have both traditional service delivery and the self-directed PAS service delivery option available in the event that an individual voluntarily disenrolls or is involuntarily disenrolled, from the self-directed PAS service delivery option.

(c) The State's assessment of an individual's needs must form the basis of the level of services for which the individual is eligible.

(d) Nothing in this subpart will be construed as affecting an individual's Medicaid eligibility, including that of an individual whose Medicaid eligibility is attained through receipt of section 1915(c) waiver services.

§ 441.454 Use of cash.

(a) States have the option of disbursing cash prospectively to participants self-directing their PAS.

(b) States that choose to offer the cash option must ensure compliance with all applicable requirements of the Internal Revenue Service.

(c) States must permit participants using the cash option to choose to use the financial management entity for some or all of the functions described in § 441.484(c).

(d) States must make available a financial management entity to a participant who has demonstrated, after additional counseling, information, training, or assistance, that the participant cannot effectively manage the cash option described in paragraph (a) of this section.

§ 441.456 Voluntary disenrollment.

(a) States must permit a participant to voluntarily disenroll from the self-directed PAS option at any time and return to a traditional service delivery system.

(b) The State must specify in the State plan the safeguards that are in place to ensure continuity of services during the transition from self-directed PAS.

§ 441.458 Involuntary disenrollment.

(a) States must specify the conditions under which a participant may be involuntarily disenrolled from the self-directed PAS option.

(b) CMS must approve the State's conditions under which a participant may be involuntarily disenrolled.

(c) The State must specify in the State plan the safeguards that are in place to ensure continuity of services during the transition from self-directed PAS.

§ 441.460 Participant living arrangements.

(a) Self-directed PAS are not available to an individual who resides in a home or property that is owned, operated, or controlled by a provider of services who is not related to the individual by blood or marriage.

(b) States may specify additional restrictions on a participant's living arrangements if they have been approved by CMS.

§ 441.462 Statewideness, comparability and limitations on number served.

A State may do the following:

(a) Provide self-directed PAS without regard to the requirements of statewideness.

(b) Limit the population eligible to receive these services without regard to comparability of amount, duration, and scope of services.

(c) Limit the number of persons served without regard to comparability of amount, duration, and scope of services.

§ 441.464 State assurances.

A State must assure that the following requirements are met:

(a) *Necessary safeguards.* Necessary safeguards have been taken to protect the health and welfare of individuals furnished services under the program and to assure the financial accountability for funds expended for self-directed services.

(1) Safeguards must prevent the premature depletion of the participant directed budget as well as identify potential service delivery problems that might be associated with budget underutilization.

(2) These safeguards may include the following:

(i) Requiring a case manager, support broker or other person to monitor the participant's expenditures.

(ii) Requiring the financial management entity to flag significant budget variances (over and under expenditures) and bring them to the attention of the participant, case manager, or support broker.

(iii) Allocating the budget on a monthly or quarterly basis.

(iv) Other appropriate safeguards as determined by the State.

(3) Safeguards must be designed so that budget problems are identified on a timely basis so that corrective action may be taken, if necessary.

(b) *Evaluation of need.* The State must perform an evaluation of the need for personal care under the State Plan or services under a section 1915(c) waiver program for individuals who meet the following requirements:

(1) Are entitled to medical assistance for personal care services under the State plan or receiving home and community based services under a section 1915(c) waiver program.

(2) May require self-directed PAS.

(3) May be eligible for self-directed PAS.

(c) *Notification of feasible alternatives.* Individuals who are likely to require personal care under the State plan, or home and community-based services under a section 1915(c) waiver program are informed of the feasible alternatives, if available, under the State's self-directed PAS State plan option, at the choice of these individuals, to the provision of personal care services under the State plan, or PAS under a section 1915(c) home and community-based services waiver program, including, but not limited to the following:

(1) Information about self-direction opportunities that is sufficient to inform decision-making about the election of self-direction and provided on a timely basis to an individual or the representative which minimally includes the following:

(i) Elements of self-direction compared to non-self-directed PAS.

(ii) Individual responsibilities and potential liabilities under the self-direction service delivery model.

(iii) The choice to receive PAS through a waiver program administered under section 1915(c) of the Act, regardless of delivery system, if applicable.

(iv) The option, if available, to receive and manage the cash amount of their individual budget allocation.

(2) When and how this information is provided.

(d) *Support system.* States must provide a support system that meets the following conditions:

(1) Appropriately assesses and counsels an individual before enrollment.

(2) Provides appropriate information, counseling, training, and assistance to ensure that a participant is able to manage the services and budgets. The support activities must include at least the following:

(i) Person-centered planning and how it is applied.

(ii) Information about the services available for self-direction.

(iii) Range and scope of individual choices and options.

(iv) Process for changing the service plan and service budget.

(v) Grievance process.

(vi) Risks and responsibilities of self-direction.

(vii) Freedom of choice of providers.

(viii) Individual rights.

(ix) Reassessment and review schedules.

(x) Defining goals, needs, and preferences.

(xi) Identifying and accessing services, supports, and resources.

(xii) Development of risk management agreements.

(xiii) Development of an individualized backup plan.

(xiv) Recognizing and reporting critical events.

(3) Offers additional information, counseling, training, or assistance, including financial management services under either of the following conditions:

(i) At the request of the participant for any reason.

(ii) When the State has determined the participant is not effectively managing the services identified in the service plan or budget.

(4) The State may mandate the use of additional assistance, including the use of a financial management entity, or may initiate an involuntary disenrollment in accordance with § 441.458, if, after additional information, counseling, training or assistance is provided to a participant, the participant has continued to demonstrate an inability to effectively manage the services and budget.

(e) *Annual report.* The State must provide to CMS an annual report on the number of individuals served and the total expenditures on their behalf in the aggregate.

(f) *Three-year evaluation.* The State must provide to CMS an evaluation of the overall impact of the self-directed PAS option on the health and welfare of participating individuals compared to non-participants every 3 years.

§ 441.466 Assessment of need.

States must conduct an assessment of the participant's needs, strengths, and preferences in accordance with the following:

(a) States may use one or more processes and techniques to obtain information about an individual, including health condition, personal goals and preferences for the provision of services, functional limitations, age, school, employment, household, and other factors that are relevant to the need for and authorization and provision of services.

(b) Assessment information supports the determination that an individual requires PAS and also supports the development of the service plan and budget.

§ 441.468 Service plan elements.

(a) The service plan must include at least the following:

(1) The scope, amount, frequency, and duration of each service.

(2) The type of provider to furnish each service.

(3) Location of the service provision.

(4) The identification of risks that may pose harm to the participant along with a written individualized backup plan for mitigating those risks.

(b) A State must develop a service plan for each program participant using a person-centered and directed planning process to ensure the following:

(1) The identification of each program participant's preferences, choices, and abilities, and strategies to address those preferences, choices, and abilities.

(2) The option for the program participant to exercise choice and control over services and supports discussed in the plan.

(3) Assessment of, and planning for avoiding, risks that may pose harm to a participant.

(c) All of the State's applicable policies and procedures associated with service plan development must be carried out and include, but are not limited to, the following:

(1) Allow the participant the opportunity to engage in, and direct, the process to the extent desired.

(2) The participant the opportunity to involve family, friends, and professionals (as desired or required) in the development and implementation of the service plan.

(3) Ensure the planning process is timely.

(4) Ensure the participant's needs are assessed and that the services meet the participant's needs.

(5) Ensure the responsibilities for service plan development are identified.

(6) Ensure the qualifications of the individuals who are responsible for service plan development reflect the nature of the program's target population(s).

(7) Ensure the State reviews the service plan annually or whenever necessary due to a change in the participant's needs or health status.

(d) When an entity that is permitted to provide other State plan services is responsible for service plan development, the State must describe the safeguards that are in place to ensure that the service provider's role in the planning process is fully disclosed to the participant and controls are in place to avoid any possible conflict of interest.

(e) An approved self-directed service plan conveys authority to the participant to perform, at a minimum, the following tasks:

(1) Recruit and hire workers to provide self-directed services, including specifying worker qualifications.

(2) Fire workers.

(3) Supervise workers in the provision of self-directed services.

(4) Manage workers in the provision of self-directed services, which includes the following functions:

(i) Determining worker duties.

(ii) Scheduling workers.

(iii) Training workers in assigned tasks.

(iv) Evaluating workers performance.

(5) Determine the amount paid for a service, support, or item.

(6) Review and approve provider invoices.

§ 441.470 Service budget elements.

A service budget must be developed and approved by the State based on the assessment of need and service plan and must include the following:

(a) The specific dollar amount a participant may utilize for services and supports.

(b) How the participant is informed of the amount of the service budget before the service plan is finalized.

(c) The procedures for how the participant may adjust the budget, including the following:

(1) How the participant may freely make changes to the budget.

(2) The circumstances, if any, that may require prior approval before a budget adjustment is made.

(3) The circumstances, if any, that may require a change in the service plan.

(d) The procedure(s) that governs how a person, at the election of the State, may reserve funds to purchase items that increase independence or substitute for human assistance including additional goods, supports, services or supplies.

(e) The procedure(s) that governs how a person may use a discretionary amount, if applicable, to purchase items not otherwise delineated in the budget.

(f) How participants are afforded the opportunity to request a fair hearing under § 441.300 if a participant's request for a budget adjustment is denied or the amount of the budget is reduced.

§ 441.472 Budget methodology.

(a) The budget methodology set forth by the State to determine a participant's service budget amount, must meet the following criteria:

(1) The State's method of determining the budget allocation is objective and evidence based utilizing valid, reliable cost data.

(2) The State's method is applied consistently to participants.

(3) The State's method is open for public inspection.

(4) The State's method includes a calculation of the expected cost of the self-directed PAS and supports, if those services and supports were not self-directed.

(5) The State has a process in place that describes the following:

(i) Any limits it places on self-directed services and supports, and the basis for the limits.

(ii) Any adjustments that will be allowed and the basis for the adjustments.

(b) The State must have procedures to safeguard participants when the budgeted service amount is insufficient to meet a participant's needs.

(c) The State must have a method of notifying participants of the amount of any limit that applies to a participant's self-directed PAS and supports.

(d) The budget may not restrict access to other medically necessary care and services furnished under the plan and approved by the State but not included in the budget.

§ 441.474 Quality assurance and improvement plan.

(a) The State must provide a quality assurance and improvement plan that describes the State's system of how it will perform activities of discovery, remediation and quality improvement in order to learn of critical incidents or events that affect participants, correct shortcomings, and pursue opportunities for system improvement.

(b) The quality assurance and improvement plan shall also describe the system performance measures, outcome measures, and satisfaction measures that the State must use to monitor and evaluate the self-directed State plan option.

§ 441.476 Risk management.

(a) The State must specify the risk assessment methods it uses to identify potential risks to the participant.

(b) The State must specify any tools or instruments it uses to mitigate identified risks.

(c) The State must ensure that each service plan includes the risks that an individual is willing and able to assume, and the plan for how identified risks will be mitigated.

(d) The State must ensure that the risk management plan is the result of discussion and negotiation among the persons designated by the State to develop the service plan, the participant, the participant's representative, if any, and others from whom the participant may seek guidance.

§ 441.478 Qualifications of providers of personal assistance.

(a) States have the option to permit participants to hire any individual capable of providing the assigned tasks, including legally liable relatives, as paid providers of the PAS identified in the service plan and budget.

(b) Participants retain the right to train their workers in the specific areas of personal assistance needed by the participant and to perform the needed assistance in a manner that comports with the participant's personal, cultural, and/or religious preferences.

(c) Participants retain the right to establish additional staff qualifications based on participants' needs and preferences.

§ 441.480 Use of a representative.

(a) States may permit participants to appoint a representative to direct the provision of self-directed PAS on their behalf. The following types of representatives are permissible:

(1) A minor child's parent or guardian.

(2) An individual recognized under State law to act on behalf of an incapacitated adult.

(3) A State-mandated representative, after approval by CMS of the State criteria, if the participant has demonstrated, after additional counseling, information, training or assistance, the inability to self-direct PAS.

(b) A person acting as a representative for a participant receiving self-directed PAS is prohibited from acting as a provider of self-directed PAS to the participant.

§ 441.482 Permissible purchases.

(a) Participants may, at the State's option, use their service budgets to pay for items that increase a participant's independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.

(b) The services, supports and items that are purchased with a service budget must be linked to an assessed participant need established in the service plan.

§ 441.484 Financial management services.

(a) States may choose to provide financial management services to participants self-directing PAS, with the exception of those participants utilizing the cash option who directly perform those functions, utilizing a financial management entity, through the following arrangements:

(1) States may use a reporting or subagent through its fiscal intermediary in accordance with section 3504 of the IRS Code and Revenue Procedure 80–4 and Notice 2003–70; or

(2) States may use a vendor organization that has the capabilities to perform the required tasks in accordance with Section 3504 of the IRS Code and Revenue Procedure 70–6. When private entities furnish financial management services, the procurement method must meet the requirements set forth in 45 CFR 74.40 through 74.48.

(b) States must provide oversight of financial management services by performing the following functions:

(1) Monitoring and assessing the performance of financial management entity, including assuring the integrity of financial transactions they perform.

(2) Designating a State entity or entities responsible for this monitoring.

(3) Determining how frequently financial management entity performance will be assessed.

(c) A financial management entity must provide functions including, but not limited to, the following:

(1) Collect and process timesheets of the participant's workers.

(2) Process payroll, withholding, filing and payment of applicable Federal, State and local employment-related taxes and insurance.

(3) Maintain a separate account for each participant's budget.

(4) Track and report disbursements and balances of participant funds.

(5) Process and pay invoices for goods and services approved in the service plan.

(6) Provide to participants periodic reports of expenditures and the status of the approved service budget.

(d) States not utilizing a financial management entity must perform the

functions listed in paragraph (c) of this section on behalf of participants self-directing PAS, with the exception of those participants utilizing the cash option who directly perform those functions.

(e) States will be reimbursed for the cost of financial management services, either provided directly or through a financial management entity, at the administrative rate of 50 percent.

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

Dated: May 24, 2007.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: October 4, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. 08–115 Filed 1–14–08; 10:00 am]

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Federal Register

Friday,
January 18, 2008

Part III

Environmental Protection Agency

40 CFR Parts 60, 63, 85 et al.

Standards of Performance for Stationary Spark Ignition Internal Combustion Engines and National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 63, 85, 90, 1048, 1065, and 1068

[EPA–HQ–OAR–2005–0030, FRL–8512–4]

RIN 2060–AM81

Standards of Performance for Stationary Spark Ignition Internal Combustion Engines and National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating new source standards of performance for stationary spark ignition internal combustion engines. EPA is also promulgating national emission standards for hazardous air pollutants for new and reconstructed stationary reciprocating internal combustion engines that either are located at area sources of hazardous air pollutant emissions or that have a site rating of less than or equal to 500 brake horsepower and are located at major sources of hazardous air pollutant emissions.

DATES: This final rule is effective on March 18, 2008. The incorporation by reference of certain publications listed in the final rule is approved by the Director of the Federal Register as of March 18, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0030. EPA also relies on materials in Docket ID No. EPA–HQ–OAR–2005–0029 and incorporates that docket into the record for the final rule. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation will be 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. 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.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagán, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5340; facsimile number (919) 541–5450; e-mail address *pagan.jaime@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background Information Document. EPA proposed new source performance standards (NSPS) for stationary spark ignition internal combustion engines, and national emission standards for hazardous air pollutants (NESHAP) for stationary reciprocating internal combustion engines that either are located at area sources of hazardous air pollutant emissions or that have a site rating of less than or equal to 500 brake horsepower and are located at major sources of hazardous air pollutant emissions, on June 12, 2006 (71 FR 33803), and received 46 comment letters on the proposal. A background information document BID) (''Response to Public Comments on Proposed Standards of Performance for Stationary Spark Ignition Internal Combustion Engines and National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines'') containing EPA's responses to each public comment and the Economic Impact Analysis Report are available in Docket ID No. EPA–HQ–OAR–2005–0030.

Organization of This Document. The following outline is provided to aid in locating information in the preamble.

I. General Information
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VII. Statutory and Executive Order Reviews
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- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations.
- K. Congressional Review Act

I. General Information

A. Does this action apply to me?

Categories and entities potentially regulated by this action include:

Category	NAICS [1]	Examples of regulated entities
Any manufacturer that produces or any industry using a stationary internal combustion engine as defined in the final rule.	2211	Electric power generation, transmission, or distribution.
	622110	Medical and surgical hospitals.
	335312	Motor and generator manufacturing.
	333912	Pump and compressor manufacturing.
	333992	Welding and soldering equipment manufacturing.
	48621	Natural gas transmission.
	211111	Crude petroleum and natural gas production.
	211112	Natural gas liquids producers.
	92811	National security.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your engine is regulated by this action, you should examine the applicability criteria of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of these final rules is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 14, 2007. Under section 307(d)(7)(B) of the CAA, only an objection to these final rules that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by these final rules may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

D. Why is EPA not promulgating a final decision for existing stationary reciprocating internal combustion engines?

In the notice of proposed rulemaking for this rule, published on April 12, 2006, EPA proposed maximum achievable control technology (MACT) and generally available control technology (GACT) standards of no emission reductions for existing engines. During the comment period following the proposal, EPA received several comments indicating that the proposed emission standards for existing engines were not appropriate. In addition, since the publication of the proposed rulemaking, the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling on March 13, 2007 involving litigation on the Brick MACT, which set emission standards for major sources. (40 CFR part 63, subpart JJJJJJ) that appears to impact EPA's ability to finalize its proposed ''no reduction'' MACT standards for existing sources. *Sierra Club* v. *EPA*, 479 F.3d 875 (DC Cir 2007). Among other things, the D.C. Circuit found unlawful EPA's no emission reduction control floors, which EPA established for categories in which the best performers used no emission reduction control technology. Because in the proposed rule EPA used a MACT floor methodology similar to the methodology used in the Brick MACT, EPA intends to re-evaluate the MACT floors for existing major sources that have a site rating of less than or equal to 500 brake horsepower consistent with the Court's decision in the Brick MACT case. EPA also intends to re-evaluate the standards for existing area sources in light of the comments received on the proposed rule.

For these reasons, this final rule does not promulgate any standards with regards to existing engines. EPA's plan is to engage in a separate rulemaking process that will focus on existing sources. EPA intends to gather further information on existing engines and then promulgate standards that will take into account the comments it has received, the intervening court decision, and any new information EPA receives as a part of the rulemaking process. EPA expects to propose standards early in 2009.

II. Background

This action promulgates new source performance standards (NSPS) that would apply to new, modified and reconstructed stationary spark ignition (SI) internal combustion engines (ICE). New source performance standards implement section 111(b) of the CAA, and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The standards apply to new stationary sources of emissions, i.e., sources whose construction, reconstruction, or modification begins after a standard for those sources is proposed. The NSPS for stationary SI ICE is promulgated under 40 CFR part 60, subpart JJJJ.

This action also promulgates national emission standards for hazardous air pollutants (NESHAP) from new and reconstructed stationary reciprocating internal combustion engines (RICE) with a site rating of less than or equal to 500 horsepower (HP) located at major sources, and new and reconstructed

stationary RICE located at area sources. The NESHAP are promulgated under 40 CFR part 63, subpart ZZZZ.

III. Summary of the Final Rule

A. What is the source category regulated by the final rule?

The final NSPS apply to new stationary SI ICE. A stationary internal combustion engine means any internal combustion engine, except combustion turbines, that converts heat energy into mechanical work and is not mobile. Stationary ICE differ from mobile ICE in that a stationary internal combustion engine is not a nonroad engine as defined at 40 CFR 1068.30, and is not used to propel a motor vehicle or a vehicle used solely for competition. Stationary ICE include reciprocating ICE, rotary ICE, and other ICE, except combustion turbines. The final NESHAP apply only to stationary RICE. To our knowledge, no rotary or other types of stationary ICE exist at this time.

The SI NSPS address emissions from new, modified and reconstructed stationary SI engines. An SI engine is either a gasoline-fueled engine; or any other type of engine, with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark ignition engines usually use a throttle to regulate intake air flow to control power during normal operation. Dual-fuel engines in which a liquid fuel (typically diesel fuel) is used for compression ignition and gaseous fuel (typically natural gas) is used as the primary fuel at an annual average ratio of less than 2 parts diesel fuel to 100 parts total fuel on an energy equivalent basis are considered SI engines for purposes of the final rule.

The final NESHAP address emissions from new and reconstructed stationary engines less than or equal to 500 HP located at major sources and all new and reconstructed stationary engines located at area sources. A major source of HAP emissions is a plant site that emits or has the potential to emit any single hazardous air pollutant (HAP) at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year, except that for oil and gas production facilities, a major source of HAP emissions is determined for each surface site. An area source of HAP emissions is a source that is not a major source.

If you are an owner or operator of an area source subject to the final rule, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a) for a reason other than your status as an area source under the final rule.

1. SI NSPS

New source performance standards for stationary SI engines are issued under section 111(b) of the CAA. All new, modified and reconstructed stationary SI engines are covered regardless of size. The NSPS apply to stationary SI engines combusting any fuel (natural gas, gasoline, liquefied petroleum gas (LPG), compressed natural gas, landfill gas, digester gas, and any other applicable fuel). New source performance standards require these sources to control emissions to the level achievable by best demonstrated technology (BDT), considering costs and any non-air quality health and environmental impacts and energy requirements.

Under section 111 of the CAA, 42 U.S.C. 7411, the Administrator is required to publish, and periodically update, a list of source categories that in his or her judgment cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. This list appears in 40 CFR 60.16. The list reflects the Administrator's determination that emissions from the listed source categories contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare, and it is intended to identify major source categories for which standards of performance are to be promulgated.

EPA has determined that for purposes of NSPS regulations, the stationary internal combustion engine source category should be split into two source categories—SI engines and compression ignition (CI) engines. Final NSPS for stationary CI engines were published on July 11, 2006 (71 FR 39154).

2. NESHAP

The NESHAP portion of this action is a revision to the regulations in 40 CFR part 63, subpart ZZZZ, currently applicable to stationary RICE greater than 500 HP located at major sources, which were promulgated in 2004. When the subpart ZZZZ of 40 CFR part 63 regulations were promulgated in 2004 (69 FR 33474), EPA deferred promulgating regulations with respect to stationary engines 500 HP or less at major sources until further information on the engines could be obtained and analyzed. It was decided to regulate these smaller engines at the same time as EPA regulates engines located at area sources.

This action revises 40 CFR part 63, subpart ZZZZ, in order to address HAP emissions from new and reconstructed stationary RICE less than or equal to 500 HP located at major sources and new and reconstructed stationary RICE located at area sources. For stationary engines less than or equal to 500 HP at major sources, EPA must determine what is the appropriate MACT for those engines under section 112(d)(3) of the CAA.

For stationary engines located at area sources, EPA has the flexibility to promulgate standards based on GACT under CAA section 112(d)(5). EPA listed stationary RICE located at area sources under sections 112(c)(3) and 112(k) of the CAA, and consistent with section 112(c)(3) is establishing standards for the source category in this final rule. The criteria relevant to EPA's listing of this area source category is set forth in the Urban Air Toxics Strategy described in the paragraph below.

On July 19, 1999, EPA announced in the **Federal Register** its plan for addressing exposure to air toxics in urban areas. The strategy addressed sections 112(c)(3) and 112(k)(3)(B)(ii) of the CAA that instruct EPA to identify not less than 30 HAP which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas, and to list sufficient area source categories or subcategories to ensure that emissions representing 90 percent of the 30 listed HAP are subject to regulation. The strategy included a list of 30 HAP judged to pose the greatest potential threat to public health in the largest number of urban areas (the urban HAP). In the strategy, EPA also listed the area source categories that account for 90 percent of the urban HAP emissions. EPA listed the stationary internal combustion engine source category under section 112(c)(3) and (k) for the following urban HAP: 7 PAH, acetaldehyde, arsenic, benzene, beryllium compounds, cadmium compounds and formaldehyde. Pursuant to section 112(c), the listed area source categories shall be subject to standards under section 112(d) of the CAA.

3. Differentiation by Fuel Type

The final rule differentiates between gasoline, LPG, natural gas, and digester and landfill gas. Gasoline and LPG are fuels more commonly used in nonroad engines than stationary engines. Nonroad SI engines less than or equal to 19 kilowatt (KW) (25 HP) typically use gasoline. It is estimated that about 68 percent of SI nonroad engines above 19 KW (25 HP) use LPG. A smaller

percentage of nonroad SI engines above 19 KW (25 HP) use gasoline (about 23 percent) and even less use compressed natural gas (about 9 percent). Natural gas fuel is more common in larger, stationary applications. Natural gas engines refer to all gaseous-fueled engines except those fueled by landfill and digester gas. Natural gas is primarily composed of methane and typically contains very low levels of sulfur. Other fuels used with stationary SI engines are landfill and digester gases. These gases are by-products of wastewater treatment and land application of municipal reuse. Landfill and digester gases, which are formed through anaerobic decomposition of organic materials, are principally comprised of methane and carbon dioxide, but small quantities of other compounds such as hydrogen sulfide, ammonia, volatile organic compounds, and particulate matter (PM) may also be present. Although similar in composition to natural gas, there are some differences in the emissions from combustion of landfill and digester gases due to e.g., chlorinated compounds are typically not found in natural gas. Both landfill and digester gases contain a family of silicon-based gases collectively called siloxanes. Combustion of siloxanes forms compounds that have been known to foul fuel systems, combustion chambers, and post-combustion catalysts.

B. What are the pollutants regulated by the final rule?

The pollutants to be regulated by the final NSPS for stationary SI engines are nitrogen oxides (NO_X), carbon monoxide (CO), and volatile organic compounds (VOC). In addition, a sulfur limit on gasoline is being finalized.

The final NESHAP regulate HAP (for areas sources, the NESHAP regulates the seven urban HAP listed above) through formaldehyde, CO, or VOC which EPA has established are appropriate surrogates for HAP emissions from certain engine types.

C. What are the final standards?

A description of the final standards is provided in the following sections.

1. SI NSPS

a. Stationary SI Engines ≤19 KW (25 HP). The final standards affect manufacturers, owners, and operators of stationary SI engines. Engine manufacturers must certify their stationary SI engines with a maximum engine power less than or equal to 19 KW (25 HP) that are manufactured after July 1, 2008, to the certification emission standards for new nonroad SI engines in 40 CFR part 90, as applicable. The standards applicable to these engines are summarized in Table 1 of this preamble.

TABLE 1.—NO_X, HC, NMHC, AND CO EMISSION STANDARDS IN G/KW-HR (G/HP-HR) FOR STATIONARY SI ENGINES >19 KW (25 HP)

Engine class [a]	Emission standards in g/KW-hr (g/HP-hr) [b]		
	HC+NO_X	NMHC+NO_X [c]	CO
I	16.1 (12.0)	14.8 (11.0)	610 (455)
I–A	50 37	....	
I–B	40 (30)	37 (27.6)	
II	12.1 (9.0)	11.3 (8.4)	

[a] Class I–A: Engines with displacement less than 66 cubic centimeters (cc); Class I–B: Engines with displacement greater than or equal to 66 cc and less than 100 cc; Class I: Engines with displacement greater than or equal to 100 cc and less than 225 cc; Class II: Engines with displacement greater than or equal to 225 cc.

[b] Modified and reconstructed engines manufactured prior to July 1, 2008, must meet the standards applicable to engines manufactured after July 1, 2008.

[c] NMHC+NO_X standards are applicable only to natural gas fueled engines at the option of the manufacturer, in lieu of HC+NO_X standards.

b. Stationary Non-Emergency SI Gasoline Engines >19 KW (25 HP) and Rich Burn LPG Engines >19 KW (25 HP). Engine manufacturers must certify their stationary non-emergency SI engines with a maximum engine power greater than 19 KW (25 HP) and less than 500 HP that use gasoline or rich burn engines greater than 19 KW (25 HP) and less than 500 HP that use LPG that are manufactured after July 1, 2008, to the certification emission standards for new nonroad SI engines in 40 CFR part 1048, as applicable. Engine manufacturers must certify their stationary non-emergency SI engines with a maximum engine power greater than or equal to 500 HP that use gasoline or rich burn engines greater than or equal to 500 HP that use LPG that are manufactured after July 1, 2007, to the certification emission standards for new nonroad SI engines in 40 CFR part 1048. The standards applicable to manufacturers of non-emergency engines greater than 19 KW (25 HP) that are gasoline or rich burn engines that use LPG are summarized in Table 2 of this preamble.

TABLE 2.—NO_X, HC, AND CO EMISSION STANDARDS IN G/KW-HR (G/HP-HR) FOR MANUFACTURERS OF STATIONARY NON-EMERGENCY SI GASOLINE ENGINES >19 KW (25 HP) AND RICH BURN LPG ENGINES >19 KW (25 HP)

Maximum engine power	Manufacture date	Emission requirement in g/KW-hr (g/HP-hr) [a, b]	
		HC+NO_X	CO
25<HP<500 [c]	July 1, 2008	2.7 (2.0)	4.4 (3.3)
	July 1, 2008 (severe duty [e])	2.7 (2.0)	130.0 (97.0)

TABLE 2.—NO_X, HC, AND CO EMISSION STANDARDS IN G/KW-HR (G/HP-HR) FOR MANUFACTURERS OF STATIONARY NON-EMERGENCY SI GASOLINE ENGINES >19 KW (25 HP) AND RICH BURN LPG ENGINES >19 KW (25 HP)—Continued

Maximum engine power	Manufacture date	Emission requirement in g/KW-hr (g/HP-hr) [a, b]	
		$HC+NO_X$	CO
HP≥500 [d]	July 1, 2007	2.7 (2.0)	4.4 (3.3)
	July 1, 2007 (severe duty [e])	2.7 (2.0)	130.0 (97.0)

[a] You may optionally certify your engines according to the following formula instead of the standards in Table 2 of this preamble: $(HC+NO_X)CO^{0.784} \leq 8.57$. The $HC+NO_X$ and CO emission levels you select to satisfy this formula, rounded to the nearest 0.1 g/KW-hr, become the emission standards that apply for those engines. You may not select an $HC+NO_X$ emission standard higher than 2.7 g/KW-hr or a CO emission standard higher than 20.6 g/KW-hr.

[b] Provisions in 40 CFR part 1048 allow engines with a maximum engine power at or below 30 KW (40 HP) with a total displacement at or below 1,000 cubic centimeters (cc) to comply with the requirements of 40 CFR part 90.

[c] Modified and reconstructed engines between 25 and 500 HP manufactured prior to July 1, 2008, must meet the standards applicable to engines manufactured after July 1, 2008.

[d] Modified and reconstructed engines greater than or equal to 500 HP manufactured prior to July 1, 2007, must meet the standards applicable to engines manufactured after July 1, 2007.

[e] Severe-duty engines are engines used in, for example, concrete saws, concrete pumps, and similar severe applications where air-cooled engines must be used. There are expected to be very few, if any, severe-duty stationary engines.

In addition to the emission standards shown in Table 2 of this preamble, there are separate field testing standards required under 40 CFR part 1048 that are part of the certification requirements for engine manufacturers.

c. Stationary Non-Emergency SI Natural Gas Engines 19<KW<75 (25<HP<100) and Lean Burn LPG Engines 19<KW<75 (25<HP<100). Engine manufacturers have the option to certify their stationary non-emergency SI natural gas engines between 25 HP and 100 HP and lean burn LPG engines between 25 HP and 100 HP to the certification emission standards in 40 CFR part 1048, as shown in Table 2 of this preamble. However, the certification is only voluntary, and it is up to the manufacturer to decide if it believes certification is feasible and beneficial. Engine manufacturers may certify engines between 19 and 30 KW (25 and 40 HP) with a displacement of 1,000 cc or less to the provisions of 40 CFR part 90 (shown in Table 1 of this preamble), which is consistent with similar provisions applicable to nonroad engines in this displacement and size category. In addition, for engines manufactured prior to January 1, 2011, manufacturers may alternatively certify to the standards summarized in Table 4 of this preamble applicable to engines greater than or equal to 100 HP and less than 500 HP.

Owners and operators who purchase stationary SI engines with a maximum engine power between 19 and 75 KW (25 and 100 HP) that are natural gas engines or lean burn engines using LPG that are manufactured after July 1, 2008, must meet the NO_X, HC, and CO emission standards in 40 CFR 1048.101(c), as summarized in Table 3 of this preamble.

TABLE 3.—NO_X, HC, AND CO EMISSION STANDARDS IN G/KW-HR (G/HP-HR) FOR OWNERS/OPERATORS OF STATIONARY NON-EMERGENCY SI NATURAL GAS ENGINES 19<KW<75 (25<HP<100) AND LEAN BURN LPG ENGINES 19<KW<75 (25<HP<100)

Maximum engine power	Manufacture date	Emission requirement in g/KW-hr (g/HP-hr) [a, b]	
		$HC+NO_X$	CO
25<HP<100 [c]	July 1, 2008	3.8 (2.8)	6.5 (4.8)
	July 1, 2008 (severe duty)	3.8 (2.8)	200.0 (149.2)

[a] You may apply the following formula to determine alternate emission standards that apply to your engines instead of the standards in paragraph in Table 3 of this preamble: $(HC+NO_X) \times CO^{0.791} \leq 16.78$. $HC+NO_X$ emission levels may not exceed 3.8 g/kW-hr and CO emission levels may not exceed 31.0 g/kW-hr.

[b] For natural gas fueled engines, you are not required to measure non-methane hydrocarbon emissions or total hydrocarbon emissions for testing to show that the engine meets the emission standards of Table 3 of this preamble; that is, you may assume HC emissions are equal to zero.

[c] Modified and reconstructed engines between 25 and 100 HP manufactured prior to July 1, 2008, must meet the standards applicable to engines manufactured after July 1, 2008.

d. Stationary Non-Emergency SI Natural Gas Engines ≥100 HP and Lean Burn LPG Engines ≥100 HP. Owners and operators who purchase stationary SI engines with a maximum engine power between 100 HP and 500 HP that are natural gas engines or lean burn engines using LPG that are manufactured between July 1, 2008 and January 1, 2011, must limit their exhaust emissions of NO_X to 2.0 g/HP-hr, emissions of CO to 4.0 g/HP-hr, and emissions of VOC to 1.0 g/HP-hr. Owners and operators may as an alternative limit their exhaust emissions of NO_X to 160 parts per million by volume, dry basis (ppmvd) at 15 percent oxygen (O_2), emissions of CO to 540 ppmvd at 15 percent O_2, and emissions of VOC to 86 ppmvd at 15 percent O_2 instead of the g/HP-hr limits.

Stationary SI engines with a maximum engine power between 100 HP and 500 HP that are natural gas engines or lean burn engines using LPG that are manufactured after January 1, 2011, must limit their exhaust emissions of NO_X to 1.0 g/HP-hr, emissions of CO to 2.0 g/HP-hr, and emissions of VOC to 0.7 g/HP-hr. Again, owners and operators may as an alternative limit their exhaust emissions of NO_X to 82 ppmvd at 15 percent O_2, emissions of CO to 270 ppmvd at 15 percent O_2, and emissions of VOC to 60 ppmvd at 15 percent O_2 instead of the g/HP-hr limits.

Owners and operators who purchase stationary SI engines with a maximum engine power greater than or equal to 500 HP that are natural gas engines or lean burn engines using LPG that are manufactured after July 1, 2007, must limit their exhaust emissions of NO_X to 2.0 g/HP-hr, emissions of CO to 4.0 g/HP-hr, and emissions of VOC to 1.0 g/HP-hr, except that these standards apply to lean burn engines between 500 and 1,350 HP manufactured after January 1, 2008. Instead of complying with limits in terms of g/HP-hr, owners and operators may limit their exhaust emissions of NO_X to 160 ppmvd at 15 percent O_2, emissions of CO to 540 ppmvd at 15 percent O_2, and emissions of VOC to 86 ppmvd at 15 percent O_2.

Stationary SI engines with a maximum engine power greater than or equal to 500 HP that are natural gas engines or lean burn engines using LPG that are manufactured after July 1, 2010, must limit their exhaust emissions of NO_X to 1.0 g/HP-hr, emissions of CO to 2.0 g/HP-hr, and emissions of VOC to 0.7 g/HP-hr. Instead of complying with limits in terms of g/HP-hr, owners and operators may limit their exhaust emissions of NO_X to 82 ppmvd at 15 percent O_2, emissions of CO to 270 ppmvd at 15 percent O_2, and emissions of VOC to 60 ppmvd at 15 percent O_2.

Engine manufacturers may voluntarily certify their stationary non-emergency SI natural gas engines greater than or equal to 100 HP and lean burn LPG engines greater than or equal to 100 HP, but the certification is not required by the rule. Additionally, for natural gas engines below 500 HP manufactured prior to January 1, 2011, and natural gas engines greater than or equal to 500 HP manufactured prior to July 1, 2010, engine manufacturers may choose to certify their engines to the standards for non-severe duty engines in 40 CFR part 1048 (see Table 2 of this preamble).

A summary of the emission standards that apply to stationary non-emergency SI natural gas engines greater than or equal to 100 HP and lean burn LPG engines greater than or equal to 100 HP are shown in Table 4 of this preamble.

For lean burn LPG engines greater than or equal to 100 HP, manufacturers may certify these engines to the certification emission standards in 40 CFR part 1048 instead of the emission standards shown in Table 4 of this preamble.

TABLE 4.—NO_X, CO, AND VOC EMISSION STANDARDS FOR STATIONARY SI ENGINES ≥100 HP (EXCEPT GASOLINE AND RICH BURN LPG), STATIONARY SI LANDFILL/DIGESTER GAS ENGINES, AND STATIONARY EMERGENCY ENGINES >25 HP

Engine type and fuel	Maximum engine power	Manufacture date	Emission standards [a]					
			g/HP-hr			ppmvd at 15% O_2		
			NO_X	CO	VOC	NO_X	CO	VOC
Non-Emergency SI Natural Gas and Non-Emergency SI Lean Burn LPG.	100≤HP<500	7/1/2008	2.0	4.0	1.0	160	540	86
		1/1/2011	1.0	2.0	0.7	82	270	60
Non-Emergency SI Lean Burn Natural Gas and LPG.	500≥HP<1,350	1/1/2008	2.0	4.0	1.0	160	540	86
		7/1/2010	1.0	2.0	0.7	82	270	60
Non-Emergency SI Natural Gas and Non-Emergency SI Lean Burn LPG (except lean burn 500≥HP<1,350).	HP≥500	7/1/2007	2.0	4.0	1.0	160	540	86
	HP≥500	7/1/2010	1.0	2.0	0.7	82	270	60
Landfill/Digester Gas (except lean burn 500≥HP<1,350).	HP<500	7/1/2008	3.0	5.0	1.0	220	610	80
		1/1/2011	2.0	5.0	1.0	150	610	80
	HP≥500	7/1/2007	3.0	5.0	1.0	220	610	80
		7/1/2010	2.0	5.0	1.0	150	610	80
Landfill/Digester Gas lean burn	500≥HP<1,350	1/1/2008	3.0	5.0	1.0	220	610	80
		7/1/2010	2.0	5.0	1.0	150	610	80
Emergency	25>HP<130	1/1/2009	[b] 10	387	N/A	N/A	N/A	N/A
	HP≥130		2.0	4.0	1.0	160	540	86

[a] Owners and operators of stationary non-certified SI engines may choose to comply with the emission standards in units of either g/HP-hr or ppmvd at 15 percent O_2.

[b] The emission standards applicable to emergency engines between 25 HP and 130 HP are in terms of NO_X+HC.

e. Stationary SI Landfill/Digester Gas Engines. Owners and operators who purchase stationary landfill or digester SI engines that are manufactured after July 1, 2007, that are greater than or equal to 500 HP must limit their exhaust emissions of NO_X to 3.0 g/HP-hr, emissions of CO to 5.0 g/HP-hr, and emissions of VOC to 1.0 g/HP-hr, except that these standards apply to lean burn engines between 500 and 1,350 HP manufactured after January 1, 2008. Instead of complying with limits in terms of g/HP-hr, owners and operators may limit their exhaust emissions of NO_X to 220 ppmvd at 15 percent O_2, emissions of CO to 610 ppmvd at 15 percent O_2, and emissions of VOC to 80 ppmvd at 15 percent O_2.

Stationary landfill and digester gas SI engines greater than or equal to 500 HP that are manufactured after July 1, 2010, must limit their exhaust emissions of NO_X to 2.0 g/HP-hr, emissions of CO to 5.0 g/HP-hr, and emissions of VOC to 1.0 g/HP-hr. Instead of complying with limits in terms of g/HP-hr, owners and operators may limit their exhaust emissions of NO_X to 150 ppmvd at 15 percent O_2, emissions of CO to 610 ppmvd at 15 percent O_2, and emissions of VOC to 80 ppmvd at 15 percent O_2.

Stationary SI engines that use landfill or digester gas that are less than 500 HP are given an extra 12 months to comply with the standards. The first stage of limits of 3.0, 5.0, and 1.0 g/HP-hr, for NO_X, CO, and VOC, respectively (or 220, 610, and 80 ppmvd at 15 percent O_2), applies to landfill and digester gas engines manufactured after July 1, 2008. The second stage of limits of 2.0, 5.0, and 1.0 g/HP-hr, for NO_X, CO, and VOC, respectively (or 150, 610, and 80 ppmvd at 15 percent O_2), applies to landfill and digester gas engines manufactured after January 1, 2011. The emission standards applicable to stationary SI landfill and digester gas engines are shown in Table 4 of this preamble.

Engine manufacturers may voluntarily certify their stationary SI landfill and digester gas engines to the emission standards in Table 4 of this preamble, but the certification is not required by the final rule.

f. Stationary Emergency SI Engines >19 KW (25 HP). For stationary SI engines greater than 25 HP that are emergency engines, the final rule sets a single stage of emission limits; however, EPA has determined that it is appropriate to have separate standards for stationary emergency engines above and below 130 HP.

Owners and operators who purchase stationary emergency engines greater than 25 HP and less than 130 HP that are manufactured after January 1, 2009, must limit their exhaust emissions of $HC+NO_X$ to 10.0 g/HP-hr and emissions of CO to 387 g/HP-hr. These standards are consistent with the Phase I emission standards for Class II nonroad engines in 40 CFR part 90.

Owners and operators who purchase stationary emergency engines greater than or equal to 130 HP that are manufactured after January 1, 2009, must limit their exhaust emissions of NO_X to 2.0 g/HP-hr, emissions of CO to 4.0 g/HP-hr, and emissions of VOC to 1.0 g/HP-hr. Instead of complying with limits in terms of g/HP-hr, owners and operators may limit the exhaust emissions from their emergency engines to 160 ppmvd of NO_X at 15 percent O_2, 540 ppmvd of CO at 15 percent O_2, and 86 ppmvd of VOC at 15 percent O_2.

Engine manufacturers may voluntarily certify their stationary emergency SI engines greater than 25 HP, but the certification is not required by the rule, except for manufacturers of gasoline or LPG rich burn emergency engines, who must certify their engines to the standards in 40 CFR part 90 (for engines below 130 HP) or 40 CFR part 1048 (for engines at or above 130 HP—see Table 2 of this preamble).

g. Fuel Requirements. In addition to emission standards, the final rule requires that owners and operators who use gasoline in their stationary SI engine must use gasoline that meets the requirements of 40 CFR 80.195. The requirements include a gasoline sulfur per gallon cap of 80 parts per million (ppm).

2. NESHAP

a. Engines ≤500 HP at Major Sources. Owners and operators of new and reconstructed stationary SI engines with a site rating of equal to or less than 500 HP located at a major source of HAP emissions (except new or reconstructed 4-stroke lean burn (4SLB) stationary RICE with a site rating of greater than or equal to 250 and less than or equal to 500 brake HP located at major source of HAP emissions), must meet the requirements of the final SI NSPS (40 CFR part 60, subpart JJJJ). Thus, if the owners and operators are in compliance with 40 CFR part 60, subpart JJJJ, they would also be in compliance with 40 CFR part 63, subpart ZZZZ, for engines equal to or less than 500 HP located at a major source (except for 4SLB engines greater than or equal to 250 and less than or equal to 500 brake HP located at a major source). The requirements that apply under 40 CFR part 60, subpart JJJJ, were discussed in the previous section of this preamble.

Similarly, owners and operators of new and reconstructed stationary CI engines with a site rating of equal to or less than 500 HP located at a major source of HAP emissions must meet the requirements of the final CI NSPS (40 CFR part 60, subpart IIII). If the owners and operators are in compliance with 40 CFR part 60, subpart IIII, they would also be in compliance with 40 CFR part 63, subpart ZZZZ, for engines equal to or less than 500 HP located at a major source.

Owners and operators of new or reconstructed 4SLB SI stationary engines with a site rating of greater than or equal to 250 and less than or equal to 500 brake HP located at a major source are required to either reduce CO emissions by 93 percent or more, or limit the concentration of formaldehyde in the stationary engine exhaust to 14 ppmvd or less, at 15 percent O_2. These engines would also be required to meet the requirements in the final SI NSPS, but do not have to comply with the CO emission standards of the SI NSPS if in compliance with the NESHAP.

b. Engines at Area Sources. Owners and operators of new and reconstructed stationary engines located at area sources of HAP emissions must meet the requirements of the final CI NSPS (40 CFR part 60, subpart IIII) or SI NSPS (40 CFR part 60, subpart JJJJ), as appropriate. If the owners and operators are in compliance with either 40 CFR part 60, subpart IIII or JJJJ, as appropriate, they would also be in compliance with 40 CFR part 63, subpart ZZZZ, for new and reconstructed engines located at an area source.

D. What are the requirements for sources that are modified or reconstructed?

1. SI NSPS

The final standards apply to stationary SI engines subject to the SI NSPS that are modified or reconstructed after June 12, 2006. The definitions for modification and reconstruction are given in 40 CFR 60.14 and 40 CFR 60.15, respectively. A stationary engine that is overhauled as part of a maintenance program is not considered a modification if there is no increase in emissions.

Stationary SI ICE less than or equal to 19 KW (25 HP) manufactured prior to July 1, 2008, that are modified or reconstructed after June 12, 2006, are required to meet the standards that apply to engines manufactured after July 1, 2008 (January 1, 2009 for emergency engines).

Stationary SI gasoline and rich burn LPG engines between 25 HP and 500 HP manufactured prior to July 1, 2008, that are modified or reconstructed after June 12, 2006, are required to meet the standards applicable to engines manufactured after July 1, 2008 (January 1, 2009 for emergency engines).

Stationary SI natural gas and lean burn LPG engines greater than 25 HP and less than 100 HP manufactured prior to July 1, 2008, that are modified or reconstructed after June 12, 2006, are required to meet the NO_X, HC, and CO emission standards in 40 CFR 1048.101(c), as summarized in Table 3 of this preamble.

Stationary SI gasoline and rich burn LPG engines greater than or equal to 500 HP manufactured prior to July 1, 2007, that are modified or reconstructed after June 12, 2006, are required to meet the standards applicable to engines manufactured after July 1, 2007.

Stationary SI natural gas and lean burn LPG engines greater than or equal to 100 HP and less than 500 HP manufactured prior to July 1, 2008, that are modified or reconstructed after June 12, 2006, are required to meet a NO_X emission standard of 3.0 g/HP-hr, a CO standard of 4.0 g/HP-hr, and a VOC standard of 1.0 g/HP-hr. Instead of meeting emission standards in terms of

g/HP-hr, owners and operators may meet NO_X, CO, and VOC emission standards of 250, 540, and 86 ppmvd at 15 percent O_2, respectively.

Stationary non-emergency SI natural gas and lean burn LPG engines greater than or equal to 500 HP manufactured prior to July 1, 2007, (or January 1, 2008, for lean burn natural gas engines greater than or equal to 500 HP and less than 1,350 HP) that are modified after June 12, 2006, are required to meet a NO_X emission standard of 3.0 g/HP-hr, a CO standard of 4.0 g/HP-hr, and a VOC standard of 1.0 g/HP-hr. Again, instead of meeting emission standards in terms of g/HP-hr, owners and operators may meet NO_X, CO, and VOC emission standards of 250, 540, and 86 ppmvd at 15 percent O_2, respectively.

Stationary SI landfill and digester gas engines less than 500 HP manufactured prior to July 1, 2008, that are modified or reconstructed after June 12, 2006, are required to meet a NO_X emission standard of 3.0 g/HP-hr, a CO standard of 5.0 g/HP-hr, and a VOC standard of 1.0 g/HP-hr.

Stationary SI landfill and digester gas engines greater than or equal to 500 HP manufactured prior to July 1, 2007, that are modified after June 12, 2006, are required to meet a NO_X emission standard of 3.0 g/HP-hr, a CO standard of 5.0 g/HP-hr, and a VOC standard of 1.0 g/HP-hr. For all modified and reconstructed SI landfill and digester gas engines, instead of meeting emission standards in terms of g/HP-hr, owners and operators may meet NO_X, CO, and VOC emission standards of 220, 610, and 80 ppmvd at 15 percent O_2.

Stationary SI emergency engines greater than or equal to 130 HP manufactured prior to January 1, 2009, that are modified or reconstructed after June 12, 2006, are required to meet a NO_X emission standard of 3.0 g/HP-hr, a CO standard of 4.0 g/HP-hr, and a VOC standard of 1.0 g/HP-hr. Instead of meeting emission standards in terms of g/HP-hr, owners and operators may meet NO_X, CO, and VOC emission standards of 250, 540, and 86 ppmvd at 15 percent O_2. Stationary SI emergency engines between 25 HP and 130 HP manufactured prior to January 1, 2009, that are modified or reconstructed after June 12, 2006, are required to meet a $HC+NO_X$ emission standard of 10.0 g/HP-hr and a CO standard of 387 g/HP-hr.

2. NESHAP

Similar concepts as those discussed above apply to engines subject to 40 CFR part 63 regulations; however, the concept of modification is not included in 40 CFR part 63. The final standards apply to stationary engines subject to the NESHAP that commence reconstruction on or after June 12, 2006, and the reconstruction criteria are provided in 40 CFR 63.2.

E. What are the requirements for demonstrating compliance?

The following sections describe the requirements for demonstrating compliance under the stationary SI NSPS and NESHAP.

1. SI NSPS

Owners and operators subject to the emission standards specified in the final rule who use stationary SI engines with a maximum engine power of less than or equal to 19 KW (25 HP) or who use stationary SI engines with a maximum engine power greater than 19 KW (25 HP) and use gasoline or are rich burn engines greater than 19 KW (25 HP) using LPG must demonstrate compliance by using an engine certified to the emission standards specified in 40 CFR part 90 or 1048, as applicable.

Owners and operators subject to the final rule who use stationary SI engines with a maximum engine power greater than 19 KW (25 HP) that use fuels other than gasoline and that are not rich burn engines greater than 19 KW (25 HP) that use LPG, must demonstrate compliance by either using an engine certified to the emission standards specified in Tables 3 or 4 of this preamble, as applicable, or by conducting an initial performance test (and potentially subsequent performance testing depending on the engine size) to demonstrate compliance with the emission standards.

Owners and operators of all stationary engines subject to the requirements of the SI NSPS must keep records of maintenance conducted on the engine. Owners and operators of stationary non-certified engines, which include certified engines operating in a non-certified manner, must keep a maintenance plan. Owners and operators of certified engines may demonstrate compliance by operating and maintaining their stationary engine and aftertreatment control device (if any) according to the manufacturer's emission-related written instructions and do not have to conduct any performance testing.

Owners and operators of certified engines who do not follow the manufacturer's emission-related operation and maintenance procedures will be considered non-certified engines and will be subject to performance testing. Certified engines operating in a non-certified manner that are less than 100 HP do not have to conduct performance testing to demonstrate compliance. Certified engines operating in a non-certified manner that are greater than or equal to 100 HP and less than or equal to 500 HP, however, must conduct an initial performance test within the first year of engine operation to demonstrate compliance with the emission standards. Finally, certified engines operating in a non-certified manner that are greater than 500 HP must conduct a performance test within the first year of operation and every 8,760 hours of operation or 3 years thereafter to demonstrate compliance. Owners and operators of engines that have never been certified that are greater than 25 HP and less than or equal to 500 HP must conduct an initial performance test to demonstrate compliance with the emission standards. As mentioned, all engines are subject to recordkeeping of maintenance, which includes these engines. Owners and operators of engines that have never been certified that are greater than 500 HP must conduct an initial performance test to demonstrate compliance and must test every 8,760 hours of operation or 3 years after that.

Manufacturers of stationary SI engines required to certify their engines must demonstrate compliance by certifying that their stationary SI engines meet the emission standards, as specified in 40 CFR part 60, subpart JJJJ, as applicable, using the certification procedures in subpart B of 40 CFR part 90 or subpart C of 40 CFR part 1048, as applicable, and must test their engines as specified in those parts. Manufacturers who conduct voluntary certification must follow the same test procedures that apply to large SI nonroad engines under 40 CFR part 1048, but must use the D–1 cycle in International Organization for Standardization (ISO) 8178–4: 1996(E) for stationary engines or the test cycle requirements specified in Table 5 to 40 CFR 1048.505, except that Table 5 to 40 CFR 1048.505 applies to high load engines only.

Manufacturers who opt to voluntarily certify their stationary SI engines to the emission standards specified in this subpart must certify their engines using fuel that meets the definition of pipeline-quality natural gas, which according to the definition must be composed of at least 70 percent methane by volume or have a gross calorific value between 950 and 1,100 British thermal units per standard cubic foot.

If the manufacturer chooses to certify its stationary SI engines to another fuel, the manufacturer must specify the properties of that fuel and what adjustments the owner or operator must make to the engine during installation in the field in order to meet the

emission standards. The manufacturer must also perform certification testing on the engine on that fuel, as it would if it was certifying to pipeline-quality natural gas, in order to assure compliance with the emission standards. Manufacturers who conduct voluntary certification of stationary SI ICE must also provide instructions to the owner and operator for configuring the stationary engine to meet the emission standards on fuels that meet the pipeline-quality natural gas specifications and fuels that do not meet the pipeline-quality natural gas specifications. The manufacturer must provide information to the owner and operator of the certified stationary SI engine regarding the particular fuels to which the engine is certified, and instructions regarding configuring the engine in a manner most appropriate for reducing pollutant emissions for engines operating on such fuels.

EPA allows owners and operators of natural gas engines to use propane as back up fuel for emergency purposes for no more than 100 hours per year. If propane is used for more than 100 hours per year in an engine that is not certified to the emission standards when using propane, the owners and operators are required to conduct a performance test to demonstrate compliance with the emission standards.

Owners and operators that operate engines that have been certified by the engine manufacturer are not required to perform any performance testing unless the engine is operated outside of the fuel properties or emission-related operation and maintenance procedures specified by the manufacturer. If the owner or operator uses fuels that are outside of the fuel specifications or does not follow the emission-related adjustments or maintenance requirements specified by the manufacturer, the engine is no longer considered a certified engine and the owner or operator must test the engine to demonstrate compliance.

Regarding stationary rich burn engines operating with three-way catalysts or non-selective catalytic reduction, EPA expects that air-to-fuel ratio controllers will be used in conjunction with the control device. The AFR controller must be operated in an appropriate manner to ensure proper operation of the engine and control device in order to minimize emissions.

2. NESHAP

For most engines (i.e. except those discussed in the following paragraph), owners and operators of new and reconstructed stationary SI RICE equal to or less than 500 HP located at a major source of HAP emissions and stationary RICE located at an area source, will be able to demonstrate compliance with the NESHAP if they meet the requirements of the final SI NSPS (40 CFR part 60, subpart JJJJ). Similarly, owners and operators of new and reconstructed stationary CI engines with a site rating of equal to or less than 500 HP located at a major source of HAP emissions, will be able to demonstrate compliance with the NESHAP if they meet the requirements of the final CI NSPS (40 CFR part 60, subpart IIII). If the owners and operators are in compliance with 40 CFR part 60, subpart JJJJ or IIII, as applicable, they will also be in compliance with 40 CFR part 63, subpart ZZZZ, for engines equal to or less than 500 HP located at a major source. The compliance requirements that apply under 40 CFR part 60, subpart JJJJ, were discussed in the previous section. For the majority of stationary CI engines, all that is required under 40 CFR part 60, subpart IIII, is that the owner or operator purchase a certified stationary CI engine and operate it properly and according to the manufacturer's specifications.

Owners and operators of new or reconstructed 4SLB stationary RICE greater than or equal to 250 HP and less than or equal to 500 brake HP located at major source are required to follow the compliance requirements specified in 40 CFR part 63, subpart ZZZZ, consistent with the compliance requirements for 4SLB stationary RICE greater than 500 HP located at a major source. Those compliance requirements include demonstrating compliance by conducting an initial performance test. These engines must also conduct a subsequent performance test semiannually if they are complying with the requirement to reduce CO emissions and not using a continuous emissions monitoring system, and if they are complying with the requirement to limit the concentration of formaldehyde in the stationary engine exhaust. Under the NESHAP, these engines must either reduce CO emissions or limit the concentration of formaldehyde. In addition, these engines would be required to meet the requirements in the final SI NSPS. However, these engines do not have to comply with the CO emission standards of the SI NSPS if in compliance with the NESHAP.

F. What are the reporting and recordkeeping requirements?

The following sections describe the reporting and recordkeeping requirements that are required under the SI NSPS and the NESHAP.

1. SI NSPS

Owners and operators of all engines (certified and non-certified) are required to maintain records of proper maintenance and non-certified engines must keep a maintenance plan. An initial notification is required for owners and operators of engines greater than 500 HP that are non-certified. Also, owners and operators who conduct performance testing are required to report the test results within 60 days of each performance test.

Owners and operators of emergency engines are required to keep records of their hours of operation. For emergency engines greater than or equal to 130 HP, this requirement starts for engines manufactured after the point when more stringent emission standards take effect for non-emergency engines, either in July 2010 or January 2011, depending on the power rating of the engine. For emergency engines below 130 HP, the requirement to keep records of the hours of operation begins for all engines manufactured after January 1, 2009. Owners and operators of emergency engines must install a non-resettable hour meter on their engines to record the necessary information. Emergency stationary engines may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by the Federal, State or local government, the manufacturer, the vendor, or the insurance company associated with the engine. Maintenance checks and readiness testing of such units is limited to 100 hours per year. Owners and operators can petition the Administrator for additional hours, beyond the allowed 100 hours per year, if such additional hours should prove to be necessary for maintenance and testing reasons. A petition is not required if the hours beyond 100 hours per year for maintenance and testing purposes are mandated by regulation such as State or local requirements. There is no time limit on the use of emergency stationary engines in emergency situations, however, the owner or operator is required to record the length of operation and the reason the engine was in operation during that time. Records must be maintained documenting why the engine was operating to ensure the 100 hours per year limit for maintenance and testing operation is not exceeded. In addition, owners and operators are allowed to operate their emergency engines for non-emergency purposes for 50 hours per year, but those 50 hours are counted towards the total 100 hours provided for operation other than for true emergencies and owners and operators

may not engage in income-generating activities during those 50 hours. The 50 hours per year for non-emergency purposes cannot be used to generate income for a facility, for example, to supply power to an electric grid or otherwise supply power as part of a financial arrangement with another entity.

2. NESHAP

In general, owners and operators of new and reconstructed stationary RICE equal to or less than 500 HP located at a major source of HAP emissions and stationary RICE located at an area source of HAP emissions, will be able to demonstrate compliance with the NESHAP if they meet the requirements of the final SI NSPS (40 CFR part 60, subpart JJJJ) or the final CI NSPS (40 CFR part 60, subpart IIII), as appropriate, which includes reporting and recordkeeping requirements. The reporting and recordkeeping requirements that would apply to stationary RICE were discussed in the previous section of this preamble and in the preamble to the final CI NSPS (71 FR 39154). No additional reporting and recordkeeping requirements are required under the 40 CFR part 63.

Owners and operators of new or reconstructed 4SLB stationary RICE greater than or equal to 250 and less than or equal to 500 brake HP located at major source are required to meet the reporting and recordkeeping requirements specified in 40 CFR part 63, subpart ZZZZ, consistent with the compliance requirements for 4SLB stationary RICE greater than 500 HP located at a major source. The recordkeeping and reporting requirements that apply to these engines were discussed in the preamble to the final RICE NESHAP (69 FR 33473).

IV. Summary of Significant Changes Since Proposal

Most of the rationale used to develop the proposed rule remains the same for the final rule. Therefore, the rationale previously provided in the preamble to the proposed rule is not repeated in the final rule, and the rationale sections of the rule, as proposed, should be referred to. Major changes that have been made to the rule since proposal are discussed in this section with rationale following in the Summary of Responses to Major Comments section.

A. Compliance Dates

In the final rule, EPA has extended the compliance dates for all stationary SI ICE that had a compliance date of January 1, 2008, in the proposal, by 6 months. These engines have a compliance date of July 1, 2008. In addition, stationary SI lean burn engines between 500 and 1,350 HP that had a compliance date of July 1, 2007, in the proposed rule, have also been provided with an additional 6 months, *i.e.*, these engines have a compliance date of January 1, 2008.

B. Distinguishing Sources Based on Size

In the final rule, based on the comments received, EPA is adopting a size threshold of 100 HP for non-emergency stationary SI engines to meet nonroad emission standards. That is, non-emergency stationary SI engines less than 100 HP are subject to the nonroad emission standards in 40 CFR part 90 (if less than or equal to 25 HP) or 40 CFR part 1048 (if greater than 25 HP). Certification to 40 CFR part 1048 is voluntary for all stationary SI engines except gasoline and rich burn LPG engines. Stationary SI engines greater than or equal to 100 HP (except gasoline and rich burn LPG) are subject to the emission standards specified in part 60 subpart JJJJ, as shown in Table 4 of this preamble. Stationary SI lean burn LPG engines have the option of meeting 40 CFR part 1048 instead of the emission standards specified in this subpart. EPA has also provided some flexibility on the initial years of the program for manufacturers to certify to standards in either 40 CFR part 1048 or as shown in Table 4 of this preamble.

C. Hydrocarbon Limit

EPA proposed emission limits for NO_X, CO, and NMHC. In the final rule, EPA is adopting a VOC limit in place of the proposed NMHC limit. The stage 1 and stage 2 emission standards remain as proposed at 1.0 g/HP-hr and 0.7 g/HP-hr, but the standards are for VOC. EPA has defined VOC according to 40 CFR part 51, and has noted that emissions of formaldehyde should not be counted for testing purposes. That is, the final stage 1 and stage 2 emission limits for VOC effectively do not include ethane, methane, and formaldehyde. Formaldehyde was excluded because it cannot be measured by the testing method used to determine the standard; however, EPA expects formaldehyde emissions to be reduced using the emission controls expected for other hydrocarbons and CO. Therefore, we expect formaldehyde emissions to be reduced comparably to VOCs and CO, which are used as a surrogate for formaldehyde for the purposes of section 112.

D. Alternative Limits in Concentration Units

EPA proposed NO_X, CO, and NMHC emission limits in terms of exhaust-based units. Based on various comments and concerns with finalizing emission standards in terms of these units, EPA finds it appropriate to include alternative concentration-based emission limits in the final rule. The concentration-based emission limits, provided in terms of ppmvd at 15 percent O_2, are equivalent to the g/HP-hr emission limits. The owners and operators may choose if they wish to comply with the g/HP-hr standards or the ppmvd standards.

E. Emergency Engine Standards

For stationary emergency engines, EPA proposed that these engines meet emissions standards of 2.0, 4.0, and 1.0 g/HP-hr for NO_X, CO, and NMHC, respectively, for all emergency engines. In the final rule, stationary emergency engines between 25 and 130 HP are subject to emission standards of reduced stringency of 10 g/HP-hr for NO_X+HC and 387 g/HP-hr for CO. Stationary emergency engines greater than or equal to 130 HP are subject to the emission standards as proposed. Stationary emergency engines less than or equal to 25 HP are subject to the emission standards in 40 CFR part 90.

F. Emergency Engine Definition

In the final rule, EPA has retained the proposed definition of stationary emergency engine, except that stationary engines greater than 500 HP located at major sources that were built prior to the proposal date of this rule (June 12, 2006), are subject to the emergency engine definition as finalized in 40 CFR part 60, subpart ZZZZ, on June 15, 2004. All stationary engines built after the date of proposal of this rule are subject to the new definition of stationary emergency engine and are limited to 100 hours per year of maintenance and readiness testing. There is no limit on the time allowed for emergency operation. Stationary emergency engines may be operated for non-emergency purposes for up to 50 hours per year, but those 50 hours are counted towards the 100 hours per year allowed for maintenance and readiness testing. The 50 hours per year for non-emergency purposes cannot be used for peak shaving or to generate income for a facility to supply power to an electric grid or otherwise supply power as part of a financial arrangement with another entity.

G. Manufacturer O&M Requirements

The proposed rule required that owners and operators operate and maintain their stationary SI internal combustion engine and control device according to the manufacturer's written instructions or procedures developed by the owner or operator that are approved by the engine manufacturer. The final rule does not require that owners and operators follow the manufacturer's instructions. Owners and operators who operate and maintain their certified stationary ICE and control device according to the manufacturer's emission-related guidelines are required to keeping records of conducted maintenance and do not have any performance testing requirements under the final rule.

Owners and operators who operate their certified stationary ICE and control device in a manner that is inconsistent with the manufacturer's emission-related guidelines are considered non-certified engines and must keep a maintenance plan, records of conducted maintenance, and must conduct performance testing under the final rule if the engine is greater than or equal to 100 HP. Owners and operators of stationary ICE that have never been certified must keep a maintenance plan, records of conducted maintenance, and must conduct performance testing for all size engines.

H. Streamlined Compliance Requirements

In the final NESHAP, EPA has included a provision that states that owners and operators of new and reconstructed stationary engines less than 500 HP located at major sources and new and reconstructed stationary engines located at area sources (except stationary 4SLB engines between 250 and 500 HP) will be in compliance with the NESHAP requirements if they meet the requirements of the SI NSPS (40 CFR part 60, subpart JJJJ) or the CI NSPS (40 CFR part 60, subpart IIII), as applicable.

V. Summary of Responses to Major Comments

A more detailed summary of comments and EPA's responses can be found in the Summary of Public Comments document, which is available from the rulemaking docket (see **ADDRESSES** section).

A. Compliance Dates

Comment: Several commenters stated that more time is needed to comply with the final rule for owners, operators, and manufacturers. Two commenters said that because there are no existing Federal requirements affecting the vast majority of stationary SI engines and due to the complexity of the regulation, more time is needed to develop the testing and compliance systems for the proposed requirements. Also, two commenters added, that the first compliance date of July 1, 2007, actually occurs prior to the anticipated publication date of the final rule. One commenter expressed that such a regulatory mandate is impractical and unworkable considering the uncertainty of the final regulatory requirements. One commenter believes that an implementation date of January 1, 2008, is unreasonable. This commenter believes that the engine control technology requires significant changes to meet the proposed standards and recommended the implementation date be January 1, 2009, to allow proper development and application time. This commenter explained that a minimum of 12 months is required for manufacturer development and testing such as catalyst configuration changes and component specification for additional engines and fuel types not certified to 40 CFR part 1048. In addition, any deterioration factor service accumulation time required will take 6 months to complete, according to one commenter. Once the development of the systems are complete, this commenter said that it will take manufacturers a minimum of 6 months to apply, or ''roll out,'' this technology to the equipment manufacturer base. The commenter bases this comment on the experience in implementing the large SI nonroad engine regulations (40 CFR part 1048), which began implementation in January of 2004. One commenter requested that the initial compliance dates be delayed 9 months from the proposed compliance dates. Another commenter recommended that the initial compliance dates be delayed until at least 6 to 9 months following publication of the final rule in the **Federal Register**. Sufficient lead time is required not only for manufacturers, but also to allow the many thousands of owners/operators affected by the regulation to be notified and educated regarding the rule's requirements, according to a commenter. Finally, commenter 154 said that subsequent compliance dates also should be delayed by the same amount to assure that the requisite leadtime and stability periods are preserved for manufacturers.

Response: Based on comments received on the proposed compliance dates as summarized in the above comment and on various discussions post-proposal with engine manufacturers, EPA agrees that it is appropriate to extend the proposed compliance date of January 1, 2008, that affected a variety of different engines, many of which are subject to mandatory certification. In the final rule, EPA has provided an additional 6 months for engines that had a compliance date of January 1, 2008 in the proposal. The compliance date in the final rule is July 1, 2008, for engines less than 500 HP. EPA believes that July 1, 2008, will accommodate engine manufacturers and that 6 months will be sufficient lead-time for both owners/operators and manufacturers. In particular, EPA believes July 1, 2008, will provide manufacturers enough time to prepare and complete the certification of new engines. Although the technology already exists for reducing emissions to the level required in the rule, an appropriate amount of time should be provided in order to make the necessary arrangements for engine manufacturers to obtain certification of their products and otherwise assist affected parties prepare for the new standards. EPA's approach is similar to the approach taken in the CI NSPS where sources were required to comply before the final rule was issued, but some time was provided prior to the requirement for mandatory certification. Sections 111 and 112 of the CAA define new engines to be all engines for which construction is commenced following the date of the proposal and it is routine for sources that commenced construction prior to the final rule to be subject to standards under these provisions. Also note that the certification program for large SI engines is voluntary so manufacturers are not being forced to certify engines by those dates. Only engines that are 25 HP or smaller or are gasoline or rich burn LPG-fueled, which are directly related to nonroad engines that are already subject to certification requirements and are also generally smaller than 500 HP, must certify. This is one reason why EPA does not believe that it is necessary to include additional lead-time for large engines (i.e., those above 500 HP) and the compliance date remains as proposed for these engines, i.e., July 1, 2007, with the exception that EPA has granted a delay for certain engines until January 1, 2008, which EPA discusses below.

Regarding the comparison with the large SI nonroad engine rule, EPA notes that the proposal for that rule was published in October 2001, over 2 years from initiation of a mandatory certification program. EPA believes that the compliance dates provide adequate time for manufacturers of engines and

owners/operators to make the necessary preparations and adjustments to develop engines that comply with the emission standards. Additional lead-time has been provided for certain engines, as discussed above, as well as emergency engines. EPA has also provided additional lead-time in order to meet the Stage 2 emission standards. With that said, EPA notes that in the final rule that it has provided lean burn engines in the size range of 500 HP or greater to less than 1,350 HP additional lead-time. Engine manufacturers have indicated that it would be problematic to meet the proposed compliance date. EPA believes that providing engine manufacturers with a later compliance date will make it possible to complete necessary development and implementation work necessary in order to prepare these engines for compliance. More information on this topic can be found in the docket to this rulemaking.

B. Final Hydrocarbon Emission Limits

Comment: Several commenters expressed some concerns with the proposed non-methane hydrocarbons (NMHC) emission standards. One commenter initially recommended a 1.0 g/HP-hr NMHC emissions limit as being technically achievable for most engine applications. However, several engine manufacturers have clarified that the information submitted to EPA regarding achievable NMHC numbers did not include aldehydes and other oxygenated hydrocarbon compounds in the totals. Three commenters recommended that NMHC limitations exclude aldehydes and other oxygenated HC. One commenter said that if the standard includes aldehydes, then the emission standard of 1.0 g/HP-hr is not achievable for most engines, since the initial recommendation the commenter submitted was based on excluding aldehydes from the NMHC totals.

Three commenters requested that ethane be excluded from the calculation of NMHC. They argue that ethane is not a VOC under 40 CFR 51.100(s)(1) and they say that ethane does not contribute to ozone formation. The commenters also noted that natural gases with a relative high content of ethane are primarily present in the western part of the U.S. and commenter 139 provides information indicating that engines are not able to meet the NMHC standards when using natural gas that is high in ethane. Two commenters recommended that EPA examine alternative standards, indices, and testing methods for hydrocarbon emissions. Three commenters said that the parameter to be used for natural gas fueled engines should exclude methane and ethane and have suitable measurement techniques that are applicable in both factory and field tests. One commenter said, if EPA decides to retain NMHC as the appropriate parameter, then at a minimum, the level of the proposed standards needs to be raised or clarification made that the measured HC do not include aldehydes.

Three commenters recommended that if the NSPS includes an emission limit for HC species, the limit should be for VOC (or non-methane non-ethane (NMNEHC)) and not NMHC. Three commenters stated that VOC, not NMHC, are the National Ambient Air Quality Standards (NAAQS) pollutant regulated as an ozone precursor for stationary sources. The commenters believe that most available data are reported as VOC rather than NMHC, and owners/operators are very limited in their ability to assess whether the data indicate that the proposed NMHC standard is achievable for field performance tests. The commenters also believe that before regulating NMHC for stationary engines, EPA should complete an analysis to identify the potential benefit and cost of regulating ethane or using NMHC as a surrogate for VOC for gas-fired engines, and ensure that emissions data from field tests are available to substantiate the basis for the standard.

Several commenters also expressed concern over the proposed test methods for measuring NMHC. Commenters believe that the emissions test methods should be consistent with the included hydrocarbon species, and EPA Method 25 of 40 CFR part 60, Appendix A, should not be used for determination of NMHC or VOC. The commenters support their claim by saying that NMHC emissions are defined as THC emissions less methane emissions. However, this definition needs further clarification to exclude formaldehyde and oxygenates, because the emissions information provided by manufacturers that serves as the basis of the standard does NOT include aldehydes or other oxygenated HC. Non-methane hydrocarbon measurements are typically conducted using a flame ionization detector (FID) to measure THC and a FID or gas chromatography method to measure methane. EPA Method 25A of 40 CFR part 60, Appendix A, uses a continuous FID analyzer to measure exhaust gas THC. Method 18 separates CH_4 (methane) from other exhaust gas species with a gas chromatograph, and quantifies the methane with an appropriate detector. Method 18 of 40 CFR part 60, Appendix A, allows exhaust gas to be collected in a bag or continuously sampled. A flame ionization detector poorly quantifies oxygenated hydrocarbon species. Formaldehyde, and to a lesser extent acetaldehyde, methanol, and acrolein, have been measured in natural gas-fired engine exhaust. The commenters agree with EPA's conclusion that NMHC test methods are simpler and less costly to implement than formaldehyde test methods and that NMHC testing will reduce the testing burden while maintaining emissions compliance assurance. Recognizing that measuring NMHC with a FID does not directly measure formaldehyde and that the emission limits are based on manufacturer data that do not include formaldehyde and other oxygenates, it is important to understand that NMHC is used as a formaldehyde surrogate, but NMHC, the regulated pollutant, does NOT include formaldehyde under this standard. Thus, it is only appropriate to allow test methods that do NOT measure formaldehyde or other oxygenated hydrocarbons; therefore, EPA Method 25 should be excluded from the final rule.

Response: We agree that the composition of certain western gas (i.e. the high concentration of ethane) may make compliance with an NMHC standard more difficult in some cases. As the proposed NMHC standards were intended to ensure compliance with VOC and HAP reduction requirements, and pursuant to 51.100(s) ethane is not a VOC, (nor is it a HAP under CAA section 112(c)) we agree that expressing the standard in terms of VOC, rather than NMHC is appropriate in this case. EPA's final hydrocarbon standards for gaseous fueled and lean burn LPG engines above 100 HP are presented as VOC standards, instead of NMHC standards. For natural gas engines below 100 HP meeting the NMHC standards in 40 CFR part 1048, the regulations do not require measurement of ethane for testing in the field. EPA agrees that EPA Method 25A does not measure formaldehyde and that all data gathered to support the emission limit using this method would not have included formaldehyde. However, EPA Method 25A would measure all other aldehydes and other oxygenated organic compounds although the measured results would be less than the actual concentrations in the gas stream. Even though EPA Method 25A measurements for the other aldehydes and oxygenated organic compounds would have been less than their true values, EPA believes that in all cases the measured values would represent substantially greater than 50 percent of the true value for these compounds. Because these

compounds are accounted for to a significant extent in the database supporting the emission limit it would not be appropriate to exclude them from the definition of VOC. If EPA Method 25A is used to determine compliance with the emission limit, the reduced response of the aldehydes and other oxygenated organics will automatically be taken into account, and the compliance demonstration will be consistent with the procedures used to establish the emission limit. However, if one of the alternative methods, such as EPA Method 18 or EPA Method 320 of 40 CFR part 60, Appendix A, is used, these methods will measure 100 percent of the aldehydes and other oxygenated organic compounds. The results from these methods should be adjusted to account for the bias in EPA Method 25A by multiplying the measured values of the aldehydes and other oxygenated organics by the EPA Method 25A response factor for each measured compound. In addition, when adding the masses of all of the measured VOC from either of these two methods, the actual mass of the aldehydes and oxygenated organics should be reported as the equivalent mass on a propane basis. This will ensure that the results from these two methods are reported on a basis that is consistent with the procedures used to establish the emission limit.

EPA agrees that it is not appropriate to allow EPA Method 25 in the final rule, and EPA has made this clear in the regulatory text. Since the final emission standards are based on data that does not include formaldehyde, it would not be appropriate to include Method 25 since that method may capture that compound.

Further, the emission standards for VOC are based on data that does not include formaldehyde and EPA agrees that it is appropriate to specify that formaldehyde is not included in the final VOC emission standard. EPA has made this clarification in the testing requirements for VOC. In the final rule, EPA has replaced the proposed NMHC limits in g/HP-hr with VOC limits in the same units. In addition, EPA has specified VOC limits in terms of concentration (ppmvd at 15 percent O_2). EPA believes, based on evidence, that a final standard of 1.0 g/HP-hr and 0.7 g/HP-hr for VOC will be achievable for most engines. (Certain engines, like engines burning landfill gases, are subject to less stringent final standards.) The proposed NMHC emission limits are essentially the same as the final VOC emission limits based on how VOC is defined in the final rule. EPA has defined VOC according to the definition provided in 40 CFR part 51, and has noted that formaldehyde is, as discussed, excluded from calculation of VOC emissions. The magnitude of the final VOC limits is the same as the proposed NMHC limits and remain unchanged because the test methods used to capture pollutants are essentially the same.

EPA recognizes that there may be variability in the ethane content in natural gas and believes it would be appropriate to exclude ethane from the final standard. Since EPA has replaced the proposed NMHC standards with VOC standards in the final rule, and since VOC by definition excludes ethane, this comment is resolved.

As discussed, EPA is finalizing emission standards in terms of VOC not as NMHC, as proposed. Based on review of the emissions information used to set the proposed standards for NMHC, comments received on the proposal from industry, and meetings with various stakeholders post-proposal, EPA believes it is more appropriate finalize a VOC standard than an NMHC standard as a measure for HC compounds. Many State regulations affecting stationary sources use VOC and VOC is a more familiar term than NMHC to the regulated community. Emissions of NMHC might be difficult to measure in the field and is a pollutant that has typically been regulated through the manufacturer. Also, because of the variability of ethane in natural gas fuel, VOC, since it excludes ethane, it is more appropriate than NMHC.

C. Emergency Engine Standards

Comment: Several commenters were of the opinion that stationary emergency engines should be exempt from the rule; at a minimum they should be exempt from the emission standards. Two commenters were of the opinion that a size-based exemption threshold or alternative emission limits should be defined for emergency engines. One commenter believes that the proposed NSPS notifications and reporting for small emergency engines will be a cumbersome activity with little environmental benefit. The commenter noted that in most cases emergency engines operated less than 500 hours are not permitted or are considered insignificant due to the limited potential to emit emissions. The commenter requested that EPA consider exempting all emergency engines less than 500 HP from the proposed NSPS and NESHAP regulations. One commenter added that there is little data that show that by regulating these small emergency engines there will be significant environmental improvement. This commenter was of the opinion that as long as hour records are kept to show the engines are being operated in the manner addressed in the EPA white paper mentioned above these engines should be considered insignificant emitters. One commenter requested that EPA exempt stationary emergency engines from the proposed requirements, other than monitoring and recording annual operating hours by owners/operators to demonstrate the engines meet the 100-hour annual operating limitation.

One commenter recommended that emergency engines be exempted from the NSPS and NESHAP. The commenter said that emergency SI engines provide essential and needed services to owners/operators when the normal supply of electricity is disrupted and often serve life-critical functions in times of emergency. The proper operation and function of emergency engines is an essential service, according to the commenter. In addition, because emergency engines operate only during times of emergencies and are limited in hours of operation for maintenance or testing operation, emergency SI engines add minimal emissions to the inventory of criteria or HAP emissions, the commenter added. Commenter 154 believes that there will be negligible emission reductions or environmental benefits from fully applying the requirements of the proposed rule to emergency SI engines. In addition, the commenter said that including emergency engines within the regulations adds a significantly large number of owners/operators to the affected regulatory community, and thus significantly increases the reporting, recordkeeping, and compliance costs of the proposed regulation. Since emissions from emergency SI engines are small and the cost of regulatory compliance and reporting are large, the imposition of NSPS and NESHAP controls on emergency SI engines is not cost-effective, according to the commenter.

Two commenters believe that a 400 HP exemption threshold or alternative emission limits should be defined for emergency engines. The commenters said that 4SLB engines are not available below 400 HP, a size range that comprises the majority of emergency units in the oil and gas industry. The proposed rules would require non-selective catalytic reduction (NSCR) to be applied to these small engines; however NSCR application to an emergency engine has inherent complications, costs, and reliability issues, according to the commenters.

The proposed rule requires controls for emergency engines, whereas the existing RICE MACT concluded controls for emergency units were not necessary and the commenters believe that the proposed rule is therefore more stringent than the existing RICE MACT.

Some commenters also requested that EPA provide an exemption for reconstructed or modified rich burn emergency engines, which would also require post-combustion control to meet the standards.

Two commenters said that if a size-based exemption is not included in the rule, separate subcategories will be needed for emergency engines based on size with emission limits for smaller units commensurate with an uncontrolled rich burn engine, as well as an exemption for existing rich burn emergency engines that are reconstructed or modified.

Response: EPA disagrees that stationary emergency engines should be completely exempted from the rule and also does not agree that emergency engines should be exempt from emission standards. Emergency engines are part of the source category and stationary internal combustion engines and they represent a significant portion of the engines being regulated under these combined rules, and their aggregate emissions are not insignificant. EPA believes that their emissions can be regulated in a manner that is cost-effective and not disruptive. Moreover, given that EPA has already promulgated standards for stationary CI emergency engines, failure to regulate SI emergency engines may create a loophole in regulation. However, as discussed below, EPA believes that a distinction in emission standards based on size is appropriate to include for stationary emergency engines to account for what types of engines and emission controls are available. In addition, EPA agrees that alternative emission limits should be finalized for emergency engines, consistent with the proposal that recognizes a need for different emission standards for emergency engines. The final standards do not require a second stage of more stringent standards for emergency engines. For emergency engines equal to or greater than 130 HP, the standards remain as proposed at 2.0, 4.0, and 1.0 g/HP-hr for NO_X, CO and VOC, respectively. As discussed elsewhere in this document, EPA is also including the option for owners and operators to meet these emission standards in terms of concentration. However, for emergency engines below 130 HP, EPA has found it appropriate to adopt less stringent emission standards in the final rule. Based on information received post-proposal, EPA has learned that there are lean burn engines currently in the market down to 130 HP, and EPA, therefore, disagrees with the commenters who requested a 400 HP exemption threshold or alternative emission limit for emergency engines claiming that 4SLB engines are not available below 400 HP. Information on these engines can be found in the docket. The final emission standards for emergency engines below 130 HP are commensurate with the emission standards that are achievable for rich burn engines without aftertreatment and represent the maximum level of control that is attainable for small emergency engines without using aftertreatment. EPA agrees that requiring NSCR for these engines raises complications and reliability issues that are inappropriate for this subcategory. The final rule requires emergency engines greater than 25 HP and below 130 HP to meet a NO_X+HC standard of 10.0 g/hp-hr and a CO standard of 387 g/HP-hr. These emission standards are consistent with the Phase II standards that apply to Class II nonroad engines.

EPA does not believe that the recordkeeping requirements for emergency engines will be significantly burdensome. Emergency engines have to maintain records hours of operation (of emergency and non-emergency use) to ensure they are not operated beyond the 100-hour limit of the rule. Small emergency engines, i.e., those less than 130 HP will be required to begin recordkeeping immediately. However, since there is no difference between the emission standards for emergency and non-emergency engines above 130 HP until the stage 2 emission standards become effective for non-emergency engines, these larger emergency engines do not have to begin recording hours of operation and keep records of total hours of operation until July 1, 2010 or January 1, 2011, depending on whether the emergency engine is greater than or equal to 500 HP or below 500 HP, respectively.

EPA has made simplifications in the final rule that would affect emergency engine compliance requirements. In the final NESHAP, EPA has included a provision that allows emergency engines subject to the NESHAP that are new or reconstructed and equal to or less than 500 brake HP located at a major source of HAP emissions or located at an area source of HAP emissions to meet the requirements of the NESHAP by demonstrating compliance with the SI NSPS. EPA believes that this provision greatly reduces the compliance burden for owners and operators of emergency engines and overall simplifies the compliance process. Further, under the final SI NSPS, engines less than 100 HP that are certified or that were certified, but are operated in a non-certified manner will not be subject to any performance testing. This would include emergency engines.

EPA recognizes that this final rule is more stringent than the existing RICE NESHAP covering stationary engines greater than 500 HP at major sources, but EPA sees nothing improper about adopting more stringent standards affecting emergency engines under this rule. EPA often promulgates more stringent requirements in rules subsequent to initial rules regulating a source category. Emergency engines covered by the previous NESHAP are not subject to this rule. Only new, modified or reconstructed engines installed after the publication date of the notice of proposed rulemaking for this rule are subject to the more stringent requirements, except that EPA has added explicit limitations on use of emergency engines for peak shaving and supplying power to an electric grid or that supply power as part of a financial arrangement with another entity.

Regarding the request for an exemption for modified and reconstructed rich burn emergency engines, EPA disagrees that an exemption should be provided. The overall goal of the statute for modified and reconstructed engines is that older engines that are being modified or reconstructed should be subject to relatively the same standards as new engines. This reduces the incentive for owners and operators to continue to use older dirtier engines for very long periods beyond their normal life. It is not impossible to apply add-on controls to emergency engines.

D. Emergency Engine Definition

Comment: One commenter stated that the proposal sets separate standards for new emergency engines, but fails to impose enforceable limits so that these engines will be used only in clearly defined emergencies. The commenter strongly supports EPA's specification of emissions standards for emergency engines and to require that emergency engines be equipped with non-resettable meters. In addition to these requirements, the commenter said that EPA must require that emergency engines that do not meet otherwise applicable emissions limits be labeled as such. Additionally the commenter said that EPA must tighten the definition of a stationary emergency engine. According to the commenter, by

allowing emergency engines to run for an unlimited number of hours during emergency situations, but failing to provide a clear definition of what constitutes an emergency situation or emergency operation, the proposed rule leaves a highly problematic loophole. The commenter further noted that since the requirements for emergency engines are not as stringent as those for non-emergency engines, there could be a positive economic incentive for consumers to purchase an emergency engine even if that is not the engine's intended use. To close this loophole and effectuate the rule's intent, the commenter said that EPA must provide an unequivocal definition of what constitutes an emergency situation and emergency operation. The commenter advocated that a clear and stringent definition is needed to prevent operators of emergency engines from running these engines for an unlimited number of hours without triggering the more stringent Phase 2 controls required of non-emergency engines.

EPA's proposed definition does preclude one specific activity from being classified as an emergency situations (i.e., peak shaving), but it is otherwise far too general. According to the commenter, by including only examples of what constitutes an emergency engine, EPA is leaving the definition open to too much interpretation. The commenter recommended that at the least, the definition of an emergency engine should replicate the language used for stationary CI engines in stating that ''Stationary (CI) ICE used to supply power to an electric grid or that supply power as part of a financial agreement with another entity are not considered to be emergency engines.''

The commenter further suggested that the following elements be incorporated into the definition of an emergency stationary internal combustion engine:

- The definition should require that the situation be truly unforeseeable, beyond the control of the owner or operator, and not part of any contractual obligation. In particular, the definition should exclude operation for purposes of supplying power for distribution to the electric grid and operation for training purposes.
- The definition should exclude equipment failure or other failure to comply with any environmental law caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error. This will ensure the proper incentives are in place for care and maintenance of non-backup engines.

The commenter also said that if EPA finalizes its intent to allow natural gas-fired stationary SI engines to operate on propane fuel for up to 100 hours per year for emergency operations, a comprehensive analysis should be undertaken to evaluate the full emissions implications of what appears to be a somewhat arbitrary relaxation of the proposed standards.

Response: EPA agrees that requiring emission standards for stationary emergency engines and requiring that emergency engines be equipped with non-resettable hour meters, but disagrees that the definition of emergency engine creates a loophole. EPA believes it proposed an adequate definition and it is not possible to include every possible situation that might constitute an emergency in the definition. EPA agrees that it is important to provide language that minimizes the possibility of affected sources avoiding more stringent requirements. EPA believes the definition is clear, and furthermore, believes that the requirement to keep records of the hours of operation of the engine in emergency and non-emergency situations will prevent misuse. EPA does agree with the commenter that it is appropriate to tighten the definition as far as precluding certain activities and has included in the definition of emergency engine that stationary SI ICE used to supply power to an electric grid or that supply power as part of a financial arrangement with another entity are not considered to be emergency engines. This language is consistent with the final CI NSPS. As for the comment related to labeling of emergency engines, EPA proposed in § 60.4242(d) that manufacturers label their emergency engines that only meet the emergency engine emission standards as such and that the engine is for emergency use only. This requirement has been retained in the final rule, and EPA believes this satisfies the commenter's concern on this topic.

Regarding the comment on EPA's provision allowing natural gas-fired stationary SI engines to operate on propane fuel for up to 100 hours per year for emergency operations, EPA included that provision to provide flexibility in emergency situations when the main fuel may not be available. EPA believes such an allowance is appropriate and does not expect that emissions will be significantly affected by including a provision to operate on propane for 100 hours per year for emergency purposes. Numbers EPA has available, which are presented in information included in the docket to the proposed rule, show that regulated pollutant emissions (NO_X, CO, and VOC/NMHC/THC) from engines running on propane are the same or lower than emissions from engines running on natural gas (rich burn and lean burn), with a few exceptions. Therefore, for the reasons provided, it is not expected that the propane allowance will significantly affect emissions and EPA has retained the propane use allowance in the final rule.

Comment: Two commenters believe that the emergency engine requirements in the proposed NSPS/NESHAP are more restrictive than the requirements in the RICE NESHAP. The commenters believe the proposed rules should be amended to be consistent with the emergency engine definition and exemption provided in the RICE NESHAP. Two commenters said that the emergency engine definition in the existing RICE MACT that was developed based on input and review from a broad stakeholder group should be retained. The commenters believe that the proposed rule substantially and materially alters the definition as follows:

- Maintenance and readiness testing limited to 100 hours per year versus no time limit on the use of emergency stationary RICE for routine testing and maintenance.
- Elimination of an additional 50 hours per year in non-emergency situations.
- Requirement to maintain documentation for maintenance and testing operation to ensure the 100 hour per year limit is not exceeded.
- Maintenance and readiness testing operation provisions as recommended by third party Federal, State or local government, the manufacturer, the vendor, or the insurance company associated with the engine has been introduced.

The commenters believe that the current NESHAP places no restriction on the use of emergency stationary RICE in emergency situations and for routine testing and maintenance. In addition, it offers an additional 50 hours per year in non-emergency situations. This clause was included as an outcome of the industrial combustion coordinated rulemaking (ICCR) process to provide adequate time to tests systems related to the emergency unit. For example, firewater systems where engine checks are necessary, and a systems check is also required and may be completed as part of a safety exercise. Commenter 150 believes that EPA has confused the additional non-emergency allocation with a perceived hour restriction for

annual maintenance and readiness checks.

Also, the commenter stated that in consideration relative to the RICE MACT, the proposed NESHAP amendments broaden the category of affected equipment to include units that are less than or equal to 500 HP and area sources. With more stringent criteria in the proposed rule, the commenter believes that EPA is requiring more stringency for small engines and area sources than what was deemed necessary for larger engines under the existing RICE MACT. Further, the added burden and cost associated with documenting and maintaining records describing why the engine was operating must be assessed and the benefit for this requirement rationalized. As an alternative to continuing with the revised definition in the proposed rule, the commenters recommend that the current definition be retained.

Response: It is true that EPA proposed a more stringent emergency engine definition and requirements as compared to the existing RICE MACT emergency engine definition. Regarding the commenters' request to retain the existing RICE MACT definition, EPA believes that keeping the proposed definition is appropriate for the most part. EPA recognizes that the existing definition was based on input and review from industry, and EPA is not ignoring the products of the ICCR process nor the extensive participation and commitment of industry members. However, EPA has learned a lot since the ICCR process from 10 years ago and knows now that there are health consequences for failing to regulate emergency engines and for having a broad definition that allows engines that are used for more than emergencies to emit at higher levels. EPA feels the existing RICE MACT definition of emergency engines was not given appropriate restrictions and would unintentionally allow significant operation of an engine in non-emergency situations such as the unlimited maintenance allowance.

Based on vast information received since the time of the ICCR process and the RICE MACT rulemaking, EPA has concluded that it is appropriate to limit the hours of operation during maintenance and testing to 100 hours per year. The issue of allowable hours for maintenance and testing was discussed extensively under the CI NSPS rulemaking and more information can be found in the final CI NSPS rule (71 FR 39153) and Responses to Comments (RTC) document (see EPA–HQ–OAR–2005–0029–0324). EPA recognizes that the existing RICE MACT places no restriction on the use of emergency engines in emergency situations and for routine maintenance and testing. EPA agrees that is appropriate to retain a no time limit on the use of emergency stationary engines in emergency situations; however, does not agree that routine maintenance and testing should be unlimited. Again, EPA has gained much information regarding emergency engine operation since the ICCR process a decade ago and must consider environmental and health consequences for failing to regulate the operation of emergency engines appropriately and prevent loop-holes. Numerous comments received during the public comment period for NSPS for stationary CI engines argued that EPA should allow 100 hours per year for emergency engines to conduct necessary maintenance and testing. Based on those comments, EPA continues to believe that it is appropriate to finalize a 100 hours per year limit for maintenance and testing operation for emergency engines under the NSPS. EPA disagrees that maintenance and testing should be unrestricted. However, EPA believes it is crucial to allow sufficient hours for maintenance and readiness testing to ensure that the emergency engine will respond as expected in the event of an emergency, and EPA believes that 100 hours per year is adequate.

The commenters expressed particular concern over the elimination of the additional 50 hours per year for non-emergency situations included in the original RICE MACT emergency engine definition, but excluded from the proposed requirements affecting emergency engines in this rule and EPA understands the commenters' concerns. It is true that in the preamble to the proposed rule, EPA confused the existing 50 hours per year currently allowed for non-emergency operation in the RICE MACT with the 100 hours per year for maintenance and readiness checks, and may be, as the commenters indicated, a result of comparing the SI NSPS too closely to the CI NSPS that was recently promulgated. Industry has expressed that it might be forced to use portable emergency engines instead of stationary emergency engines to avoid certain requirements of the rule and indicated that the portable engines will be dirtier than the stationary engines. EPA certainly does not wish to create such outcome of the rulemaking and therefore believes it is appropriate to allow owners/operators to operate their engines for 50 hours per year for non-emergency purposes and has made that clarification in § 60.4243(d) of the final rule. However, EPA is concerned that if stationary emergency engines are allowed to operate in non-emergency situations they may be inappropriately used for peaking power. In response to EPA's concern, industry has noted that its intent is not to use stationary emergency engines for peaking purposes. Even so, EPA has specified that the 50 hours allowed for non-emergency situations cannot be used to generate income for a facility to supply power to an electric grid or otherwise supply power as part of a financial arrangement with another entity. If this happens, the engine is no longer considered to be an emergency engine and the engine would be required to meet the non-emergency engine emission standards, which are more stringent. In addition, the allowed 50 hours of operation for non-emergency situations must be within the currently allowable 100-hour total for purposes of maintenance and testing. In other words, the total hours of operation per year cannot exceed 100 hours for purposes of maintenance and testing and for running the engine for non-emergency purposes.

Regarding the requirement to maintain records to ensure the 100-hour limit is not exceeded for emergency engines as specified in § 60.4245(b) of the proposed rule, EPA feels this requirement is necessary and appropriate. This requirement is consistent with the final CI NSPS (see 40 CFR 60.4214(b)). To ensure compliance with the 100-hour limit, EPA must require recordkeeping for all operation of emergency engines, emergency situations as well as required testing. This is a reasonable way to enforce this limit to ensure that the non-emergency hours of operation are not exceeded beyond allowable limits. Clearly, this requirement yields environmental benefits since it will limit the likelihood that sources subject to the rule that operate emergency engines would exceed the 100-hour annual non-emergency limit. As noted in the RTC document for the final CI NSPS, many States require reporting of both emergency and non-emergency use, e.g., the California ATCM requires a monthly log of all operation by emergency engines. Also, certain facilities already maintain such documentation, e.g., operating hours and operating conditions are currently maintained at hospitals. EPA wishes to prevent owners/operators from operating emergency engines illegally and circumventing the regulation and believes the additional recordkeeping requirements will greatly enhance EPA's ability to enforce this requirement. The

requirement will ensure that there is documentation that the engine was operating in emergency situations when it was running beyond the annual limits permitted for maintenance and testing. There is no annual cap on the hours of operation during an emergency situation, but it is important to have documentation that such operation was indeed for emergency purposes. As noted, owners/operators of emergency engines already keep documentation of when and why such engines were operated so EPA feels the recordkeeping requirement is no significant additional burden.

However, EPA does believe it is necessary to clarify that emergency engines above 500 HP at major sources that were installed prior to the proposal date for this rule (June 12, 2006), but after the proposal date (December 19, 2002) for the previous RICE MACT (and thus, new emergency engines under 40 CFR part 63, subpart ZZZZ, and subject to the old rule) should be governed by the old definition of emergency engines, except that the definition includes the clarification that emergency engines do not include engines used for peaking power or to supply power to an electric grid or otherwise supply power as part of a financial arrangement with another entity. This clarification has been made to the definition of emergency stationary RICE in section 63.6675 of the final rule. EPA believes this clarification addresses some of the commenters' concerns on this issue.

Comment: One commenter stated that by reducing the scope of engines that qualify as ''emergency engines,'' the proposed revision could expand the universe of engines that are subject to more stringent NESHAP requirements. Commenter 145 believes that its member utilities would be directly affected, since they deploy emergency engines to support their obligation to deliver energy to customers safely and reliably. In addition, this revision would impact utility customers who deploy emergency engines, such as hospitals and nursing homes, since there is no minimal size threshold on the engines affected by the proposal.

Response: EPA disagrees that the rule necessarily expands the universe of engines that are subject to the standards applicable to non-emergency engines. Operation of engines during emergencies is not restricted by the rule and if an engine is truly an emergency engine, it would not be subject to more stringent requirements. Available information indicates that emergency engines operate on average about 50 hours per year, which includes the hours spent for maintenance and testing purposes. EPA recognizes that there may be stationary emergency engine applications that operate beyond 50 hours per year for maintenance and testing purposes, which is why EPA proposed a 100-hour allowance for such purposes. EPA received numerous comments on the testing and maintenance allowance on the proposed CI NSPS. Based on the number of commenters who indicated that the proposed maintenance and testing allowance of 30 hours per year was not enough, EPA chose to increase the number to 100 hours per year, which was consistent with what commenters recommended. Even though the original RICE NESHAP covering stationary engines greater than 500 HP located at major sources did not have a time limit on the use of emergency stationary engines for routine testing and maintenance, EPA believes that providing 100 hours per year is more than sufficient. In those few cases where 100 hours is not sufficient, EPA has included the provision allowing owners/operators to petition for additional hours (unless the owner/operator maintains records indicating that Federal, State, or local standards require maintenance and testing of emergency ICE beyond 100 hours per year, in which case, a petition is not necessary.) Note, however, that in the final rule, EPA has made it clear that ''new'' engines affected by the NESHAP that are installed prior to the proposal of the NSPS would be covered by the old definition included in the original NESHAP at 40 CFR part 63, subpart ZZZZ. In addition, EPA has specified that 50 of the 100 hours allowed for maintenance and testing can be use for non-emergency purposes.

E. Manufacturer O&M Requirements

Comment: Several commenters expressed concern over the proposed requirements requiring owners/operators to operate and maintain SI ICE according to the manufacturer's written instructions or procedures developed by the owners/operators that are approved by the engine manufacturer. One commenter believes that compliance requirements should reflect best practices developed by the owners/operators with experience with using the engines in the field. Another commenter felt that the manufacturers do not have the long-term experience in operating and maintaining these engines in the field and recommended that the proposed NESHAP allow owners/operators to use the existing maintenance requirements of the General Provisions of both the NSPS (40 CFR part 60, subpart A) and the NESHAP (40 CFR part 63, subpart A) rules to meet the requirements of this rule.

One commenter recommended for voluntarily certified engines, the owners/operators be given a choice of either accepting the manufacturers certification or opting for a ''verification program'' modeled after the performance testing of § 60.4243(d)(2) of the proposal.

One commenter expressed that it is in general agreement that owners/operators should maintain their SI ICE in accordance to the original manufacturer's specifications for larger engines. However, the commenter had concerns about imposing these requirements on limited use and small engines. The commenter believes that this requirement does not appear to be commensurate with the environmental impact.

One commenter expressed that the operation and maintenance (O&M) requirements in manufacturer's manuals is too stringent and inflexible and needs to be changed and stated that engine manufacturers do not want to become involved in approving or reviewing procedures developed by owners/operators. The commenter added that in many cases, owners/operators of stationary engines have developed and follow their own O&M procedures and have extensive experience in operating their engines to optimize performance and life in their specific applications within regulatory emissions limits. Further, the commenter said, owners/operators of non-certified engines are required to conduct performance testing to assure compliance. Therefore, since these owners/operators will use other means to assure compliance, there should not be a regulatory requirement to follow manufacturer's procedures, the commenter expressed. However, if EPA includes the requirement to follow engine manufacturer's procedures in the final rule, the referenced procedures should be limited to those required to maintain emissions control, the commenter said, and recommended that EPA develop a suite of options and requirements to assure compliance as follows:

- For certified engines, owners/operators should be required to set up the engine and follow manufacturers' recommended maintenance, but only for systems or components that affect emissions.
- For non-certified engines, appropriate emissions testing and monitoring should be all that is required.
- In addition, owners/operators should be able to purchase a certified

engine but operate it according to their own procedures. In that case, appropriate emissions testing and monitoring should be all that is required.

One commenter's objection to the proposed requirement to follow the manufacturer's procedures was based on the assertion that most operators of these engines have developed proprietary procedures for their engines, varying from region to region and across the broad spectrum of applications of these engines; that reviewing procedures would subject engine manufacturers to an administrative burden. This requirement is unnecessary, the commenter noted, because owners/operators bear responsibility for compliance, and are already required to demonstrate such compliance through extensive testing.

Two commenters requested that EPA allow owners/operators to define O&M requirements for gas-fired engines, rather than the manufacturer O&M. These two commenters stated that owners/operators have developed and refined O&M practices to address the specific challenges, rigor, and accessibility of their application. However, if EPA chooses to mandate manufacturer O&M, then the commenters requested that the manufacturers be required to reasonably review and approve alternatives, and the cost of the program be borne by the manufacturer. One commenter stated that allowing owners/operators to follow their own O&M procedures is consistent with the requirements of the subpart A General Provisions. The commenter stated that the EPA should clearly indicate that owners/operators of gas-fired engines can choose compliance monitoring based on owners/operators defined O&M and periodic tests even if a certified engine is available.

Response: EPA agrees with some of the comments received on the issue of operating the engine according to manufacturer O&M procedures. EPA agrees that any requirement to operate and maintain engines according to manufacturer instructions should be limited to emission-related operation and maintenance. In addition, in the final rule, EPA has not included the requirement for owners/operators of non-certified engines to operate and maintain their engines according to the manufacturer's written instructions or procedures developed by the owners/operators that are approved by the engine manufacturer. Instead, owners/operators will be required to operate and maintain their engines in a proper manner, consistent with their own maintenance plan. Owners and operators of non-certified engines will be required to keep records of the maintenance performed on the engine. In addition, EPA is requiring performance testing of non-certified engines to demonstrate compliance with the emission standards, consistent with the proposal.

Based on information received during the final rulemaking and in public comments, EPA does not believe it is appropriate to require manufacturer O&M procedures for all owners/operators of certified engines without allowing alternative procedures and is therefore providing an alternative option to owners/operators. However, if an owner/operator has a certified engine that it wishes to operate according to its own well-established procedures based on its own experience with operating that engine (or engines), that particular engine that was originally certified will no longer be considered certified and the engine must be tested. EPA will consider that engine to be operating in a non-certified manner, and will require testing if the engine is greater than or equal to 100 HP. Engines below 100 HP operating in a non-certified manner will be exempt from performance testing, but are required to keep a maintenance plan and records. EPA wishes to encourage the certified route for smaller engines and expects that the majority of engines in this size group will be certified. Engines greater than or equal to 100 HP and less than or equal to 500 HP will be required to conduct a performance within 1 year of startup to demonstrate compliance with the emission standards. These engines will in addition be required to keep a maintenance plan and records of conducted maintenance. Engines greater than 500 HP will in addition to conducting a performance testing within 1 year of startup, also have to conduct subsequent performance testing every 8,760 hours or 3 years (whichever comes first) thereafter.

F. Streamlined Compliance Requirements

Comment: Commenters asserted that the proposed rule is complex partly due to having a combined rulemaking. One commenter stated that the proposed rule is too complex for most small oil and gas operators to be able to fully understand and evaluate. The commenter also believed that the proposed rule requires a person with significant knowledge and experience with CAA rules and requirements to understand it. One commenter stated that the proposed rulemaking added much complexity to the 2004 rulemaking for stationary RICE greater than 500 HP located at major sources, as it combined the adoption of a new NSPS, the expansion of the 2004 requirements to smaller sources, and the addition of the section 112(k) of the CAA requirements covering HAP emissions at area sources. The commenter believed that this complex interweaving of the area source requirements with the major source requirements make the rule very difficult to follow relative to area sources. This commenter recommended that EPA separate the major source from the area source requirements and suggested that one way of doing this would be to establish two separate subparts in 40 CFR part 63 for stationary RICE; one to cover area sources and another to cover major sources. According to the commenter, this approach would simplify and clarify the rule for small businesses and the various State and local agencies. In addition, the commenter recommended that EPA avoid similar interweaving of requirements, and strive to create simpler, easier to understand area source rulemakings under section 112(k) of the CAA in the future.

Two commenters were concerned that there are conflicting or duplicate requirements between the proposed NSPS, existing nonroad regulations, the RICE NESHAP, and the currently proposed NESHAP. Specifically, the existing RICE NESHAP requirements for formaldehyde and the currently proposed emission limit for non-methane hydrocarbons (NMHC) to control HAP are duplicative and may lead to conflicting or impractical reduction requirements for some engines, or may be technically infeasible, the commenters said. Other commenters noted that stationary natural gas engines greater than 500 HP located at a major source are required to comply with 40 CFR part 63, subpart ZZZZ, and the NSPS NMHC limits. According to one commenter, it also creates confusion, since it may not be technically feasible to meet the various standards required in the NSPS and the NESHAP simultaneously. Three commenters recommended that all engines greater than 500 HP and all 4SLB engines greater than 250 HP located at major sources be exempt from meeting the NMHC NSPS standards. The emissions controls needed to meet the NESHAP standards applicable to those engines are sufficient to reduce HAP and other HC emissions. Elimination of the NMHC standard for that group of engines in the NSPS will simplify the rules, eliminate confusing, redundant, and possibly conflicting

requirements, and will relieve owners/operators from unnecessary testing and monitoring requirements, according to commenters.

Response: EPA believes that the approach taken to have a combined rulemaking is more effective than having separate rules for the same types of facilities and will help reduce burden and EPA also believes that having a combined rulemaking, as well as regulations that refer to one another and are promulgated concurrently, actually simplifies compliance for affected sources. Commenters are reminded that Congress requires EPA to promulgate standards under both sections 111 and 112 of the CAA, which requires that owners and operators of sources covered under both sections are required to meet standards under both sections. However, EPA has made a major simplification in the final rule and has included a provision in section 63.6590 of the final NESHAP that owners/operators of new and reconstructed engines less than 500 HP located at major sources (except new and reconstructed 4SLB engines between 250 and 500 HP) and engines located at area sources will be in compliance with the NESHAP if they are in compliance with the NSPS. This approach is substantively the same as the approach in the notice of proposed rulemaking, at least in terms of emission requirements, but EPA believes this approach more clearly streamlines and simplifies compliance and greatly reduces the complexity that may be associated with demonstrating compliance for owners/operators and makes the rule easy to understand for all parties affected, including small business owners and State and local agencies. Additionally, for the most part the only thing required from small engine owners/operators is that they purchase a certified engine, which EPA believes will be available for most, if not all, of the smaller engines, and operate the engine according to the manufacturer's specifications. EPA further notes that even for non-certified engines, requirements are reduced, especially for smaller engines. However, EPA appreciates the commenters' concerns and has made changes to the proposed rule that will further help affected parties understand and evaluate the requirements, as discussed above.

EPA understands the commenters' concerns and agrees that there may be some duplication in the proposed rule and has taken steps in the final rule to simplify the compliance process for owners/operators by removing potential duplicative and/or conflicting requirements. Specifically, EPA realizes that certain engines will be subject to two sets of emission standards and regulations. New engines over 500 HP located at major sources would be subject to the NESHAP as well as the NSPS. Stationary 4SLB engines between 250 and 500 HP located at major sources would also be subject to the NESHAP and NSPS. EPA does not agree with the commenters that recommend that EPA exempt all engines greater than 500 HP and 4SLB above 250 HP at major sources from meeting the NSPS NMHC (now VOC) standard. These stationary engines will be required to comply with both regulations. One regulation addresses HAP emissions and the other regulation addresses criteria pollutants. The commenters provide no data or analysis indicating that it would be infeasible to meet both regulations, and EPA has shown that the standards under both regulations are feasible.

For the current 40 CFR part 63, subpart ZZZZ, EPA did not find that there is a good relationship between CO emission concentration or CO emission reductions and HAP emission concentrations or HAP emission reductions from rich burn engines equipped with NSCR. Therefore, in that rule, EPA could not use CO as a surrogate for HAP for rich burn engines. For that reason, EPA cannot exempt stationary rich burn engines from either regulation, and rich burn engines greater than 500 HP located at major sources have to comply with the formaldehyde emission standard in the RICE NESHAP (percent reduction or concentration limit) and the NO_X, CO, and VOC emission standards in the SI NSPS.

However, for SI lean burn engines, under the existing RICE NESHAP, EPA established a good relationship between CO emission reductions and HAP emission reductions from 4SLB engines with oxidation catalyst systems. Therefore, EPA concluded that CO emission reductions could serve as a surrogate for HAP emission reductions for SI lean burn engines with oxidation catalysts. Since the existing RICE NESHAP contains emission standards for CO and formaldehyde that are based on the application of oxidation catalysts, it makes sense to exempt these engines from the CO emission standard under the SI NSPS, which would be less stringent than the NESHAP CO standard. For this group of engines, and for 4SLB engines between 250 and 500 HP located at major sources, EPA believes it is more appropriate and reasonable to exempt the engines from the CO standard in the NSPS, since that is the same pollutant that they are testing for in the NESHAP, rather than the VOC standard. Based on comments received and other information analyzed post-proposal, EPA believes that CO is a more appropriate surrogate for formaldehyde than VOC for SI lean burn engines and EPA does not believe VOC should be used as a surrogate for HAP. EPA recognizes that it proposed exempting 4SLB engines between 250 and 500 HP at major sources from the NSPS NMHC standard, but based on new information comments submitted by EUROMOT (EPA–HQ–OAR–2005–0030–0039), EPA now believes that CO is more appropriate and consistent with the NESHAP for 4SLB engines. Therefore, SI lean burn engines greater than or equal to 250 HP located at major sources that comply with the RICE NESHAP only have to comply with the NO_X and VOC standard in the SI NSPS. EPA has included this provision in Table 1 to the final NSPS.

VI. Summary of Environmental, Energy and Economic Impacts

A. What are the air quality impacts?

The final rule is estimated to reduce NO_X emissions from stationary SI ICE by an estimated 77,000 tons per year (tpy), CO emissions by about 45,000 tpy, VOC emissions by about 2,000 tpy, and HAP emissions by approximately 800 tpy in the year 2015. Of the 800 tpy of HAP reduced in 2015, it is expected that about 86 tpy will be the result of requirements under the RICE NESHAP. The final rule is estimated to reduce NO_X emissions by 84,000 tpy, CO emissions by 49,000 tpy, VOC emissions by 2,400 tpy, and HAP emissions by 900 tpy in the year 2020. Of the 900 tpy of HAP reduced in 2020, it is expected that about 100 tpy will be the result of requirements under the RICE NESHAP. The final rule is estimated to reduce NO_X emissions by 99,000 tpy, CO emissions by 56,000 tpy, VOC emissions by 3,000 tpy, and HAP emissions by 1,000 tpy in the year 2030. Of the 1,000 tpy of HAP reduced in 2030, it is expected that about 120 tpy will be the result of requirements under the RICE NESHAP.

EPA estimates that a total of about 150,000 stationary SI engines will be affected by the final rule by the year 2015. A total of 433,000 stationary SI engines will be affected by the year 2030. An estimated 623,000 stationary CI engines will be affected by the final rule by the year 2015. However, stationary CI engines affected by the final rule would also be subject to the CI NSPS. Further information regarding the estimated reductions of the final rule can be found in the memorandum entitled ''Cost Impacts and Emission Reductions Associated with Proposed NSPS for Stationary SI ICE and

NESHAP for Stationary RICE,'' which is available in the docket.

B. What are the cost impacts?

The total national capital cost for the final rule is estimated to be approximately $44 million in the year 2015, with a total national annual cost of $19 million in the year 2015. Total national capital cost for the RICE NESHAP portion of the final rule are $3 million in 2015 with a total annual cost of also $3 million in 2015. In the year 2020, the total national capital and annual costs for the final rule are estimated to be $47 million and $20 million, respectively. Total national capital cost for the RICE NESHAP portion of the final rule are $3.5 million in 2020 with a total annual cost of $3.5 million in 2020. In the year 2030, the total national capital and annual costs for the final rule are estimated to be $54 million and $22 million, respectively. Total national capital cost for the RICE NESHAP portion of the final rule are $4.2 million in 2030 with a total annual cost of $4.3 million in 2030.

C. What are the benefit estimates?

EPA estimates the monetized benefits of this final rule to be about $220 million (2005$). This estimate of benefits reflects the use of the Pope *et al.* (2002) $PM_{2.5}$ mortality estimate. EPA recognizes the uncertainty associated with this estimate and readers may refer to the benefits chapter of the Regulatory Impacts Analysis for a discussion of the range of benefits estimated for this rule. To estimate the human health benefits of NO_X emission reductions from stationary SI engines, EPA followed an approach and methodology described in the Technical Support Document (TSD) accompanying EPA's 2007 benefits analysis of the proposed changes to the National Ambient Air Quality Standards for Ozone. In this analysis, EPA applied dollar per ton benefit transfer coefficients. These benefit per ton estimates relate a one-ton reduction in a given $PM_{2.5}$ precursor, such as NO_X emitted by stationary sources, to an estimate of the total monetized human health benefits of reduced exposure to $PM_{2.5}$. EPA chose these transfer coefficients as the basis for estimating the benefits from emission reductions of these two pollutants because the coefficients were derived for sources that share many of the same key attributes as those covered here. These elements include the stack height and the pollutant affected-NO_X. Thus EPA believes that it can generate a reasonable estimate of benefits for this final rule using a benefits transfer approach. Specifically, these estimates are based on application of the benefits scaling approach derived from the benefits analyses completed for these rulemakings. Readers interested in the methodology followed to generate these estimates may consult the Technical Support Document supporting the Proposed Ozone NAAQS RIA.[1] A summary of the benefits estimates is in Table 5 of this preamble.

TABLE 5.—ESTIMATE OF MONETIZED BENEFITS BY 2015 ($2005) [a]

$ Benefits/ ton	Amount of NO_X emissions reduced (tons)	Monetized benefits (millions of 2005$) [b]
$2,800	77,362	$220

[a] The results are presented assuming a discount rate of three percent.
[b] Estimate rounded to two significant figures.

The specific estimates of benefits per ton of pollutant reductions included in this analysis are largely driven by the concentration response function for premature mortality, which is based on the American Cancer Society cohort (ACS) (Pope, C.A. III, *et al.*, ''Lung Cancer, Cardiopulmonary Mortality, and Long-Term Exposure to Fine Particulate Air Pollution,'' JAMA, 2002).

Since the publication of Clean Air Interstate Rulemaking (CAIR), the EPA's Office of Air and Radiation has adopted a different format for its benefits analysis in which characterization of the uncertainty in the concentration response function is integrated into the main benefits analysis. The PM NAAQS RIA analysis prepared last year provides an indication of the sensitivity of our results to the use of alternative concentration response functions, including those derived from the recently completed expert elicitation study. Specifically, compared to the final PM NAAQS estimate of the mean mortality from the ACS cohort, the expert-based premature mortality incidence ranged from 50 percent of the mean ACS estimate to more than five times the size of the ACS mean estimate. The Agency intends to consider using information to update our benefits estimates as part of an approach similar to that used in the PM NAAQS Regulatory Impact Analysis (RIA) in the benefits analyses for future rulemakings.

EPA estimates the annualized benefits of this rulemaking (the NSPS and NESHAP together) to be about $220 million (2005$) and annualized costs to be $22 million (2005$). Thus, benefits exceed cost by about to $200 million in 2015. EPA believes that the benefits are likely to exceed the costs by a significant margin under this rulemaking even when taking into account uncertainties in the cost and benefit estimates. For more information, please refer to the RIA for this final rule that is available in the docket.

D. What are the economic impacts?

The impacts to producers and consumers affected by this final rule are higher product prices and outputs. Prices for affected engines that are larger than 175 HP may increase from 5 to 7 percent, and prices for engines smaller than 175 HP may increase by 17 to 33 percent. Production of affected engines, however, should only fall by between 0.5 and 3.3 percent since previous analyses by EPA of engine markets done for the Final Nonroad Diesel Engine Rule suggest a small reaction in output due to a large price increase. Hence, the overall economic impact on affected industries should be small.

E. What are the non-air health, environmental and energy impacts?

EPA does not anticipate any significant non-air health, environmental or energy impacts as a result of the final rule.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an ''economically significant regulatory action'' because it is likely to have an annual affect on the economy of $100 million or more. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NSPS General Provisions (40 CFR part 60, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically

[1] Technical Support Document: Calculating Benefit per-Ton Estimates. EPA–HQ–OAR–2006–0834.

authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

This final rule will require notifications from certain engines and compliance reports. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of this final rule) is estimated to be 132,164 labor hours per year at a total annual cost of $17,995,722. This estimate includes a one-time notification for engines greater than 500 HP that are non-certified, engine certification, engine performance testing, and recordkeeping. There are no capital/start-up costs associated with the monitoring requirements over the 3-year period of the ICR. The operation and maintenance costs for the monitoring requirements over the 3-year period of the ICR are estimated to be $8,498,888 per year.

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. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business 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 this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule is expected to affect 21 ultimate parent businesses that are manufacturers of affected SI engines. Five of the parent businesses are small according to the SBA small business size standard. One of these five firms would have an annualized cost of more than one percent of sales associated with meeting the requirements; the estimated cost is about five percent of the annual sales for this small firm. In addition, for the industries in which small firms are found that may be affected by this final rule, either by purchasing a compliant SI engine or by performing the required testing, the estimated cost of this rule is 0.10 percent of sales or less. Also, no other adverse impacts are expected to these affected small businesses.

For more information on the small entity impacts associated with the final rule, please refer to the Economic Impact and Small Business Analyses in the public docket. These analyses can be found in the Regulatory Impact Analysis for this final rule.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. When developing the revised standards, EPA took special steps to ensure that the burdens imposed on small entities were minimal. EPA conducted several meetings with industry trade associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting.

D. Unfunded Mandates Reform Act of 1995

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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, this final rule is not subject to the requirements of sections 202 and 205 of

the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them.

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 final 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. This final rule primarily affects private industry, and does not impose significant economic costs on State or local governments. Thus, Executive Order 13132 does not apply to the final rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the 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 final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA has prepared an analysis of energy impacts that explains this conclusion as follows.

The increase in petroleum product output, which includes increases in fuel production, is estimated at less than 0.03 percent, or 11.1 trillion BTUs as based on 2007 Annual Energy Outlook data provided by the U.S. Energy Information Administration. The reduction in coal production is zero since no coal-fired units will be affected by the requirements of the final rule. The reduction in electricity output is estimated at 0.10 percent, or about 15.1 trillion BTUs per year based on 2007 U.S. electricity production nationwide. Production of natural gas is expected to decrease by 13.83 trillion BTU, a decrease of 0.07 percent from 2007 U.S. production levels. The maximum of all energy price increases, which include increases in natural gas prices as well as those for petroleum products, and electricity, is estimated to be 0.10 percent nationwide. Energy distribution costs may increase by roughly no more than the same amount as electricity rates. EPA expects that there will be no discernable impact on the import of foreign energy supplies, and no other adverse outcomes are expected to occur with regards to energy supplies. The increase in cost of energy production should be minimal given the very small increases in energy prices and outputs shown above. All of the estimates presented above account for some pass-through of costs to consumers as well as the direct cost impact to producers. For more information on these estimated energy effects, please refer to the economic impact analysis for the final rule. This analysis is available in the public docket.

Therefore, EPA concludes that this rule when implemented will not have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113, Section 12(d), 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies.

The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS. These rules involve technical standards. The EPA cites the following standards: EPA Methods 1, 1A, 2, 3, 3A, 3B, 4, 7E, 10, 18, 19, 25A, 320, and 323 (40 CFR part 60, appendix A); and American Society of Testing and Materials (ASTM) methods ASTM D6348–03 and ASTM D6522–00 (2005).

Consistent with the NTTAA, EPA conducted searches to identify voluntary potentially applicable consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 19, 320, and 323. The search and review results are in the docket for these rules.

The search identified two voluntary consensus standards as acceptable alternatives to EPA Methods. In addition, the standards, ASTM D6348–03 and ASTM D6522–00 (2005) cited in these rules are also VCS.

The standard ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' is cited in this rule for its manual method for measuring the oxygen content of the exhaust gas. This part of ASME PTC 19.10–1981 is an acceptable alternative to EPA Method 3B.

The standard ASTM D6420–99 (2004), ''Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry'' is cited in this rule as an alternative to EPA Method 18 for measuring total nonmethane organic.

Similar to EPA's performance-based Method 18, ASTM D6420–99 is also a performance-based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by Method 18. Therefore, ASTM D6420–99 is a suitable alternative to Method 18 only where:

(1) The target compound(s) are those listed in Section 1.1 of ASTM D6420–99, and

(2) The target concentration is between 150 ppbv and 100 ppmv.

For target compound(s) not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the regulation specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target compound(s) not listed in Section 1.1 of ASTM D6420–99, and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

As a result, EPA will cite ASTM D6420–99 in this rule. The EPA will also cite Method 18 as a gas chromatography (GC) option in addition to ASTM D6420–99. This will allow the continued use of GC configurations other than GC/MS.

The search for emissions measurement procedures identified 13 other voluntary consensus standards. The EPA determined that these 13 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in these rules were impractical alternatives to EPA test methods for the purposes of these rules. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for the determinations for the 13 methods are discussed in the dockets to the rules.

Under 63.7(f) and 63.8(f) of subpart A of the General Provisions to part 63, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures. In addition, EPA Method 301 describes procedures any source may use to establish the equivalency of alternatives to any EPA reference method.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (February 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent 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 final 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. This rule promulgates new source performance standards and national emission standards for hazardous air pollutants.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on March 18, 2008.

List of Subjects

40 CFR Part 60

Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 85

Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 90

Administrative practice and procedure, Air pollution control.

40 CFR Part 1048

Administrative practice and procedure, Air pollution control.

40 CFR Part 1065

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements, Research.

40 CFR Part 1068

Administrative practice and procedure, Imports, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: December 20, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is to be amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 60.17 is amended as follows:

■ a. By revising paragraph (a)(82);

■ b. By redesignating paragraphs (a)(85) through (a)(90) as paragraphs (a)(87) through (a)(92);

■ c. By redesignating paragraph (a)(84) as (a)(85);

■ d. By adding new paragraph (a)(84);

■ e. By adding new paragraph (a)(86);

■ f. By revising paragraph (h)(4); and
■ g. By adding paragraph (n).

The revisions and additions read as follows:

§ 60.17 Incorporation by Reference

* * * * *

(82) ASTM D6348–03, Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, IBR approved for table 7 of Subpart IIII of this part and table 2 of subpart JJJJ of this part.

* * * * *

(84) ASTM D6420–99 (Reapproved 2004) Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, IBR approved for table 2 of subpart JJJJ of this part.

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(86) ASTM D6522–00 (Reapproved 2005), Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, IBR approved for table 2 of subpart JJJJ of this part.

* * * * *

(h) * * *

(4) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], IBR approved for Tables 1 and 3 of subpart EEEE, Tables 2 and 4 of subpart FFFF, Table 2 of subpart JJJJ, and §§ 60.4415(a)(2) and 60.4415(a)(3) of subpart KKKK of this part.

* * * * *

(n) This material is available for purchase from IHS Inc., 15 Inverness Way East, Englewood, CO 80112.

(1) International Organization for Standards 8178–4: 1996(E), Reciprocating Internal Combustion Engines—Exhaust Emission Measurement—Part 4: Test Cycles for Different Engine Applications, IBR approved for § 60.4241(b).

(2) [Reserved]

Subpart JJJJ—[Amended]

■ 3. Part 60 is amended by adding subpart JJJJ to read as follows:

Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines

Sec.

What This Subpart Covers

60.4230 Am I subject to this subpart?

Emission Standards for Manufacturers

60.4231 What emission standards must I meet if I am a manufacturer of stationary SI internal combustion engines?

60.4232 How long must my engines meet the emission standards if I am a manufacturer of stationary SI internal combustion engines?

Emission Standards for Owners and Operators

60.4233 What emission standards must I meet if I am an owner or operator of a stationary SI internal combustion engine?

60.4234 How long must I meet the emission standards if I am an owner or operator of a stationary SI internal combustion engine?

Other Requirements for Owners and Operators

60.4235 What fuel requirements must I meet if I am an owner or operator of a stationary SI gasoline fired internal combustion engine subject to this subpart?

60.4236 What is the deadline for importing or installing stationary SI ICE produced in the previous model year?

60.4237 What are the monitoring requirements if I am an owner or operator of an emergency stationary SI internal combustion engine?

Compliance Requirements for Manufacturers

60.4238 What are my compliance requirements if I am a manufacturer of stationary SI internal combustion engines ≤19 KW (25 HP)?

60.4239 What are my compliance requirements if I am a manufacturer of stationary SI internal combustion engines >19 KW (25 HP) that use gasoline?

60.4240 What are my compliance requirements if I am a manufacturer of stationary SI internal combustion engines >19 KW (25 HP) that are rich burn engines that use LPG?

60.4241 What are my compliance requirements if I am a manufacturer of stationary SI internal combustion engines participating in the voluntary certification program?

60.4242 What other requirements must I meet if I am a manufacturer of stationary SI internal combustion engines?

Compliance Requirements for Owners and Operators

60.4243 What are my compliance requirements if I am an owner or operator of a stationary SI internal combustion engine?

Testing Requirements for Owners and Operators

60.4244 What test methods and other procedures must I use if I am an owner or operator of a stationary SI internal combustion engine?

Notification, Reports, and Records for Owners and Operators

60.4245 What are my notification, reporting, and recordkeeping requirements if I am an owner or operator of a stationary SI internal combustion engine?

General Provisions

60.4246 What parts of the General Provisions apply to me?

Mobile Source Provisions

60.4247 What parts of the mobile source provisions apply to me if I am a manufacturer of stationary SI internal combustion engines?

Definitions

60.4248 What definitions apply to this subpart?

Tables to Subpart JJJJ of Part 60

Table 1 to Subpart JJJJ of Part 60—NO_X, CO, and VOC Emission Standards for Stationary Non-Emergency SI Engines ≥100 HP (except gasoline and rich burn LPG), Stationary SI Landfill/Digester Gas Engines, and Stationary Emergency Engines >25 HP.

Table 2 to Subpart JJJJ of Part 60—Requirements for Performance Tests.

Table 3 to Subpart JJJJ of Part 60—Applicability of General Provisions to Subpart JJJJ.

Table 4 to Subpart JJJJ of Part 60—Applicability of Mobile Source Provisions for Manufacturers Participating in the Voluntary Certification Program and Certifying Stationary SI ICE to Emission Standards in Table 1 of Subpart JJJJ.

What This Subpart Covers

§ 60.4230 Am I subject to this subpart?

(a) The provisions of this subpart are applicable to manufacturers, owners, and operators of stationary spark ignition (SI) internal combustion engines (ICE) as specified in paragraphs (a)(1) through (5) of this section. For the purposes of this subpart, the date that construction commences is the date the engine is ordered by the owner or operator.

(1) Manufacturers of stationary SI ICE with a maximum engine power less than or equal to 19 kilowatt (KW) (25 horsepower (HP)) that are manufactured on or after July 1, 2008.

(2) Manufacturers of stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) that are gasoline fueled or that are rich burn engines fueled by liquefied petroleum gas (LPG), where the date of manufacture is:

(i) On or after July 1, 2008; or

(ii) On or after January 1, 2009, for emergency engines.

(3) Manufacturers of stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) that are not gasoline fueled and are not rich burn

engines fueled by LPG, where the manufacturer participates in the voluntary manufacturer certification program described in this subpart and where the date of manufacture is:

(i) On or after July 1, 2007, for engines with a maximum engine power greater than or equal to 500 HP (except lean burn engines with a maximum engine power greater than or equal to 500 HP and less than 1,350 HP);

(ii) On or after January 1, 2008, for lean burn engines with a maximum engine power greater than or equal to 500 HP and less than 1,350 HP;

(iii) On or after July 1, 2008, for engines with a maximum engine power less than 500 HP; or

(iv) On or after January 1, 2009, for emergency engines.

(4) Owners and operators of stationary SI ICE that commence construction after June 12, 2006, where the stationary SI ICE are manufactured:

(i) On or after July 1, 2007, for engines with a maximum engine power greater than or equal to 500 HP (except lean burn engines with a maximum engine power greater than or equal to 500 HP and less than 1,350 HP);

(ii) on or after January 1, 2008, for lean burn engines with a maximum engine power greater than or equal to 500 HP and less than 1,350 HP;

(iii) on or after July 1, 2008, for engines with a maximum engine power less than 500 HP; or

(iv) on or after January 1, 2009, for emergency engines with a maximum engine power greater than 19 KW (25 HP).

(5) Owners and operators of stationary SI ICE that commence modification or reconstruction after June 12, 2006.

(b) The provisions of this subpart are not applicable to stationary SI ICE being tested at an engine test cell/stand.

(c) If you are an owner or operator of an area source subject to this subpart, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart as applicable.

(d) For the purposes of this subpart, stationary SI ICE using alcohol-based fuels are considered gasoline engines.

(e) Stationary SI ICE may be eligible for exemption from the requirements of this subpart as described in 40 CFR part 1068, subpart C (or the exemptions described in 40 CFR parts 90 and 1048, for engines that would need to be certified to standards in those parts), except that owners and operators, as well as manufacturers, may be eligible to request an exemption for national security.

(f) Owners and operators of facilities with internal combustion engines that are acting as temporary replacement units and that are located at a stationary source for less than 1 year and that have been properly certified as meeting the standards that would be applicable to such engine under the appropriate nonroad engine provisions, are not required to meet any other provisions under this subpart with regard to such engines.

Emission Standards for Manufacturers

§ 60.4231 What emission standards must I meet if I am a manufacturer of stationary SI internal combustion engines?

(a) Stationary SI internal combustion engine manufacturers must certify their stationary SI ICE with a maximum engine power less than or equal to 19 KW (25 HP) manufactured on or after July 1, 2008, to the certification emission standards and other requirements for new nonroad SI engines in 40 CFR part 90.

(b) Stationary SI internal combustion engine manufacturers must certify their stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) (except emergency stationary ICE with a maximum engine power greater than 25 HP and less than 130 HP) that use gasoline and that are manufactured on or after the applicable date in § 60.4230(a)(2), or manufactured on or after the applicable date in § 60.4230(a)(4) for emergency stationary ICE with a maximum engine power greater than or equal to 130 HP, to the certification emission standards and other requirements for new nonroad SI engines in 40 CFR part 1048. Stationary SI internal combustion engine manufacturers must certify their emergency stationary SI ICE greater than 25 HP and less than 130 HP that are manufactured on or after the applicable date in § 60.4230(a)(4) to the Phase 1 emission standards in 40 CFR 90.103, applicable to class II engines, and other requirements for new nonroad SI engines in 40 CFR part 90. Stationary SI internal combustion engine manufacturers may certify their stationary SI ICE with a maximum engine power less than or equal to 30 KW (40 HP) with a total displacement less than or equal to 1,000 cubic centimeters (cc) to the certification emission standards and other requirements for new nonroad SI engines in 40 CFR part 90.

(c) Stationary SI internal combustion engine manufacturers must certify their stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) (except emergency stationary ICE with a maximum engine power greater than 25 HP and less than 130 HP) that are rich burn engines that use LPG and that are manufactured on or after the applicable date in § 60.4230(a)(2), or manufactured on or after the applicable date in § 60.4230(a)(4) for emergency stationary ICE with a maximum engine power greater than or equal to 130 HP, to the certification emission standards and other requirements for new nonroad SI engines in 40 CFR part 1048. Stationary SI internal combustion engine manufacturers must certify their emergency stationary SI ICE greater than 25 HP and less than 130 HP that are manufactured on or after the applicable date in § 60.4230(a)(4) to the Phase 1 emission standards in 40 CFR 90.103, applicable to class II engines, and other requirements for new nonroad SI engines in 40 CFR part 90. Stationary SI internal combustion engine manufacturers may certify their stationary SI ICE with a maximum engine power less than or equal to 30 KW (40 HP) with a total displacement less than or equal to 1,000 cc to the certification emission standards and other requirements for new nonroad SI engines in 40 CFR part 90.

(d) Stationary SI internal combustion engine manufacturers who choose to certify their stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) and less than 75 KW (100 HP) (except gasoline and rich burn engines that use LPG and emergency stationary ICE with a maximum engine power greater than 25 HP and less than 130 HP) under the voluntary manufacturer certification program described in this subpart must certify those engines to the certification emission standards for new nonroad SI engines in 40 CFR part 1048. Stationary SI internal combustion engine manufacturers who choose to certify their emergency stationary SI ICE greater than 25 HP and less than 130 HP, must certify those engines to the Phase 1 emission standards in 40 CFR 90.103, applicable to class II engines, for new nonroad SI engines in 40 CFR part 90. Stationary SI internal combustion engine manufacturers may certify their stationary SI ICE with a maximum engine power less than or equal to 30 KW (40 HP) with a total displacement less than or equal to 1,000 cc to the certification emission standards for new nonroad SI engines in 40 CFR part 90. For stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) and less than 75 KW (100 HP)

(except gasoline and rich burn engines that use LPG and emergency stationary ICE with a maximum engine power greater than 25 HP and less than 130 HP) manufactured prior to January 1, 2011, manufacturers may choose to certify these engines to the standards in Table 1 to this subpart applicable to engines with a maximum engine power greater than or equal to 100 HP and less than 500 HP.

(e) Stationary SI internal combustion engine manufacturers who choose to certify their stationary SI ICE with a maximum engine power greater than or equal to 75 KW (100 HP) (except gasoline and rich burn engines that use LPG) under the voluntary manufacturer certification program described in this subpart must certify those engines to the emission standards in Table 1 to this subpart. Stationary SI internal combustion engine manufacturers may certify their stationary SI ICE with a maximum engine power greater than or equal to 75 KW (100 HP) that are lean burn engines that use LPG to the certification emission standards for new nonroad SI engines in 40 CFR part 1048. For stationary SI ICE with a maximum engine power greater than or equal to 100 HP (75 KW) and less than 500 HP (373 KW) manufactured prior to January 1, 2011, and for stationary SI ICE with a maximum engine power greater than or equal to 500 HP (373 KW) manufactured prior to July 1, 2010, manufacturers may choose to certify these engines to the certification emission standards for new nonroad SI engines in 40 CFR part 1048 applicable to engines that are not severe duty engines.

§ 60.4232 How long must my engines meet the emission standards if I am a manufacturer of stationary SI internal combustion engines?

Engines manufactured by stationary SI internal combustion engine manufacturers must meet the emission standards as required in § 60.4231 during the certified emissions life of the engines.

Emission Standards for Owners and Operators

§ 60.4233 What emission standards must I meet if I am an owner or operator of a stationary SI internal combustion engine?

(a) Owners and operators of stationary SI ICE with a maximum engine power less than or equal to 19 KW (25 HP) manufactured on or after July 1, 2008, must comply with the emission standards in § 60.4231(a) for their stationary SI ICE.

(b) Owners and operators of stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) manufactured on or after the applicable date in § 60.4230(a)(4) that use gasoline must comply with the emission standards in § 60.4231(b) for their stationary SI ICE.

(c) Owners and operators of stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) manufactured on or after the applicable date in § 60.4230(a)(4) that are rich burn engines that use LPG must comply with the emission standards in § 60.4231(c) for their stationary SI ICE.

(d) Owners and operators of stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) and less than 75 KW (100 HP) (except gasoline and rich burn engines that use LPG) must comply with the emission standards for field testing in 40 CFR 1048.101(c) for their non-emergency stationary SI ICE and with the emission standards in Table 1 to this subpart for their emergency stationary SI ICE. Owners and operators of stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) and less than 75 KW (100 HP) manufactured prior to January 1, 2011, that were certified to the standards in Table 1 to this subpart applicable to engines with a maximum engine power greater than or equal to 100 HP and less than 500 HP, may optionally choose to meet those standards.

(e) Owners and operators of stationary SI ICE with a maximum engine power greater than or equal to 75 KW (100 HP) (except gasoline and rich burn engines that use LPG) must comply with the emission standards in Table 1 to this subpart for their stationary SI ICE. For owners and operators of stationary SI ICE with a maximum engine power greater than or equal to 100 HP (except gasoline and rich burn engines that use LPG) manufactured prior to January 1, 2011 that were certified to the certification emission standards in 40 CFR part 1048 applicable to engines that are not severe duty engines, if such stationary SI ICE was certified to a carbon monoxide (CO) standard above the standard in Table 1 to this subpart, then the owners and operators may meet the CO certification (not field testing) standard for which the engine was certified.

(f) Owners and operators of any modified or reconstructed stationary SI ICE subject to this subpart must meet the requirements as specified in paragraphs (f)(1) through (5) of this section.

(1) Owners and operators of stationary SI ICE with a maximum engine power less than or equal to 19 KW (25 HP), that are modified or reconstructed after June 12, 2006, must comply with the same emission standards as those specified in paragraph (a) of this section.

(2) Owners and operators of stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) that use gasoline engines, that are modified or reconstructed after June 12, 2006, must comply with the same emission standards as those specified in paragraph (b) of this section.

(3) Owners and operators of stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) that are rich burn engines that use LPG, that are modified or reconstructed after June 12, 2006, must comply with the same emission standards as those specified in paragraph (c) of this section.

(4) Owners and operators of stationary SI natural gas and lean burn LPG engines with a maximum engine power greater than 19 KW (25 HP), that are modified or reconstructed after June 12, 2006, must comply with the same emission standards as those specified in paragraph (d) or (e) of this section, except that such owners and operators of non-emergency engines and emergency engines greater than or equal to 130 HP must meet a nitrogen oxides (NO_X) emission standard of 3.0 grams per HP-hour (g/HP-hr), a CO emission standard of 4.0 g/HP-hr (5.0 g/HP-hr for non-emergency engines less than 100 HP), and a volatile organic compounds (VOC) emission standard of 1.0 g/HP-hr, or a NO_X emission standard of 250 ppmvd at 15 percent oxygen (O_2), a CO emission standard 540 ppmvd at 15 percent O_2 (675 ppmvd at 15 percent O_2 for non-emergency engines less than 100 HP), and a VOC emission standard of 86 ppmvd at 15 percent O_2, where the date of manufacture of the engine is:

(i) Prior to July 1, 2007, for non-emergency engines with a maximum engine power greater than or equal to 500 HP;

(ii) Prior to July 1, 2008, for non-emergency engines with a maximum engine power less than 500 HP;

(iii) Prior to January 1, 2009, for emergency engines.

(5) Owners and operators of stationary SI landfill/digester gas ICE engines with a maximum engine power greater than 19 KW (25 HP), that are modified or reconstructed after June 12, 2006, must comply with the same emission standards as those specified in paragraph (e) of this section for stationary landfill/digester gas engines.

(g) Owners and operators of stationary SI wellhead gas ICE engines may petition the Administrator for approval on a case-by-case basis to meet emission standards no less stringent than the emission standards that apply to

stationary emergency SI engines greater than 25 HP and less than 130 HP due to the presence of high sulfur levels in the fuel, as specified in Table 1 to this subpart. The request must, at a minimum, demonstrate that the fuel has high sulfur levels that prevent the use of aftertreatment controls and also that the owner has reasonably made all attempts possible to obtain an engine that will meet the standards without the use of aftertreatment controls. The petition must request the most stringent standards reasonably applicable to the engine using the fuel.

(h) Owners and operators of stationary SI ICE that are required to meet standards that reference 40 CFR 1048.101 must, if testing their engines in use, meet the standards in that section applicable to field testing, except as indicated in paragraph (e) of this section.

§ 60.4234 How long must I meet the emission standards if I am an owner or operator of a stationary SI internal combustion engine?

Owners and operators of stationary SI ICE must operate and maintain stationary SI ICE that achieve the emission standards as required in § 60.4233 over the entire life of the engine.

Other Requirements for Owners and Operators

§ 60.4235 What fuel requirements must I meet if I am an owner or operator of a stationary SI gasoline fired internal combustion engine subject to this subpart?

Owners and operators of stationary SI ICE subject to this subpart that use gasoline must use gasoline that meets the per gallon sulfur limit in 40 CFR 80.195.

§ 60.4236 What is the deadline for importing or installing stationary SI ICE produced in the previous model year?

(a) After July 1, 2010, owners and operators may not install stationary SI ICE with a maximum engine power of less than 500 HP that do not meet the applicable requirements in § 60.4233.

(b) After July 1, 2009, owners and operators may not install stationary SI ICE with a maximum engine power of greater than or equal to 500 HP that do not meet the applicable requirements in § 60.4233, except that lean burn engines with a maximum engine power greater than or equal to 500 HP and less than 1,350 HP that do not meet the applicable requirements in § 60.4233 may not be installed after January 1, 2010.

(c) For emergency stationary SI ICE with a maximum engine power of greater than 19 KW (25 HP), owners and operators may not install engines that do not meet the applicable requirements in § 60.4233 after January 1, 2011.

(d) In addition to the requirements specified in §§ 60.4231 and 60.4233, it is prohibited to import stationary SI ICE less than or equal to 19 KW (25 HP), stationary rich burn LPG SI ICE, and stationary gasoline SI ICE that do not meet the applicable requirements specified in paragraphs (a), (b), and (c) of this section, after the date specified in paragraph (a), (b), and (c) of this section.

(e) The requirements of this section do not apply to owners and operators of stationary SI ICE that have been modified or reconstructed, and they do not apply to engines that were removed from one existing location and reinstalled at a new location.

§ 60.4237 What are the monitoring requirements if I am an owner or operator of an emergency stationary SI internal combustion engine?

(a) Starting on July 1, 2010, if the emergency stationary SI internal combustion engine that is greater than or equal to 500 HP that was built on or after July 1, 2010, does not meet the standards applicable to non-emergency engines, the owner or operator must install a non-resettable hour meter.

(b) Starting on January 1, 2011, if the emergency stationary SI internal combustion engine that is greater than or equal to 130 HP and less than 500 HP that was built on or after January 1, 2011, does not meet the standards applicable to non-emergency engines, the owner or operator must install a non-resettable hour meter.

(c) If you are an owner or operator of an emergency stationary SI internal combustion engine that is less than 130 HP, was built on or after July 1, 2008, and does not meet the standards applicable to non-emergency engines, you must install a non-resettable hour meter upon startup of your emergency engine.

Compliance Requirements for Manufacturers

§ 60.4238 What are my compliance requirements if I am a manufacturer of stationary SI internal combustion engines ≤19 KW (25 HP)?

Stationary SI internal combustion engine manufacturers who are subject to the emission standards specified in § 60.4231(a) must certify their stationary SI ICE using the certification procedures required in 40 CFR part 90, subpart B, and must test their engines as specified in that part.

§ 60.4239 What are my compliance requirements if I am a manufacturer of stationary SI internal combustion engines >19 KW (25 HP) that use gasoline?

Stationary SI internal combustion engine manufacturers who are subject to the emission standards specified in § 60.4231(b) must certify their stationary SI ICE using the certification procedures required in 40 CFR part 1048, subpart C, and must test their engines as specified in that part. Stationary SI internal combustion engine manufacturers who certify their stationary SI ICE with a maximum engine power less than or equal to 30 KW (40 HP) with a total displacement less than or equal to 1,000 cc to the certification emission standards and other requirements for new nonroad SI engines in 40 CFR part 90, and manufacturers of stationary SI emergency engines that are greater than 25 HP and less than 130 HP who meet the Phase 1 standards in 40 CFR 90.103, applicable to class II engines, must certify their stationary SI ICE using the certification procedures required in 40 CFR part 90, subpart B, and must test their engines as specified in that part.

§ 60.4240 What are my compliance requirements if I am a manufacturer of stationary SI internal combustion engines >19 KW (25 HP) that are rich burn engines that use LPG?

Stationary SI internal combustion engine manufacturers who are subject to the emission standards specified in § 60.4231(c) must certify their stationary SI ICE using the certification procedures required in 40 CFR part 1048, subpart C, and must test their engines as specified in that part. Stationary SI internal combustion engine manufacturers who certify their stationary SI ICE with a maximum engine power less than or equal to 30 KW (40 HP) with a total displacement less than or equal to 1,000 cc to the certification emission standards and other requirements for new nonroad SI engines in 40 CFR part 90, and manufacturers of emergency engines that are greater than 25 HP and less than 130 HP who meet the Phase 1 standards in 40 CFR 90.103, applicable to class II engines, must certify their stationary SI ICE using the certification procedures required in 40 CFR part 90, subpart B, and must test their engines as specified in that part.

§ 60.4241 What are my compliance requirements if I am a manufacturer of stationary SI internal combustion engines participating in the voluntary certification program?

(a) Manufacturers of stationary SI internal combustion engines with a maximum engine power greater than 19 KW (25 HP) that do not use gasoline and

are not rich burn engines that use LPG can choose to certify their engines to the emission standards in § 60.4231(d) or (e), as applicable, under the voluntary certification program described in this subpart. Manufacturers who certify their engines under the voluntary certification program must meet the requirements as specified in paragraphs (b) through (g) of this section. In addition, manufacturers of stationary SI internal combustion engines who choose to certify their engines under the voluntary certification program, must also meet the requirements as specified in § 60.4247.

(b) Manufacturers of engines other than those certified to standards in 40 CFR part 90 must certify their stationary SI ICE using the certification procedures required in 40 CFR part 1048, subpart C, and must follow the same test procedures that apply to large SI nonroad engines under 40 CFR part 1048, but must use the D–1 cycle of International Organization of Standardization 8178–4: 1996(E) (incorporated by reference, see 40 CFR 60.17) or the test cycle requirements specified in Table 5 to 40 CFR 1048.505, except that Table 5 of 40 CFR 1048.505 applies to high load engines only. Stationary SI internal combustion engine manufacturers who certify their stationary SI ICE with a maximum engine power less than or equal to 30 KW (40 HP) with a total displacement less than or equal to 1,000 cc to the certification emission standards and other requirements for new nonroad SI engines in 40 CFR part 90, and manufacturers of emergency engines that are greater than 25 HP and less than 130 HP who meet the Phase 1 standards in 40 CFR 90.103, applicable to class II engines, must certify their stationary SI ICE using the certification procedures required in 40 CFR part 90, subpart B, and must test their engines as specified in that part.

(c) Certification of stationary SI ICE to the emission standards specified in § 60.4231(d) or (e), as applicable, is voluntary, but manufacturers who decide to certify are subject to all of the requirements indicated in this subpart with regard to the engines included in their certification. Manufacturers must clearly label their stationary SI engines as certified or non-certified engines.

(d) Manufacturers of natural gas fired stationary SI ICE who conduct voluntary certification of stationary SI ICE to the emission standards specified in § 60.4231(d) or (e), as applicable, must certify their engines for operation using fuel that meets the definition of pipeline-quality natural gas. The fuel used for certifying stationary SI natural gas engines must meet the definition of pipeline-quality natural gas as described in § 60.4248. In addition, the manufacturer must provide information to the owner and operator of the certified stationary SI engine including the specifications of the pipeline-quality natural gas to which the engine is certified and what adjustments the owner or operator must make to the engine when installed in the field to ensure compliance with the emission standards.

(e) Manufacturers of stationary SI ICE that are lean burn engines fueled by LPG who conduct voluntary certification of stationary SI ICE to the emission standards specified in § 60.4231(d) or (e), as applicable, must certify their engines for operation using fuel that meets the specifications in 40 CFR 1065.720.

(f) Manufacturers may certify their engines for operation using gaseous fuels in addition to pipeline-quality natural gas; however, the manufacturer must specify the properties of that fuel and provide testing information showing that the engine will meet the emission standards specified in § 60.4231(d) or (e), as applicable, when operating on that fuel. The manufacturer must also provide instructions for configuring the stationary engine to meet the emission standards on fuels that do not meet the pipeline-quality natural gas definition. The manufacturer must also provide information to the owner and operator of the certified stationary SI engine regarding the configuration that is most conducive to reduced emissions where the engine will be operated on gaseous fuels with different quality than the fuel that it was certified to.

(g) A stationary SI engine manufacturer may certify an engine family solely to the standards applicable to landfill/digester gas engines as specified in § 60.4231(d) or (e), as applicable, but must certify their engines for operation using landfill/digester gas and must add a permanent label stating that the engine is for use only in landfill/digester gas applications. The label must be added according to the labeling requirements specified in 40 CFR 1048.135(b).

(h) For purposes of this subpart, when calculating emissions of volatile organic compounds, emissions of formaldehyde should not be included.

§ 60.4242 What other requirements must I meet if I am a manufacturer of stationary SI internal combustion engines?

(a) Stationary SI internal combustion engine manufacturers must meet the provisions of 40 CFR part 90 or 40 CFR part 1048, as applicable, as well as 40 CFR part 1068 for engines that are certified to the emission standards in 40 CFR part 1048, except that engines certified pursuant to the voluntary certification procedures in § 60.4241 are subject only to the provisions indicated in § 60.4247 and are permitted to provide instructions to owners and operators allowing for deviations from certified configurations, if such deviations are consistent with the provisions of paragraphs § 60.4241(c) through (f). Labels on engines certified to 40 CFR part 1048 must refer to stationary engines, rather than or in addition to nonroad engines, as appropriate.

(b) An engine manufacturer certifying an engine family or families to standards under this subpart that are identical to standards applicable under 40 CFR part 90 or 40 CFR part 1048 for that model year may certify any such family that contains both nonroad and stationary engines as a single engine family and/or may include any such family containing stationary engines in the averaging, banking and trading provisions applicable for such engines under those parts.

(c) Manufacturers of engine families certified to 40 CFR part 1048 may meet the labeling requirements referred to in paragraph (a) of this section for stationary SI ICE by either adding a separate label containing the information required in paragraph (a) of this section or by adding the words ''and stationary'' after the word ''nonroad'' to the label.

(d) For all engines manufactured on or after January 1, 2011, and for all engines with a maximum engine power greater than 25 HP and less than 130 HP manufactured on or after July 1, 2008, a stationary SI engine manufacturer that certifies an engine family solely to the standards applicable to emergency engines must add a permanent label stating that the engines in that family are for emergency use only. The label must be added according to the labeling requirements specified in 40 CFR 1048.135(b).

(e) All stationary SI engines subject to mandatory certification that do not meet the requirements of this subpart must be labeled according to 40 CFR 1068.230 and must be exported under the provisions of 40 CFR 1068.230. Stationary SI engines subject to standards in 40 CFR part 90 may use the provisions in 40 CFR 90.909. Manufacturers of stationary engines with a maximum engine power greater than 25 HP that are not certified to standards and other requirements under 40 CFR part 1048 are subject to the

labeling provisions of 40 CFR 1048.20 pertaining to excluded stationary engines.

Compliance Requirements for Owners and Operators

§ 60.4243 What are my compliance requirements if I am an owner or operator of a stationary SI internal combustion engine?

(a) If you are an owner or operator of a stationary SI internal combustion engine that is manufactured after July 1, 2008, and must comply with the emission standards specified in § 60.4233(a) through (c), you must comply by purchasing an engine certified to the emission standards in § 60.4231(a) through (c), as applicable, for the same engine class and maximum engine power. You must also meet the requirements as specified in 40 CFR part 1068, subparts A through D, as they apply to you. If you adjust engine settings according to and consistent with the manufacturer's instructions, your stationary SI internal combustion engine will not be considered out of compliance. In addition, you must meet one of the requirements specified in (a)(1) and (2) of this section.

(1) If you operate and maintain the certified stationary SI internal combustion engine and control device according to the manufacturer's emission-related written instructions, you must keep records of conducted maintenance to demonstrate compliance, but no performance testing is required if you are an owner or operator.

(2) If you do not operate and maintain the certified stationary SI internal combustion engine and control device according to the manufacturer's emission-related written instructions, your engine will be considered a non-certified engine, and you must demonstrate compliance according to (a)(2)(i) through (iii) of this section, as appropriate.

(i) If you are an owner or operator of a stationary SI internal combustion engine less than 100 HP, you must keep a maintenance plan and records of conducted maintenance to demonstrate compliance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions, but no performance testing is required if you are an owner or operator.

(ii) If you are an owner or operator of a stationary SI internal combustion engine greater than or equal to 100 HP and less than or equal to 500 HP, you must keep a maintenance plan and records of conducted maintenance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions. In addition, you must conduct an initial performance test within 1 year of engine startup to demonstrate compliance.

(iii) If you are an owner or operator of a stationary SI internal combustion engine greater than 500 HP, you must keep a maintenance plan and records of conducted maintenance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions. In addition, you must conduct an initial performance test within 1 year of engine startup and conduct subsequent performance testing every 8,760 hours or 3 years, whichever comes first, thereafter to demonstrate compliance.

(b) If you are an owner or operator of a stationary SI internal combustion engine and must comply with the emission standards specified in § 60.4233(d) or (e), you must demonstrate compliance according to one of the methods specified in paragraphs (b)(1) and (2) of this section.

(1) Purchasing an engine certified according to procedures specified in this subpart, for the same model year and demonstrating compliance according to one of the methods specified in paragraph (a) of this section.

(2) Purchasing a non-certified engine and demonstrating compliance with the emission standards specified in § 60.4233(d) or (e) and according to the requirements specified in § 60.4244, as applicable, and according to paragraphs (b)(2)(i) and (ii) of this section.

(i) If you are an owner or operator of a stationary SI internal combustion engine greater than 25 HP and less than or equal to 500 HP, you must keep a maintenance plan and records of conducted maintenance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions. In addition, you must conduct an initial performance test to demonstrate compliance.

(ii) If you are an owner or operator of a stationary SI internal combustion engine greater than 500 HP, you must keep a maintenance plan and records of conducted maintenance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions. In addition, you must conduct an initial performance test and conduct subsequent performance testing every 8,760 hours or 3 years, whichever comes first, thereafter to demonstrate compliance.

(c) If you are an owner or operator of a stationary SI internal combustion engine that must comply with the emission standards specified in § 60.4233(f), you must demonstrate compliance according paragraph (b)(2)(i) or (ii) of this section, except that if you comply according to paragraph (b)(2)(i) of this section, you demonstrate that your non-certified engine complies with the emission standards specified in § 60.4233(f).

(d) Emergency stationary ICE may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by Federal, State or local government, the manufacturer, the vendor, or the insurance company associated with the engine. Maintenance checks and readiness testing of such units is limited to 100 hours per year. There is no time limit on the use of emergency stationary ICE in emergency situations. The owner or operator may petition the Administrator for approval of additional hours to be used for maintenance checks and readiness testing, but a petition is not required if the owner or operator maintains records indicating that Federal, State, or local standards require maintenance and testing of emergency ICE beyond 100 hours per year. Emergency stationary ICE may operate up to 50 hours per year in non-emergency situations, but those 50 hours are counted towards the 100 hours per year provided for maintenance and testing. The 50 hours per year for non-emergency situations cannot be used for peak shaving or to generate income for a facility to supply power to an electric grid or otherwise supply power as part of a financial arrangement with another entity. For owners and operators of emergency engines, any operation other than emergency operation, maintenance and testing, and operation in non-emergency situations for 50 hours per year, as permitted in this section, is prohibited.

(e) Owners and operators of stationary SI natural gas fired engines may operate their engines using propane for a maximum of 100 hours per year as an alternative fuel solely during emergency operations, but must keep records of such use. If propane is used for more than 100 hours per year in an engine that is not certified to the emission standards when using propane, the owners and operators are required to conduct a performance test to

demonstrate compliance with the emission standards of § 60.4233.

(f) If you are an owner or operator of a stationary SI internal combustion engine that is less than or equal to 500 HP and you purchase a non-certified engine or you do not operate and maintain your certified stationary SI internal combustion engine and control device according to the manufacturer's written emission-related instructions, you are required to perform initial performance testing as indicated in this section, but you are not required to conduct subsequent performance testing unless the stationary engine is rebuilt or undergoes major repair or maintenance. A rebuilt stationary SI ICE means an engine that has been rebuilt as that term is defined in 40 CFR 94.11(a).

(g) It is expected that air-to-fuel ratio controllers will be used with the operation of three-way catalysts/non-selective catalytic reduction. The AFR controller must be maintained and operated appropriately in order to ensure proper operation of the engine and control device to minimize emissions at all times.

(h) If you are an owner/operator of an stationary SI internal combustion engine with maximum engine power greater than or equal to 500 HP that is manufactured after July 1, 2007 and before July 1, 2008, and must comply with the emission standards specified in sections 60.4233(b) or (c), you must comply by one of the methods specified in paragraphs (h)(1) through (h)(4) of this section.

(1) Purchasing an engine certified according to 40 CFR part 1048. The engine must be installed and configured according to the manufacturer's specifications.

(2) Keeping records of performance test results for each pollutant for a test conducted on a similar engine. The test must have been conducted using the same methods specified in this subpart and these methods must have been followed correctly.

(3) Keeping records of engine manufacturer data indicating compliance with the standards.

(4) Keeping records of control device vendor data indicating compliance with the standards.

Testing Requirements for Owners and Operators

§ 60.4244 What test methods and other procedures must I use if I am an owner or operator of a stationary SI internal combustion engine?

Owners and operators of stationary SI ICE who conduct performance tests must follow the procedures in paragraphs (a) through (f) of this section.

(a) Each performance test must be conducted within 10 percent of 100 percent peak (or the highest achievable) load and according to the requirements in § 60.8 and under the specific conditions that are specified by Table 2 to this subpart.

(b) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 60.8(c). If your stationary SI internal combustion engine is non-operational, you do not need to startup the engine solely to conduct a performance test; however, you must conduct the performance test immediately upon startup of the engine.

(c) You must conduct three separate test runs for each performance test required in this section, as specified in § 60.8(f). Each test run must be conducted within 10 percent of 100 percent peak (or the highest achievable) load and last at least 1 hour.

(d) To determine compliance with the NO_X mass per unit output emission limitation, convert the concentration of NO_X in the engine exhaust using Equation 1 of this section:

$$ER = \frac{C_d \times 1.912 \times 10^{-3} \times Q \times T}{HP - hr} \qquad \text{(Eq. 1)}$$

Where:

ER = Emission rate of NO_X in g/HP-hr.

C_d = Measured NO_X concentration in parts per million by volume (ppmv).

1.912×10^{-3} = Conversion constant for ppm NO_X to grams per standard cubic meter at 20 degrees Celsius.

Q = Stack gas volumetric flow rate, in standard cubic meter per hour, dry basis.

T = Time of test run, in hours.

HP-hr = Brake work of the engine, horsepower-hour (HP-hr).

(e) To determine compliance with the CO mass per unit output emission limitation, convert the concentration of CO in the engine exhaust using Equation 2 of this section:

$$ER = \frac{C_d \times 1.164 \times 10^{-3} \times Q \times T}{HP - hr} \qquad \text{(Eq. 2)}$$

Where:

ER = Emission rate of CO in g/HP-hr.

C_d = Measured CO concentration in ppmv.

1.164×10^{-3} = Conversion constant for ppm CO to grams per standard cubic meter at 20 degrees Celsius.

Q = Stack gas volumetric flow rate, in standard cubic meters per hour, dry basis.

T = Time of test run, in hours.

HP-hr = Brake work of the engine, in HP-hr.

(f) For purposes of this subpart, when calculating emissions of VOC, emissions of formaldehyde should not be included. To determine compliance with the VOC mass per unit output emission limitation, convert the concentration of VOC in the engine exhaust using Equation 3 of this section:

$$ER = \frac{C_d \times 1.833 \times 10^{-3} \times Q \times T}{HP - hr} \qquad \text{(Eq. 3)}$$

Where:

ER = Emission rate of VOC in g/HP-hr.

C_d = VOC concentration measured as propane in ppmv.

1.833×10^{-3} = Conversion constant for ppm VOC measured as propane, to grams per

standard cubic meter at 20 degrees Celsius.

Q = Stack gas volumetric flow rate, in standard cubic meters per hour, dry basis.

T = Time of test run, in hours.

HP-hr = Brake work of the engine, in HP-hr.

(g) If the owner/operator chooses to measure VOC emissions using either Method 18 of 40 CFR part 60, appendix A, or Method 320 of 40 CFR part 63, appendix A, then it has the option of correcting the measured VOC emissions to account for the potential differences in measured values between these methods and Method 25A. The results from Method 18 and Method 320 can be corrected for response factor differences using Equations 4 and 5 of this section. The corrected VOC concentration can then be placed on a propane basis using Equation 6 of this section.

$$RF_i = \frac{C_{Mi}}{C_{Ai}} \qquad \text{(Eq. 4)}$$

Where:

RF_i = Response factor of compound i when measured with EPA Method 25A.

C_{Mi} = Measured concentration of compound i in ppmv as carbon.

C_{Ai} = True concentration of compound i in ppmv as carbon.

$$C_{icorr} = RF_i \times C_{imeas} \qquad \text{(Eq. 5)}$$

Where:

$C_{i\ corr}$ = Concentration of compound i corrected to the value that would have been measured by EPA Method 25A, ppmv as carbon.

$C_{i\ meas}$ = Concentration of compound i measured by EPA Method 320, ppmv as carbon.

$$C_{Peq} = 0.6098 \times C_{icorr} \qquad \text{(Eq. 6)}$$

Where:

C_{Peq} = Concentration of compound i in mg of propane equivalent per DSCM.

Notification, Reports, and Records for Owners and Operators

§ 60.4245 What are my notification, reporting, and recordkeeping requirements if I am an owner or operator of a stationary SI internal combustion engine?

Owners or operators of stationary SI ICE must meet the following notification, reporting and recordkeeping requirements.

(a) Owners and operators of all stationary SI ICE must keep records of the information in paragraphs (a)(1) through (4) of this section.

(1) All notifications submitted to comply with this subpart and all documentation supporting any notification.

(2) Maintenance conducted on the engine.

(3) If the stationary SI internal combustion engine is a certified engine, documentation from the manufacturer that the engine is certified to meet the emission standards and information as required in 40 CFR parts 90 and 1048.

(4) If the stationary SI internal combustion engine is not a certified engine or is a certified engine operating in a non-certified manner and subject to § 60.4243(a)(2), documentation that the engine meets the emission standards.

(b) For all stationary SI emergency ICE greater than or equal to 500 HP manufactured on or after July 1, 2010, that do not meet the standards applicable to non-emergency engines, the owner or operator of must keep records of the hours of operation of the engine that is recorded through the non-resettable hour meter. For all stationary SI emergency ICE greater than or equal to 130 HP and less than 500 HP manufactured on or after July 1, 2011 that do not meet the standards applicable to non-emergency engines, the owner or operator of must keep records of the hours of operation of the engine that is recorded through the non-resettable hour meter. For all stationary SI emergency ICE greater than 25 HP and less than 130 HP manufactured on or after July 1, 2008, that do not meet the standards applicable to non-emergency engines, the owner or operator of must keep records of the hours of operation of the engine that is recorded through the non-resettable hour meter. The owner or operator must document how many hours are spent for emergency operation, including what classified the operation as emergency and how many hours are spent for non-emergency operation.

(c) Owners and operators of stationary SI ICE greater than or equal to 500 HP that have not been certified by an engine manufacturer to meet the emission standards in § 60.4231 must submit an initial notification as required in § 60.7(a)(1). The notification must include the information in paragraphs (c)(1) through (5) of this section.

(1) Name and address of the owner or operator;

(2) The address of the affected source;

(3) Engine information including make, model, engine family, serial number, model year, maximum engine power, and engine displacement;

(4) Emission control equipment; and

(5) Fuel used.

(d) Owners and operators of stationary SI ICE that are subject to performance testing must submit a copy of each performance test as conducted in § 60.4244 within 60 days after the test has been completed.

General Provisions

§ 60.4246 What parts of the General Provisions apply to me?

Table 3 to this subpart shows which parts of the General Provisions in §§ 60.1 through 60.19 apply to you.

Mobile Source Provisions

§ 60.4247 What parts of the mobile source provisions apply to me if I am a manufacturer of stationary SI internal combustion engines?

(a) Manufacturers certifying to emission standards in 40 CFR part 90, including manufacturers certifying emergency engines below 130 HP, must meet the provisions of 40 CFR part 90.

(b) Manufacturers certifying to emission standards in 40 CFR part 1048 must meet the provisions of 40 CFR part 1048. Manufacturers of stationary SI internal combustion engines that are less than 100 HP participating in the voluntary certification program must meet the requirements in Table 4 to this subpart.

(c) For manufacturers of stationary SI internal combustion engines participating in the voluntary certification program and certifying engines to Table 1 to this subpart, Table 4 to this subpart shows which parts of the mobile source provisions in 40 CFR parts 1048, 1065, and 1068 apply to you. Compliance with the deterioration factor provisions under 40 CFR 1048.205(n) and 1048.240 will be required for engines built new on and after January 1, 2010. Prior to January 1, 2010, manufacturers of stationary internal combustion engines participating in the voluntary certification program have the option to develop their own deterioration factors based on an engineering analysis.

Definitions

§ 60.4248 What definitions apply to this subpart?

As used in this subpart, all terms not defined herein shall have the meaning given them in the CAA and in subpart A of this part.

Certified emissions life means the period during which the engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as a number of hours of operation or calendar years, whichever comes first. The values for certified emissions life for stationary SI ICE with a maximum engine power less than or equal to 19 KW (25 HP) are given in 40 CFR 90.105. The values for certified emissions life for stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) certified to 40 CFR part 1048 are

given in 40 CFR 1048.101(g). The certified emissions life for stationary SI ICE with a maximum engine power greater than or equal to 75 KW (100 HP) certified under the voluntary manufacturer certification program of this subpart is 5,000 hours or 7 years, whichever comes first.

Certified stationary internal combustion engine means an engine that belongs to an engine family that has a certificate of conformity that complies with the emission standards and requirements in this part, or of 40 CFR part 90 or 40 CFR part 1048, as appropriate.

Combustion turbine means all equipment, including but not limited to the turbine, the fuel, air, lubrication and exhaust gas systems, control systems (except emissions control equipment), and any ancillary components and sub-components comprising any simple cycle combustion turbine, any regenerative/recuperative cycle combustion turbine, the combustion turbine portion of any cogeneration cycle combustion system, or the combustion turbine portion of any combined cycle steam/electric generating system.

Compression ignition means relating to a type of stationary internal combustion engine that is not a spark ignition engine.

Diesel fuel means any liquid obtained from the distillation of petroleum with a boiling point of approximately 150 to 360 degrees Celsius. One commonly used form is number 2 distillate oil.

Digester gas means any gaseous by-product of wastewater treatment typically formed through the anaerobic decomposition of organic waste materials and composed principally of methane and carbon dioxide (CO_2).

Emergency stationary internal combustion engine means any stationary internal combustion engine whose operation is limited to emergency situations and required testing and maintenance. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary ICE used to pump water in the case of fire or flood, etc. Stationary SI ICE used for peak shaving are not considered emergency stationary ICE. Stationary ICE used to supply power to an electric grid or that supply power as part of a financial arrangement with another entity are not considered to be emergency engines.

Engine manufacturer means the manufacturer of the engine. See the definition of ''manufacturer'' in this section.

Four-stroke engine means any type of engine which completes the power cycle in two crankshaft revolutions, with intake and compression strokes in the first revolution and power and exhaust strokes in the second revolution.

Gasoline means any fuel sold in any State for use in motor vehicles and motor vehicle engines, or nonroad or stationary engines, and commonly or commercially known or sold as gasoline.

Landfill gas means a gaseous by-product of the land application of municipal refuse typically formed through the anaerobic decomposition of waste materials and composed principally of methane and CO_2.

Lean burn engine means any two-stroke or four-stroke spark ignited engine that does not meet the definition of a rich burn engine.

Liquefied petroleum gas means any liquefied hydrocarbon gas obtained as a by-product in petroleum refining of natural gas production.

Manufacturer has the meaning given in section 216(1) of the Clean Air Act. In general, this term includes any person who manufactures a stationary engine for sale in the United States or otherwise introduces a new stationary engine into commerce in the United States. This includes importers who import stationary engines for resale.

Maximum engine power means maximum engine power as defined in 40 CFR 1048.801.

Model year means either: The calendar year in which the engine was originally produced, or the annual new model production period of the engine manufacturer if it is different than the calendar year. This must include January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year, and it must end by December 31 of the named calendar year. For an engine that is converted to a stationary engine after being placed into service as a nonroad or other non-stationary engine, model year means the calendar year or new model production period in which the engine was originally produced.

Natural gas means a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the Earth's surface, of which the principal constituent is methane. Natural gas may be field or pipeline quality.

Other internal combustion engine means any internal combustion engine, except combustion turbines, which is not a reciprocating internal combustion engine or rotary internal combustion engine.

Pipeline-quality natural gas means a naturally occurring fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) produced in geological formations beneath the Earth's surface that maintains a gaseous state at standard atmospheric temperature and pressure under ordinary conditions, and which is provided by a supplier through a pipeline. Pipeline-quality natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 950 and 1,100 British thermal units per standard cubic foot.

Rich burn engine means any four-stroke spark ignited engine where the manufacturer's recommended operating air/fuel ratio divided by the stoichiometric air/fuel ratio at full load conditions is less than or equal to 1.1. Engines originally manufactured as rich burn engines, but modified prior to June 12, 2006, with passive emission control technology for NO_X (such as pre-combustion chambers) will be considered lean burn engines. Also, existing engines where there are no manufacturer's recommendations regarding air/fuel ratio will be considered a rich burn engine if the excess oxygen content of the exhaust at full load conditions is less than or equal to 2 percent.

Rotary internal combustion engine means any internal combustion engine which uses rotary motion to convert heat energy into mechanical work.

Spark ignition means relating to either: a gasoline-fueled engine; or any other type of engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark ignition engines usually use a throttle to regulate intake air flow to control power during normal operation. Dual-fuel engines in which a liquid fuel (typically diesel fuel) is used for compression ignition and gaseous fuel (typically natural gas) is used as the primary fuel at an annual average ratio of less than 2 parts diesel fuel to 100 parts total fuel on an energy equivalent basis are spark ignition engines.

Stationary internal combustion engine means any internal combustion engine, except combustion turbines, that converts heat energy into mechanical work and is not mobile. Stationary ICE differ from mobile ICE in that a stationary internal combustion engine is

not a nonroad engine as defined at 40 CFR 1068.30 (excluding paragraph (2)(ii) of that definition), and is not used to propel a motor vehicle or a vehicle used solely for competition. Stationary ICE include reciprocating ICE, rotary ICE, and other ICE, except combustion turbines.

Stationary internal combustion engine test cell/stand means an engine test cell/stand, as defined in subpart PPPPP of this part, that test stationary ICE.

Stoichiometric means the theoretical air-to-fuel ratio required for complete combustion.

Subpart means 40 CFR part 60, subpart JJJJ.

Two-stroke engine means a type of engine which completes the power cycle in single crankshaft revolution by combining the intake and compression operations into one stroke and the power and exhaust operations into a second stroke. This system requires auxiliary scavenging and inherently runs lean of stoichiometric.

Volatile organic compounds means volatile organic compounds as defined in 40 CFR 51.100(s).

Voluntary certification program means an optional engine certification program that manufacturers of stationary SI internal combustion engines with a maximum engine power greater than 19 KW (25 HP) that do not use gasoline and are not rich burn engines that use LPG can choose to participate in to certify their engines to the emission standards in § 60.4231(d) or (e), as applicable.

Tables to Subpart JJJJ of Part 60

TABLE 1 TO SUBPART JJJJ OF PART 60.—NO_X, CO, AND VOC EMISSION STANDARDS FOR STATIONARY NON-EMERGENCY SI ENGINES ≥100 HP (EXCEPT GASOLINE AND RICH BURN LPG), STATIONARY SI LANDFILL/DIGESTER GAS ENGINES, AND STATIONARY EMERGENCY ENGINES >25 HP

Engine type and fuel	Maximum engine power	Manufacture date	Emission standards [a]					
			g/HP-hr			ppmvd at 15% O_2		
			NO_X	CO	VOC [d]	NO_X	CO	VOC [d]
Non-Emergency SI Natural Gas [b] and Non-Emergency SI Lean Burn LPG [b].	100≤HP<500	7/1/2008	2.0	4.0	1.0	160	540	86
		1/1/2011	1.0	2.0	0.7	82	270	60
Non-Emergency SI Lean Burn Natural Gas and LPG.	500≥HP<1,350	1/1/2008	2.0	4.0	1.0	160	540	86
		7/1/2010	1.0	2.0	0.7	82	270	60
Non-Emergency SI Natural Gas and Non-Emergency SI Lean Burn LPG (except lean burn 500=≥HP<1,350).	HP≥500	7/1/2007	2.0	4.0	1.0	160	540	86
	HP≥500	7/1/2010	1.0	2.0	0.7	82	270	60
Landfill/Digester Gas (except lean burn 500≥HP<1,350).	HP<500	7/1/2008	3.0	5.0	1.0	220	610	80
		1/1/2011	2.0	5.0	1.0	150	610	80
	HP≥500	7/1/2007	3.0	5.0	1.0	220	610	80
		7/1/2010	2.0	5.0	1.0	150	610	80
Landfill/Digester Gas Lean Burn	500≥HP<1,350	1/1/2008	3.0	5.0	1.0	220	610	80
		7/1/2010	2.0	5.0	1.0	150	610	80
Emergency	25>HP<130	1/1/2009	[c] 10	387	N/A	N/A	N/A	N/A
	HP≥130		2.0	4.0	1.0	160	540	86

[a] Owners and operators of stationary non-certified SI engines may choose to comply with the emission standards in units of either g/HP-hr or ppmvd at 15 percent O_2.

[b] Owners and operators of new or reconstructed non-emergency lean burn SI stationary engines with a site rating of greater than or equal to 250 brake HP located at a major source that are meeting the requirements of 40 CFR part 63, subpart ZZZZ, Table 2A do not have to comply with the CO emission standards of Table 1 of this subpart.

[c] The emission standards applicable to emergency engines between 25 HP and 130 HP are in terms of NO_X+HC.

[d] For purposes of this subpart, when calculating emissions of volatile organic compounds, emissions of formaldehyde should not be included.

TABLE 2 TO SUBPART JJJJ OF PART 60.—REQUIREMENTS FOR PERFORMANCE TESTS

[As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load]

For each	Complying with the requirement to	You must	Using	According to the following requirements
1. Stationary SI internal combustion engine demonstrating compliance according to § 60.4244.	a. limit the concentration of NO_X in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number of traverse points;	(1) Method 1 or 1A of 40 CFR part 60, Appendix A or ASTM Method D6522–00(2005) [a].	(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B [b] of 40 CFR part 60, appendix A or ASTM Method D6522–00(2005) [a].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for NO_X concentration.
		iii. Determine the exhaust flowrate of the stationary internal combustion engine exhaust;	(3) Method 2 or 19 of 40 CFR part 60.	

TABLE 2 TO SUBPART JJJJ OF PART 60.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load]

For each	Complying with the requirement to	You must	Using	According to the following requirements
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(4) Method 4 of 40 CFR part 60, appendix A, Method 320 of 40 CFR part 63, appendix A, or ASTM D6348–03 (incorporated by reference, see § 60.17).	(c) Measurements to determine moisture must be made at the same time as the measurement for NO_X concentration.
		v. Measure NO_X at the exhaust of the stationary internal combustion engine.	(5) Method 7E of 40 CFR part 60, appendix A, Method D6522–00(2005) [a], Method 320 of 40 CFR part 63, appendix A, or ASTM D6348–03 (incorporated by reference, see § 60.17).	(d) Results of this test consist of the average of the three 1-hour or longer runs.
	b. limit the concentration of CO in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number of traverse points;	(1) Method 1 or 1A of 40 CFR part 60, Appendix A.	(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3Bb of 40 CFR part 60, appendix A or ASTM Method D6522–00(2005) [a].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for CO concentration.
		iii. Determine the exhaust flowrate of the stationary internal combustion engine exhaust;	(3) Method 2 or 19 of 40 CFR part 60.	
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(4) Method 4 of 40 CFR part 60, appendix A, Method 320 of 40 CFR part 63, appendix A, or ASTM D6348–03 (incorporated by reference, see § 60.17).	(c) Measurements to determine moisture must be made at the same time as the measurement for CO concentration.
		v. Measure CO at the exhaust of the stationary internal combustion engine.	(5) Method 10 of 40 CFR part 60, appendix A, ASTM Method D6522–00(2005) [a], Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17).	(d) Results of this test consist of the average of the three 1-hour or longer runs.
	c. limit the concentration of VOC in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number of traverse points;	(1) Method 1 or 1A of 40 CFR part 60, Appendix A.	(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B [b] of 40 CFR part 60, appendix A or ASTM Method D6522–00(2005) [a].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for VOC concentration.
		iii. Determine the exhaust flowrate of the stationary internal combustion engine exhaust;	(3) Method 2 or 19 of 40 CFR part 60.	

TABLE 2 TO SUBPART JJJJ OF PART 60.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load]

For each	Complying with the requirement to	You must	Using	According to the following requirements
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(4) Method 4 of 40 CFR part 60, appendix A, Method 320 of 40 CFR part 63, appendix A, or ASTM D6348–03 (incorporated by reference, see § 60.17).	(c) Measurements to determine moisture must be made at the same time as the measurement for VOC concentration.
		v. Measure VOC at the exhaust of the stationary internal combustion engine.	(5) Methods 25A and 18 of 40 CFR part 60, appendix A, Method 25A with the use of a methane cutter as described in 40 CFR 1065.265, Method 18 or 40 CFR part 60, appendix A,[c d] Method 320 of 40 CFR part 63, appendix A, or ASTM D6348–03 (incorporated by reference, see § 60.17).	(d) Results of this test consist of the average of the three 1-hour or longer runs.

[a] ASTM D6522–00 is incorporated by reference; see 40 CFR 60.17. Also, you may petition the Administrator for approval to use alternative methods for portable analyzer.

[b] You may use ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses, for measuring the O_2 content of the exhaust gas as an alternative to EPA Method 3B.

[c] You may use EPA Method 18 of 40 CFR part 60, appendix A, provided that you conduct an adequate presurvey test prior to the emissions test, such as the one described in OTM 11 on EPA's Web site (*http://www.epa.gov/ttn/emc/prelim/otm11.pdf*).

[d] You may use ASTM D6420–99 (2004), Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry as an alternative to EPA Method 18 for measuring total nonmethane organic.

TABLE 3 TO SUBPART JJJJ OF PART 60.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJ

[As stated in § 60.4246, you must comply with the following applicable General Provisions]

General provisions citation	Subject of citation	Applies to subpart	Explanation
§ 60.1	General applicability of the General Provisions.	Yes.	
§ 60.2	Definitions	Yes	Additional terms defined in § 60.4248.
§ 60.3	Units and abbreviations	Yes.	
§ 60.4	Address	Yes.	
§ 60.5	Determination of construction or modification.	Yes.	
§ 60.6	Review of plans	Yes.	
§ 60.7	Notification and Recordkeeping	Yes	Except that § 60.7 only applies as specified in § 60.4245.
§ 60.8	Performance tests	Yes	Except that § 60.8 only applies to owners and operators who are subject to performance testing in subpart JJJJ.
§ 60.9	Availability of information	Yes.	
§ 60.10	State Authority	Yes.	
§ 60.11	Compliance with standards and maintenance requirements.	Yes	Requirements are specified in subpart JJJJ.
§ 60.12	Circumvention	Yes.	
§ 60.13	Monitoring requirements	No.	
§ 60.14	Modification	Yes.	
§ 60.15	Reconstruction	Yes.	
§ 60.16	Priority list	Yes.	
§ 60.17	Incorporations by reference	Yes.	
§ 60.18	General control device requirements.	No.	
§ 60.19	General notification and reporting requirements.	Yes.	

TABLE 4 TO SUBPART JJJJ OF PART 60.—APPLICABILITY OF MOBILE SOURCE PROVISIONS FOR MANUFACTURERS PARTICIPATING IN THE VOLUNTARY CERTIFICATION PROGRAM AND CERTIFYING STATIONARY SI ICE TO EMISSION STANDARDS IN TABLE 1 OF SUBPART JJJJ

[As stated in § 60.4247, you must comply with the following applicable mobile source provisions if you are a manufacturer participating in the voluntary certification program and certifying stationary SI ICE to emission standards in Table 1 of Subpart JJJJ]

Mobile source provisions citation	Subject of citation	Applies to subpart	Explanation
1048 Subpart A	Overview and Applicability	Yes.	
1048 Subpart B	Emission Standards and Related Requirements.	Yes	Except for the specific sections below.
1048.101	Exhaust Emission Standards	No.	
1048.105	Evaporative Emission Standards	No.	
1048.110	Diagnosing Malfunctions	No.	
1048.140	Certifying Blue Sky Series Engines.	No.	
1048.145	Interim Provisions	No.	
1048 Subpart C	Certifying Engine Families	Yes	Except for the specific sections below.
1048.205(b)	AECD reporting	Yes.	
1048.205(c)	OBD Requirements	No.	
1048.205(n)	Deterioration Factors	Yes	Except as indicated in 60.4247(c).
1048.205(p)(1)	Deterioration Factor Discussion	Yes.	
1048.205(p)(2)	Liquid Fuels as they require	No.	
1048.240(b)(c)(d)	Deterioration Factors	Yes.	
1048 Subpart D	Testing Production-Line Engines	Yes.	
1048 Subpart E	Testing In-Use Engines	No.	
1048 Subpart F	Test Procedures	Yes.	
1065.5(a)(4)	Raw sampling (refers reader back to the specific emissions regulation for guidance).	Yes.	
1048 Subpart G	Compliance Provisions	Yes.	
1048 Subpart H	Reserved.		
1048 Subpart I	Definitions and Other Reference Information.	Yes.	
1048 Appendix I and II		Yes.	
1065 (all subparts)	Engine Testing Procedures	Yes	Except for the specific section below.
1065.715	Test Fuel Specifications for Natural Gas.	No.	
1068 (all subparts)	General Compliance Provisions for Nonroad Programs.	Yes	Except for the specific sections below.
1068.245	Hardship Provisions for Unusual Circumstances.	No.	
1068.250	Hardship Provisions for Small-Volume Manufacturers.	No.	
1068.255	Hardship Provisions for Equipment Manufacturers and Secondary Engine Manufacturers.	No.	

PART 63—[AMENDED]

■ 4. The authority citation for part 63 continues to read as follows:

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

Subpart A—[AMENDED]

■ 5. Section 63.14 is amended by revising paragraph (b)(27) and adding paragraph (b)(64) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(27) ASTM D6522–00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers,[1] IBR approved for § 63.9307(c)(2) and Table 5 to Subpart DDDDD of this part.

* * * * *

(64) ASTM D6522–00 (Reapproved 2005), Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers,[1] IBR approved for Table 4 to Subpart ZZZZ of this part.

* * * * *

■ 6. Section 63.6580 is revised to read as follows:

§ 63.6580 What is the purpose of subpart ZZZZ?

Subpart ZZZZ establishes national emission limitations and operating limitations for hazardous air pollutants (HAP) emitted from stationary reciprocating internal combustion engines (RICE) located at major and area sources of HAP emissions. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and operating limitations.

■ 7. Section 63.6585 is amended by:

■ a. Revising the introductory text;

■ b. Adding paragraph (c);

■ c. Adding paragraph (d); and

■ d. Adding paragraph (e).

The revision and additions read as follows:

§ 63.6585 Am I subject to this subpart?

You are subject to this subpart if you own or operate a stationary RICE at a major or area source of HAP emissions, except if the stationary RICE is being tested at a stationary RICE test cell/stand.

* * * * *

(c) An area source of HAP emissions is a source that is not a major source.

(d) If you are an owner or operator of an area source subject to this subpart, your status as an entity subject to a standard or other requirements under this subpart does not subject you to the obligation to obtain a permit under 40 CFR part 70 or 71, provided you are not required to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a) for a reason other than your status as an area source under this subpart. Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart as applicable.

(e) If you are an owner or operator of a stationary RICE used for national security purposes, you may be eligible to request an exemption from the requirements of this subpart as described in 40 CFR part 1068, subpart C.

■ 8. Section 63.6590 is amended by revising paragraphs (a) and (b), and adding paragraph (c), to read as follows:

§ 63.6590 What parts of my plant does this subpart cover?

* * * * *

(a) *Affected source.* An affected source is any existing, new, or reconstructed stationary RICE located at a major or area source of HAP emissions, excluding stationary RICE being tested at a stationary RICE test cell/stand.

(1) *Existing stationary RICE.*

(i) For stationary RICE with a site rating of more than 500 brake horsepower (HP) located at a major source of HAP emissions, a stationary RICE is existing if you commenced construction or reconstruction of the stationary RICE before December 19, 2002.

(ii) For stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions, a stationary RICE is existing if you commenced construction or reconstruction of the stationary RICE before June 12, 2006.

(iii) For stationary RICE located at an area source of HAP emissions, a stationary RICE is existing if you commenced construction or reconstruction of the stationary RICE before June 12, 2006.

(iv) A change in ownership of an existing stationary RICE does not make that stationary RICE a new or reconstructed stationary RICE.

(2) *New stationary RICE.* (i) A stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions is new if you commenced construction of the stationary RICE on or after December 19, 2002.

(ii) A stationary RICE with a site rating of equal to or less than 500 brake HP located at a major source of HAP emissions is new if you commenced construction of the stationary RICE on or after June 12, 2006.

(iii) A stationary RICE located at an area source of HAP emissions is new if you commenced construction of the stationary RICE on or after June 12, 2006.

(3) *Reconstructed stationary RICE.* (i) A stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions is reconstructed if you meet the definition of reconstruction in § 63.2 and reconstruction is commenced on or after December 19, 2002.

(ii) A stationary RICE with a site rating of equal to or less than 500 brake HP located at a major source of HAP emissions is reconstructed if you meet the definition of reconstruction in § 63.2 and reconstruction is commenced on or after June 12, 2006.

(iii) A stationary RICE located at an area source of HAP emissions is reconstructed if you meet the definition of reconstruction in § 63.2 and reconstruction is commenced on or after June 12, 2006.

(b) *Stationary RICE subject to limited requirements.* (1) An affected source which meets either of the criteria in paragraph (b)(1)(i) through (ii) of this section does not have to meet the requirements of this subpart and of subpart A of this part except for the initial notification requirements of § 63.6645(h).

(i) The stationary RICE is a new or reconstructed emergency stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions; or

(ii) The stationary RICE is a new or reconstructed limited use stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions.

(2) A new or reconstructed stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions which combusts landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis must meet the initial notification requirements of § 63.6645(h) and the requirements of §§ 63.6625(c), 63.6650(g), and 63.6655(c). These stationary RICE do not have to meet the emission limitations and operating limitations of this subpart.

(3) A stationary RICE which is an existing spark ignition 4 stroke rich burn (4SRB) stationary RICE located at an area source, an existing spark ignition 4SRB stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source, an existing spark ignition 2 stroke lean burn (2SLB) stationary RICE, an existing spark ignition 4 stroke lean burn (4SLB) stationary RICE, an existing compression ignition (CI) stationary RICE, an existing emergency stationary RICE, an existing limited use stationary RICE, or an existing stationary RICE that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, does not have to meet the requirements of this subpart and of subpart A of this part. No initial notification is necessary.

(c) *Stationary RICE subject to Regulations under 40 CFR Part 60.* An affected source that is a new or reconstructed stationary RICE located at an area source, or is a new or reconstructed stationary RICE located at a major source of HAP emissions and is a spark ignition 2 stroke lean burn (2SLB) stationary RICE with a site rating of less than 500 brake HP, a spark ignition 4 stroke lean burn (4SLB) stationary RICE with a site rating of less than 250 brake HP, or a 4 stroke rich burn (4SRB) stationary RICE with a site rating of less than or equal to 500 brake HP, a stationary RICE with a site rating of less than or equal to 500 brake HP which combusts landfill or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, an emergency or limited use stationary RICE with a site rating of less than or equal to 500 brake HP, or a compression ignition (CI) stationary RICE with a site rating of less than or equal to 500 brake HP, must meet the requirements of this part by meeting the requirements of 40 CFR part 60 subpart IIII, for compression ignition engines or 40 CFR part 60 subpart JJJJ, for spark ignition engines. No further requirements apply for such engines under this part.

■ 9. Section 63.6595 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 63.6595 When do I have to comply with this subpart?

(a) *Affected Sources.* (1) If you have an existing stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, you must comply with the

applicable emission limitations and operating limitations no later than June 15, 2007.

(2) If you start up your new or reconstructed stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions before August 16, 2004, you must comply with the applicable emission limitations and operating limitations in this subpart no later than August 16, 2004.

(3) If you start up your new or reconstructed stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions after August 16, 2004, you must comply with the applicable emission limitations and operating limitations in this subpart upon startup of your affected source.

(4) If you start up your new or reconstructed stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions before January 18, 2008, you must comply with the applicable emission limitations and operating limitations in this subpart no later than January 18, 2008.

(5) If you start up your new or reconstructed stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions after January 18, 2008, you must comply with the applicable emission limitations and operating limitations in this subpart upon startup of your affected source.

(6) If you start up your new or reconstructed stationary RICE located at an area source of HAP emissions before January 18, 2008, you must comply with the applicable emission limitations and operating limitations in this subpart no later than January 18, 2008.

(7) If you start up your new or reconstructed stationary RICE located at an area source of HAP emissions after January 18, 2008, you must comply with the applicable emission limitations and operating limitations in this subpart upon startup of your affected source.

(b)* * *

(2) Any stationary RICE for which construction or reconstruction is commenced before your area source becomes a major source of HAP must be in compliance with the provisions of this subpart that are applicable to RICE located at major sources within 3 years after your area source becomes a major source of HAP.

* * * * *

■ 10. Section 63.6600 is revised to read as follows:

§ 63.6600 What emission limitations and operating limitations must I meet if I own or operate a stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions?

(a) If you own or operate an existing, new, or reconstructed spark ignition 4SRB stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, you must comply with the emission limitations in Table 1a to this subpart and the operating limitations in Table 1b to this subpart which apply to you.

(b) If you own or operate a new or reconstructed 2SLB stationary RICE with a site rating of more than 500 brake HP located at major source of HAP emissions, a new or reconstructed 4SLB stationary RICE with a site rating of more than 500 brake HP located at major source of HAP emissions, or a new or reconstructed CI stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, you must comply with the emission limitations in Table 2a to this subpart and the operating limitations in Table 2b to this subpart which apply to you.

(c) If you own or operate any of the following RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, you do not need to comply with the emission limitations in Tables 1a and 2a to this subpart or operating limitations in Tables 1b and 2b to this subpart: an existing 2SLB stationary RICE, an existing 4SLB stationary RICE, or an existing CI stationary RICE; a stationary RICE that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis; an emergency stationary RICE; or a limited use stationary RICE.

■ 11. Section 63.6601 is added to read as follows:

§ 63.6601 What emission limitations must I meet if I own or operate a 4SLB stationary RICE with a site rating of greater than or equal to 250 brake HP and less than 500 brake HP located at a major source of HAP emissions?

If you own or operate a new or reconstructed 4SLB stationary RICE with a site rating of greater than or equal to 250 and less than or equal to 500 brake HP located at major source of HAP emissions manufactured on or after January 1, 2008, you must comply with the emission limitations in Table 2a to this subpart and the operating limitations in Table 2b to this subpart which apply to you.

■ 12. Section 63.6610 is amended by:

■ a. Revising the section heading;

■ b. Adding introductory text; and

■ c. Revising paragraphs (a) through (c).

The revisions and additions read as follows:

§ 63.6610 By what date must I conduct the initial performance tests or other initial compliance demonstrations if I own or operate a stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions?

If you own or operate a stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions you are subject to the requirements of this section.

(a) You must conduct the initial performance test or other initial compliance demonstrations in Table 4 to this subpart that apply to you within 180 days after the compliance date that is specified for your stationary RICE in § 63.6595 and according to the provisions in § 63.7(a)(2).

(b) If you commenced construction or reconstruction between December 19, 2002 and June 15, 2004 and own or operate stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, you must demonstrate initial compliance with either the proposed emission limitations or the promulgated emission limitations no later than February 10, 2005 or no later than 180 days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(c) If you commenced construction or reconstruction between December 19, 2002 and June 15, 2004 and own or operate stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, and you chose to comply with the proposed emission limitations when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limitations by December 13, 2007 or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

* * * * *

■ 13. Section 63.6611 is added to read as follows:

§ 63.6611 By what date must I conduct the initial performance tests or other initial compliance demonstrations if I own or operate a 4SLB SI stationary RICE with a site rating of greater than or equal to 250 and less than or equal to 500 brake HP located at a major source of HAP emissions?

If you own or operate a new or reconstructed 4SLB stationary RICE with a site rating of greater than or equal to 250 and less than or equal to 500 brake HP located at a major source of HAP emissions, you must conduct an

initial performance test within 240 days after the compliance date that is specified for your stationary RICE in § 63.6595 and according to the provisions specified in Table 4 to this subpart, as appropriate.

■ 14. Section 63.6625 is amended by adding paragraph (d) to read as follows:

§ 63.6625 What are my monitoring, installation, operation, and maintenance requirements?

* * * * *

(d) If you are operating a new or reconstructed emergency 4SLB stationary RICE with a site rating of greater than or equal to 250 and less than or equal to 500 brake HP located at a major source of HAP emissions, you must install a non-resettable hour meter prior to the startup of the engine.

■ 15. Section 63.6640 is amended by revising paragraph (e) to read as follows:

§ 63.6640 How do I demonstrate continuous compliance with the emission limitations and operating limitations?

* * * * *

(e) You must also report each instance in which you did not meet the requirements in Table 8 to this subpart that apply to you. If you own or operate any stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions (except new or reconstructed 4SLB engines greater than or equal to 250 and less than or equal to 500 brake HP), a stationary RICE located at an area source of HAP emissions, or any of the following RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, you do not need to comply with the requirements in Table 8 to this subpart: An existing 2SLB stationary RICE, an existing 4SLB stationary RICE, an existing CI stationary RICE, an existing emergency stationary RICE, an existing limited use emergency stationary RICE, or an existing stationary RICE which fires landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis. If you own or operate any of the following RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, you do not need to comply with the requirements in Table 8 to this subpart, except for the initial notification requirements: a new or reconstructed stationary RICE that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, a new or reconstructed emergency stationary RICE, or a new or reconstructed limited use stationary RICE.

■ 16. Section 63.6645 is revised to read as follows:

§ 63.6645 What notifications must I submit and when?

(a) If you own or operate a stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions or a new or reconstructed 4SLB stationary RICE with a site rating of greater than or equal to 250 HP located at a major source of HAP emissions, you must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), (f)(4) and (f)(6), 63.9(b) through (e), and (g) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions before the effective date of this subpart, you must submit an Initial Notification not later than December 13, 2004.

(c) If you start up your new or reconstructed stationary RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions on or after August 16, 2004, you must submit an Initial Notification not later than 120 days after you become subject to this subpart.

(d) As specified in § 63.9(b)(2), if you start up your stationary RICE with a site rating of equal to or less than 500 brake HP located at a major source of HAP emissions before the effective date of this subpart and you are required to submit an initial notification, you must submit an Initial Notification not later than July 16, 2008.

(e) If you start up your new or reconstructed stationary RICE with a site rating of equal to or less than 500 brake HP located at a major source of HAP emissions on or after March 18, 2008 and you are required to submit an initial notification, you must submit an Initial Notification not later than 120 days after you become subject to this subpart.

(f) If you are required to submit an Initial Notification but are otherwise not affected by the requirements of this subpart, in accordance with § 63.6590(b), your notification should include the information in § 63.9(b)(2)(i) through (v), and a statement that your stationary RICE has no additional requirements and explain the basis of the exclusion (for example, that it operates exclusively as an emergency stationary RICE if it has a site rating of more than 500 brake HP located at a major source of HAP emissions).

(g) If you are required to conduct a performance test, you must submit a Notification of Intent to conduct a performance test at least 60 days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(h) If you are required to conduct a performance test or other initial compliance demonstration as specified in Tables 4 and 5 to this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration required in Table 5 to this subpart that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration required in Table 5 to this subpart that includes a performance test conducted according to the requirements in Table 3 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th day following the completion of the performance test according to § 63.10(d)(2).

■ 17. Section 63.6665 is revised to read as follows:

§ 63.6665 What parts of the General Provisions apply to me?

Table 8 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you. If you own or operate any stationary RICE with a site rating of less than or equal to 500 brake HP located at a major source of HAP emissions (except new or reconstructed 4SLB engines greater than or equal to 250 and less than or equal to 500 brake HP), a stationary RICE located at an area source of HAP emissions, or any of the following RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, you do not need to comply with any of the requirements of the General Provisions: An existing 2SLB RICE, an existing 4SLB stationary RICE, an existing CI stationary RICE, an existing stationary RICE that combusts landfill gas or digester gas equivalent to 10 percent or more of the gross heat input on an annual basis, an existing emergency stationary RICE, or an existing limited use stationary RICE. If you own or operate any of the following RICE with a site rating of more than 500 brake HP located at a major source of HAP emissions, you do not need to comply with the requirements in the General Provisions except for the initial notification requirements: A new stationary RICE that combusts landfill gas or digester gas equivalent to 10

percent or more of the gross heat input on an annual basis, a new emergency stationary RICE, or a new limited use stationary RICE.

■ 18. Section 63.6675 is amended by:

■ a. Adding definitions of ''Compression Ignition,'' ''Gasoline,'' and ''Spark ignition'' in alphabetical order;

■ b. Removing the definitions for ''Compression ignition engine'' and ''Spark ignition engine;'' and

■ c. Revising the definitions of ''Emergency stationary RICE'' and ''Natural gas;'' to read as follows:

§ 63.6675 What definitions apply to this subpart?

* * * * *

Compression ignition means relating to a type of stationary internal combustion engine that is not a spark ignition engine.

* * * * *

Emergency stationary RICE means any stationary RICE whose operation is limited to emergency situations and required testing and maintenance. Examples include stationary RICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary RICE used to pump water in the case of fire or flood, etc. Stationary RICE used for peak shaving are not considered emergency stationary RICE. Stationary ICE used to supply power to an electric grid or that supply power as part of a financial arrangement with another entity are not considered to be emergency engines. Emergency stationary RICE with a site-rating of more than 500 brake HP located at a major source of HAP emissions that were installed prior to June 12, 2006, may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by the manufacturer, the vendor, or the insurance company associated with the engine. Required testing of such units should be minimized, but there is no time limit on the use of emergency stationary RICE in emergency situations and for routine testing and maintenance. Emergency stationary RICE with a site-rating of more than 500 brake HP located at a major source of HAP emissions that were installed prior to June 12, 2006, may also operate an additional 50 hours per year in non-emergency situations. Emergency stationary RICE with a site-rating of more than 500 brake HP located at a major source of HAP emissions that were installed on or after June 12, 2006, must comply with requirements specified in 40 CFR 60.4243(d).

* * * * *

Gasoline means any fuel sold in any State for use in motor vehicles and motor vehicle engines, or nonroad or stationary engines, and commonly or commercially known or sold as gasoline.

* * * * *

Natural gas means a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the Earth's surface, of which the principal constituent is methane. Natural gas may be field or pipeline quality.

* * * * *

Spark ignition means relating to either: A gasoline-fueled engine; or any other type of engine a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle. Spark ignition engines usually use a throttle to regulate intake air flow to control power during normal operation. Dual-fuel engines in which a liquid fuel (typically diesel fuel) is used for CI and gaseous fuel (typically natural gas) is used as the primary fuel at an annual average ratio of less than 2 parts diesel fuel to 100 parts total fuel on an energy equivalent basis are spark ignition engines.

* * * * *

■ 19. Table 1a to Subpart ZZZZ of part 63 is revised to read as follows:

TABLE 1A TO SUBPART ZZZZ OF PART 63.—EMISSION LIMITATIONS FOR EXISTING, NEW, AND RECONSTRUCTED SPARK IGNITION, 4SRB STATIONARY RICE >500 HP LOCATED AT A MAJOR SOURCE OF HAP EMISSIONS

[As stated in § 63.6600, you must comply with the following emission limitations for existing, new and reconstructed 4SRB stationary RICE >500 HP located at a major source of HAP emissions at 100 percent load plus or minus 10 percent]

For each...	You must meet the following emission limitations...
1. 4SRB stationary RICE	a. reduce formaldehyde emissions by 76 percent or more. If you commenced construction or reconstruction between December 19, 2002 and June 15, 2004, you may reduce formaldehyde emissions by 75 percent or more until June 15, 2007; or b. limit the concentration of formaldehyde in the stationary RICE exhaust 350 ppbvd or less at 15 percent O_2.

■ 20. Table 1b to Subpart ZZZZ of Part 63 is revised to read as follows:

TABLE 1B TO SUBPART ZZZZ OF PART 63.—OPERATING LIMITATIONS FOR EXISTING, NEW, AND RECONSTRUCTED SPARK IGNITION, 4SRB STATIONARY RICE >500 HP LOCATED AT A MAJOR SOURCE OF HAP EMISSIONS

[As stated in §§ 63.6600, 63.6630 and 63.6640, you must comply with the following operating emission limitations for existing, new and reconstructed 4SRB stationary RICE >500 HP located at a major source of HAP emissions]

For each...	You must meet the following operating limitation...
1. 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions by 76 percent or more (or by 75 percent or more, if applicable) and using NSCR;. or	a. maintain your catalyst so that the pressure drop across the catalyst does not change by more than 2 inches of water at 100 percent load plus or minus 10 percent from the pressure drop across the catalyst measured during the initial performance test; and

TABLE 1B TO SUBPART ZZZZ OF PART 63.—OPERATING LIMITATIONS FOR EXISTING, NEW, AND RECONSTRUCTED SPARK IGNITION, 4SRB STATIONARY RICE >500 HP LOCATED AT A MAJOR SOURCE OF HAP EMISSIONS—Continued

[As stated in §§ 63.6600, 63.6630 and 63.6640, you must comply with the following operating emission limitations for existing, new and reconstructed 4SRB stationary RICE >500 HP located at a major source of HAP emissions]

For each...	You must meet the following operating limitation...
4SRB stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust to 350 ppbvd or less at 15 percent O_2 and using NSCR..	b. maintain the temperature of your stationary RICE exhaust so that the catalyst inlet temperature is greater than or equal to 750°F and less than or equal to 1250°F.
2. 4SRB stationary RICE complying with the requirement to reduce formaldehyde emissions by 76 percent or more (or by 75 percent or more, if applicable) and not using NSCR;.	Comply with any operating limitations approved by the Administrator.
or	
4SRB stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust to 350 ppbvd or less at 15 percent O_2 and not using NSCR..	

■ 21. Table 2a to Subpart ZZZZ of Part 63 is revised to read as follows:

TABLE 2A TO SUBPART ZZZZ OF PART 63.—EMISSION LIMITATIONS FOR NEW AND RECONSTRUCTED 2SLB AND COMPRESSION IGNITION STATIONARY RICE >500 HP AND 4SLB STATIONARY RICE ≥250 HP LOCATED AT A MAJOR SOURCE OF HAP EMISSIONS

[As stated in §§ 63.6600 and 63.6601, you must comply with the following emission limitations for new and reconstructed lean burn and new and reconstructed compression ignition stationary RICE at 100 percent load plus or minus 10 percent]

For each...	You must meet the following emission limitation...
1. 2SLB stationary RICE	a. reduce CO emissions by 58 percent or more; or b. limit concentration of formaldehyde in the stationary RICE exhaust to 12 ppmvd or less at 15 percent O_2. If you commenced construction or reconstruction between December 19, 2002 and June 15, 2004, you may limit concentration of formaldehyde to 17 ppmvd or less at 15 percent O_2 until June 15, 2007.
2. 4SLB stationary RICE	a. reduce CO emissions by 93 percent or more; or b. limit concentration of formaldehyde in the stationary RICE exhaust to 14 ppmvd or less at 15 percent O_2.
3. CI stationary RICE	a. reduce CO emissions by 70 percent or more; or b. limit concentration of formaldehyde in the stationary RICE exhaust to 580 ppbvd or less at 15 percent O_2.

■ 22. Table 2b to Subpart ZZZZ of Part 63 is revised to read as follows:

TABLE 2B TO SUBPART ZZZZ OF PART 63.—OPERATING LIMITATIONS FOR NEW AND RECONSTRUCTED 2SLB AND COMPRESSION IGNITION STATIONARY RICE >500 HP AND 4SLB BURN STATIONARY RICE ≥250 HP LOCATED AT A MAJOR SOURCE OF HAP EMISSIONS

[As stated in §§ 63.6600, 63.6601, 63.6630, and 63.6640, you must comply with the following operating limitations for new and reconstructed lean burn and new and reconstructed compression ignition stationary]

For each...	You must meet the following operating limitation...
1. 2SLB and 4SLB stationary RICE and CI stationary RICE complying with the requirement to reduce CO emissions and using an oxidation catalyst; or 2SLB and 4SLB stationary RICE and CI stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust and using an oxidation catalyst.	a. maintain your catalyst so that the pressure drop across the catalyst does not change by more than 2 inches of water at 100 percent load plus or minus 10 percent from the pressure drop across the catalyst that was measured during the initial performance test; and b. maintain the temperature of your stationary RICE exhaust so that the catalyst inlet temperature is greater than or equal to 450 °F and less than or equal to 1350 °F.
2. 2SLB and 4SLB stationary RICE and CI stationary RICE complying with the requirement to reduce CO emissions and not using an oxidation catalyst; or 2SLB and 4SLB stationary RICE and CI stationary RICE complying with the requirement to limit the concentration of formaldehyde in the stationary RICE exhaust and not using an oxidation catalyst.	Comply with any operating limitations approved by the Administrator.

■ 23. Table 4 to subpart ZZZZ of part 63 is revised to read as follows:

TABLE 4 TO SUBPART ZZZZ OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

[As stated in §§ 63.6610, 63.6611, 63.6620, and 63.6640, you must comply with the following requirements for performance tests for stationary RICE]

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
1. 2SLB, 4SLB, and CI stationary RICE.	a. Reduce CO emissions ..	i. Measure the O_2 at the inlet and outlet of the control device; and.	(1) Portable CO and O_2 analyzer.	(a) Using ASTM D6522–00 (2005) [a] (incorporated by reference, see § 63.14). Measurements to determine O_2 must be made at the same time as the measurements for CO concentration.
		ii. Measure the CO at the inlet and the outlet of the control device.	(1) Portable CO and O_2 analyzer.	(a) Using ASTM D6522–00 (2005) [a] (incorporated by reference, see § 63.14) or Method 10 of 40 CFR, appendix A. The CO concentration must be at 15 percent O_2, dry basis.
2. 4SRB stationary RICE ..	a. Reduce formaldehyde emissions.	i. Select the sampling port location and the number of traverse points; and.	(1) Method 1 or 1A of 40 CFR part 60, appendix A § 63.7(d)(1)(i).	(a) Sampling sites must be located at the inlet and outlet of the control device.
		ii. Measure O_2 at the inlet and outlet of the control device; and.	(1) Method 3 or 3A or 3B of 40 CFR part 60, appendix A, or ASTM Method D6522–00 (2005)..	(a) Measurements to determine O_2 concentration must be made at the same time as the measurements for formaldehyde concentration.
		iii. Measure moisture content at the inlet and outlet of the control device; and.	(1) Method 4 of 40 CFR part 60, appendix A, or Test Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03.	(a) Measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde concentration.
		iv. Measure formaldehyde at the inlet and the outlet of the control device.	(1) Method 320 or 323 of 40 CFR part 63, appendix A; or ASTM D6348–03 [b], provided in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.	(a) Formaldehyde concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.
3. Stationary RICE	a. Limit the concentration of formaldehyde in the stationary RICE exhaust.	i. Select the sampling port location and the number of traverse points; and.	(1) Method 1 or 1A of 40 CFR part 60, appendix A § 63.7(d)(1)(i).	(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary RICE exhaust at the sampling port location; and.	(1) Method 3 or 3A or 3B of 40 CFR part 60, appendix A, or ASTM Method D6522–00 (2005).	(a) Measurements to determine O_2 concentration must be made at the same time and location as the measurements for formaldehyde concentration.
		iii. Measure moisture content of the stationary RICE exhaust at the sampling port location; and.	(1) Method 4 of 40 CFR part 60, appendix A, or Test Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03.	(a) Measurements to determine moisture content must be made at the same time and location as the measurements for formaldehyde concentration.

TABLE 4 TO SUBPART ZZZZ OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in §§ 63.6610, 63.6611, 63.6620, and 63.6640, you must comply with the following requirements for performance tests for stationary RICE]

For each . . .	Complying with the requirement to . . .	You must . . .	Using . . .	According to the following requirements . . .
		iv. Measure formaldehyde at the exhaust of the stationary RICE.	(1) Method 320 or 323 of 40 CFR part 63, appendix A; or ASTM D6348–03 [b], provided in ASTM D6348–03 Annex A5 (Analyte Spiking Technique), the percent R must be greater than or equal to 70 and less than or equal to 130.	(a) Formaldehyde concentration must be at 15 percent O_2, dry basis. Results of this test consist of the average of the three 1-hour or longer runs.

[a] You may also use Methods 3A and 10 as options to ASTM–D6522–00 (2005). You may obtain a copy of ASTM–D6522–00 (2005) from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

[b] You may obtain a copy of ASTM–D6348–03 from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959, or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

■ 24. Table 8 to subpart ZZZZ of part 63 is revised to read as follows:

TABLE 8 TO SUBPART ZZZZ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART ZZZZ

[As stated in § 63.6665, you must comply with the following applicable general provisions]

General provisions citation	Subject of citation	Applies to subpart	Explanation
§ 63.1	General applicability of the General Provisions.	Yes.	
§ 63.2	Definitions	Yes	Additional terms defined in § 63.6675.
§ 63.3	Units and abbreviations	Yes.	
§ 63.4	Prohibited activities and circumvention.	Yes.	
§ 63.5	Construction and reconstruction	Yes.	
§ 63.6(a)	Applicability	Yes.	
§ 63.6(b)(1)–(4)	Compliance dates for new and reconstructed sources.	Yes.	
§ 63.6(b)(5)	Notification	Yes.	
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance dates for new and reconstructed area sources that become major sources.	Yes.	
§ 63.6(c)(1)–(2)	Compliance dates for existing sources.	Yes.	
§ 63.6(c)(3)–(4)	[Reserved].		
§ 36.6(c)(5)	Compliance dates for existing area sources that become major sources.	Yes.	
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)	Operation and maintenance	Yes.	
§ 63.6(e)(2)	[Reserved].		
§ 63.6(e)(3)	Startup, shutdown, and malfunction plan.	Yes.	
§ 63.6(f)(1)	Applicability of standards except during startup shutdown malfunction (SSM).	Yes.	
§ 63.6(f)(2)	Methods for determining compliance.	Yes.	
§ 63.6(f)(3)	Finding of compliance	Yes.	
§ 63.6(g)(1)–(3)	Use of alternate standard	Yes.	
§ 63.6(h)	Opacity and visible emission standards.	No	Subpart ZZZZ does not contain opacity or visible emission standards.
§ 63.6(i)	Compliance extension procedures and criteria.	Yes.	
§ 63.6(j)	Presidential compliance exemption.	Yes.	

TABLE 8 TO SUBPART ZZZZ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART ZZZZ—Continued

[As stated in § 63.6665, you must comply with the following applicable general provisions]

General provisions citation	Subject of citation	Applies to subpart	Explanation
§ 63.7(a)(1)–(2)	Performance test dates	Yes	Subpart ZZZZ contains performance test dates at §§ 63.6610 and 63.6611.
§ 63.7(a)(3)	CAA section 114 authority	Yes.	
§ 63.7(b)(1)	Notification of performance test	Yes.	
§ 63.7(b)(2)	Notification of rescheduling	Yes.	
§ 63.7(c)	Quality assurance/test plan	Yes.	
§ 63.7(d)	Testing facilities	Yes.	
§ 63.7(e)(1)	Conditions for conducting performance tests.	Yes.	
§ 63.7(e)(2)	Conduct of performance tests and reduction of data.	Yes	Subpart ZZZZ specifies test methods at § 63.6620.
§ 63.7(e)(3)	Test run duration	Yes.	
§ 63.7(e)(4)	Administrator may require other testing under section 114 of the CAA.	Yes.	
§ 63.7(f)	Alternative test method provisions	Yes.	
§ 63.7(g)	Performance test data analysis, recordkeeping, and reporting.	Yes.	
§ 63.7(h)	Waiver of tests	Yes.	
§ 63.8(a)(1)	Applicability of monitoring requirements.	Yes	Subpart ZZZZ contains specific requirements for monitoring at § 63.6625.
§ 63.8(a)(2)	Performance specifications	Yes.	
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring for control devices	No.	
§ 63.8(b)(1)	Monitoring	Yes.	
§ 63.8(b)(2)–(3)	Multiple effluents and multiple monitoring systems.	Yes.	
§ 63.8(c)(1)	Monitoring system operation and maintenance.	Yes.	
§ 63.8(c)(1)(i)	Routine and predictable SSM	Yes.	
§ 63.8(c)(1)(ii)	SSM not in Startup Shutdown Malfunction Plan.	Yes.	
§ 63.8(c)(1)(iii)	Compliance with operation and maintenance requirements.	Yes.	
§ 63.8(c)(2)–(3)	Monitoring system installation	Yes.	
§ 63.8(c)(4)	Continuous monitoring system (CMS) requirements.	Yes	Except that subpart ZZZZ does not require Continuous Opacity Monitoring System (COMS).
§ 63.8(c)(5)	COMS minimum procedures	No	Subpart ZZZZ does not require COMS.
§ 63.8(c)(6)–(8)	CMS requirements	Yes	Except that subpart ZZZZ does not require COMS.
§ 63.8(d)	CMS quality control	Yes.	
§ 63.8(e)	CMS performance evaluation	Yes	Except for § 63.8(e)(5)(ii), which applies to COMS.
§ 63.8(f)(1)–(5)	Alternative monitoring method	Yes.	
§ 63.8(f)(6)	Alternative to relative accuracy test.	Yes.	
§ 63.8(g)	Data reduction	Yes	Except that provisions for COMS are not applicable. Averaging periods for demonstrating compliance are specified at §§ 63.6635 and 63.6640.
§ 63.9(a)	Applicability and State delegation of notification requirements.	Yes.	
§ 63.9(b)(1)–(5)	Initial notifications	Yes	Except that § 63.9(b)(3) is reserved.
§ 63.9(c)	Request for compliance extension	Yes.	
§ 63.9(d)	Notification of special compliance requirements for new sources.	Yes.	
§ 63.9(e)	Notification of performance test	Yes.	
§ 63.9(f)	Notification of visible emission (VE)/opacity test.	No	Subpart ZZZZ does not contain opacity or VE standards.
§ 63.9(g)(1)	Notification of performance evaluation.	Yes.	
§ 63.9(g)(2)	Notification of use of COMS data	No	Subpart ZZZZ does not contain opacity or VE standards.
§ 63.9(g)(3)	Notification that criterion for alternative to RATA is exceeded.	Yes	If alternative is in use.

TABLE 8 TO SUBPART ZZZZ OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART ZZZZ—Continued

[As stated in § 63.6665, you must comply with the following applicable general provisions]

General provisions citation	Subject of citation	Applies to subpart	Explanation
§ 63.9(h)(1)–(6)	Notification of compliance status	Yes	Except that notifications for sources using a CEMS are due 30 days after completion of performance evaluations. § 63.9(h)(4) is reserved.
§ 63.9(i)	Adjustment of submittal deadlines	Yes.	
§ 63.9(j)	Change in previous information	Yes.	
§ 63.10(a)	Administrative provisions for record keeping/reporting.	Yes.	
§ 63.10(b)(1)	Record retention	Yes.	
§ 63.10(b)(2)(i)–(v)	Records related to SSM	Yes.	
§ 63.10(b)(2)(vi)–(xi)	Records	Yes.	
§ 63.10(b)(2)(xii)	Record when under waiver	Yes.	
§ 63.10(b)(2)(xiii)	Records when using alternative to RATA.	Yes	For CO standard if using RATA alternative.
§ 63.10(b)(2)(xiv)	Records of supporting documentation.	Yes.	
§ 63.10(b)(3)	Records of applicability determination.	Yes.	
§ 63.10(c)	Additional records for sources using CEMS.	Yes	Except that § 63.10(c)(2)–(4) and (9) are reserved.
§ 63.10(d)(1)	General reporting requirements	Yes.	
§ 63.10(d)(2)	Report of performance test results	Yes.	
§ 63.10(d)(3)	Reporting opacity or VE observations.	No	Subpart ZZZZ does not contain opacity or VE standards.
§ 63.10(d)(4)	Progress reports	Yes.	
§ 63.10(d)(5)	Startup, shutdown, and malfunction reports.	Yes.	
§ 63.10(e)(1) and (2)(i)	Additional CMS reports	Yes.	
§ 63.10(e)(2)(ii)	COMS-related report	No	Subpart ZZZZ does not require COMS.
§ 63.10(e)(3)	Excess emission and parameter exceedances reports.	Yes	Except that § 63.10(e)(3)(i)(C) is reserved.
§ 63.10(e)(4)	Reporting COMS data	No	Subpart ZZZZ does not require COMS.
§ 63.10(f)	Waiver for recordkeeping/reporting.	Yes.	
§ 63.11	Flares	No.	
§ 63.12	State authority and delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by reference	Yes.	
§ 63.15	Availability of information	Yes.	

PART 85—[AMENDED]

■ 25. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 26. Section 85.2401 is amended by revising paragraph (a)(13) to read as follows:

§ 85.2401 To whom do these requirements apply?

(a) * * *

(13) Stationary internal combustion engines (See 40 CFR part 60, subparts IIII and JJJJ).

* * * * *

■ 27. Section 85.2403 is amended by revising paragraph (b)(11) to read as follows:

§ 85.2403 What definitions apply to this subpart?

* * * * *

(b) * * *

(11) 40 CFR part 60, subparts IIII and JJJJ.

■ 28. Section 85.2405 is amended by adding paragraph (f) to read as follows:

§ 85.2405 How much are the fees?

* * * * *

(f) Fees for stationary SI internal combustion engine certificate requests shall be calculated in the same manner as for NR SI certificate. Fees for certificate requests where the certificate would apply to stationary and mobile engines shall be calculated in the same manner as fees for the certificate requests for the applicable mobile source engines.

PART 90—[AMENDED]

■ 29. The authority citation for part 90 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 30. Section 90.1 is amended by adding paragraph (h) to read as follows:

§ 90.1 Applicability.

* * * * *

(h) This part applies as specified in 40 CFR part 60 subpart JJJJ, to spark-ignition engines subject to the standards of 40 CFR part 60, subpart JJJJ.

■ 31. Section 90.107 is amended by adding paragraph (d)(12) to read as follows:

§ 90.107 Application for certificate.

* * * * *

(d) * * *

(12) A statement indicating whether the engine family contains only nonroad engines, only stationary engines, or both.

* * * * *

■ 32. Section 90.114 is amended by revising paragraph (c)(7) and adding paragraph (g) to read as follows:

§ 90.114 Requirement of certification-engine information label.

* * * * *

(c) * * *

(7) The statement ''THIS ENGINE CONFORMS TO U.S. EPA REGS FOR [MODEL YEAR].'';

* * * * *

(g) Stationary engines required by 40 CFR part 60, subpart JJJJ, to meet the requirements of this part 90 must meet the labeling requirements of 40 CFR 60.4242.

■ 33. Section 90.201 is revised to read as follows:

§ 90.201 Applicability.

The requirements of this subpart C are applicable to all Phase 2 spark-ignition engines subject to the provisions of subpart A of this part except as provided in § 90.103(a). These provisions are not applicable to any Phase 1 engines. Participation in the averaging, banking and trading program is voluntary, but if a manufacturer elects to participate, it must do so in compliance with the regulations set forth in this subpart. The provisions of this subpart are applicable for $HC+NO_X$ ($NMHC+NO_X$) emissions but not for CO emissions. To the extent specified in 40 CFR part 60, subpart JJJJ, stationary engines certified under this part and subject to the standards of 40 CFR part 60, subpart JJJJ, may participate in the averaging, banking, and trading program described in this subpart.

PART 1048—[AMENDED]

■ 34. The authority citation for part 1048 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 35. Section 1048.1 is amended by revising paragraph (c) to read as follows:

§ 1048.1 Does this part apply to me?

* * * * *

(c) The definition of nonroad engine in 40 CFR 1068.30 excludes certain engines used in stationary applications. These engines may be required by 40 CFR part 60, subpart JJJJ, to comply with some of the provisions of this part 1048; otherwise, these engines are only required to comply with the requirements in § 1048.20. In addition, the prohibitions in 40 CFR 1068.101 restrict the use of stationary engines for nonstationary purposes unless they are certified under this part 1048 to the same standards that would apply to nonroad engines for the same model year.

* * * * *

■ 36. Section 1048.20 is amended by revising paragraph (a) introductory text, revising paragraph (b)(4) and adding paragraph (c) to read as follows:

§ 1048.20 What requirements from this part apply to excluded stationary engines?

(a) You must add a permanent label or tag to each new engine you produce or import that is excluded under § 1048.1(c) as a stationary engine and is not required by 40 CFR part 60, subpart JJJJ, to meet the standards and other requirements of this part 1048 that are equivalent to the requirements applicable to nonroad SI engines for the same model year. To meet labeling requirements, you must do the following things:

* * * * *

(b) * * *

(4) State: ''THIS ENGINE IS EXCLUDED FROM THE REQUIREMENTS OF 40 CFR PART 1048 AS A ''STATIONARY ENGINE'' AND THE OWNER/OPERATOR MUST COMPLY WITH THE REQUIREMENTS OF 40 CFR PART 60. INSTALLING OR USING THIS ENGINE IN ANY OTHER APPLICATION MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.''.

(c) Stationary engines required by 40 CFR part 60, subpart JJJJ, to meet the requirements of this part 1048 must meet the labeling requirements of 40 CFR 60.4242.

■ 37. Section 1048.101 is amended by adding paragraph (a)(4) to read as follows:

§ 1048.101 What exhaust emission standards must my engines meet?

* * * * *

(a) * * *

(4) For constant-speed engines, the emission standards do not apply for transient testing if you do both of the following things:

(i) Demonstrate that the specified transient duty-cycle is not representative of the way your engines will operate in use.

(ii) Demonstrate that the engine's emission controls will function properly to control emissions during transient operation in use. In most cases, you may do this by showing that you use the same controls as a similar variable-speed engine that is certified as complying with the emission standards during transient testing.

* * * * *

■ 38. Section 1048.205 is amended by revising paragraphs (b) and (w) to read as follows:

§ 1048.205 What must I include in my application?

* * * * *

(b) Explain how the emission control systems operate. Describe the evaporative emission controls, if applicable. Also describe in detail all system components for controlling exhaust emissions, including all auxiliary emission control devices (AECDs) and all fuel-system components you will install on any production or test engine. Identify the part number of each component you describe. For this paragraph (b), treat as separate AECDs any devices that modulate or activate differently from each other. Include sufficient detail to allow us to evaluate whether the AECDs are consistent with the defeat device prohibition of § 1048.115.

* * * * *

(w) State whether your certification is intended to include engines used in stationary applications. Also state whether your certification is limited for certain engines. If this is the case, describe how you will prevent use of these engines in applications for which they are not certified. This applies for engines such as the following:

(1) Constant-speed engines.

(2) Variable-speed engines.

* * * * *

PART 1065—[AMENDED]

■ 39. The authority citation for part 1065 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 40. Section 1065.1 is amended by adding paragraph (a)(6) to read as follows:

§ 1065.1 Applicability.

(a) * * *

(6) Stationary spark-ignition engines certified using provisions in 40 CFR part 1048, as indicated under 40 CFR part 60, subpart JJJJ, the standard-setting part for these engines.

* * * * *

PART 1068—[AMENDED]

■ 41. The authority citation for part 1068 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 42. Section 1068.1 is amended by adding paragraph (a)(5) to read as follows:

§ 1068.1 Does this part apply to me?

(a) * * *

(5) Stationary spark-ignition engines certified using provisions in 40 CFR part

1048, as indicated under 40 CFR part 60, subpart JJJJ.

* * * * *

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Class D airspace; comments due by 1-24-08; published 12-10-07 [FR 07-05983]

Class D and E airspace; comments due by 1-24-08; published 12-10-07 [FR 07-05984]

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Motor vehicle safety standards:

School bus passenger crash protection requirements; upgrades; comments due by 1-22-08; published 11-21-07 [FR 07-05758]

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American viticultural areas establishment regulations; revision; comments due by 1-22-08; published 11-20-07 [FR E7-22717]

Leona Valley, Los Angeles County, CA; comments due by 1-22-08; published 11-21-07 [FR E7-22697]

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*.

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H.R. 660/P.L. 110–177

Court Security Improvement Act of 2007 (Jan. 7, 2008; 121 Stat. 2534)

H.R. 3690/P.L. 110–178

U.S. Capitol Police and Library of Congress Police Merger Implementation Act of 2007 (Jan. 7, 2008; 121 Stat. 2546)

S. 863/P.L. 110–179

Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007 (Jan. 7, 2008; 121 Stat. 2556)

H.R. 2640/P.L. 110–180

NICS Improvement Amendments Act of 2007 (Jan. 8, 2008; 121 Stat. 2559)

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